

## MINUTES OF CONVOCATION

Thursday, 26<sup>th</sup> June, 2008  
9:00 a.m.

## PRESENT:

The Treasurer (W. A. Derry Millar), Aitken, Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Campion, Caskey, Chahbar, Chilcott, Conway, Copeland, Crowe, Dickson, Dray, Elliott, Epstein, Feinstein, Furlong, Gold, Gottlieb, Hainey, Halajian, Hare, Hartman (by telephone), Heintzman, Henderson, Krishna, Lawrence, Lawrie (by telephone), Legge, Lewis, MacKenzie, McGrath, McMurtry, Marmur, Minor, Murphy, Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch (by telephone), Robins, Ross (by telephone), Rothstein, St. Lewis, Sandler, Schabas, Sikand, Silverstein, C. Strosberg, Swaye, Symes, Tough, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick  
Acting Secretary: Jim Varro

The Reporter was sworn.

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## IN PUBLIC

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ANNOUNCEMENT OF ELECTION OF TREASURER

The Secretary announced that after the close of nominations on May 8, 2008 at 5:00 p.m. there was only one candidate for the position of Treasurer.

Mr. Millar is declared elected as Treasurer.

Mr. Millar took the chair as Treasurer.

Mr. MacKenzie addressed Convocation.

The Treasurer, Mr. Millar, addressed Convocation.

MOTION – ELECTION OF BENCHER

It was moved by Mr. Caskey, seconded by Mr. Bredt, that, –

WHEREAS Derry Millar who was elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of the votes cast by all electors, has been elected as Treasurer; and

WHEREAS upon being elected Treasurer, Derry Millar ceased to hold office as an elected benchner in accordance with subsection 25 (2) of the *Law Society Act*, thereby creating a vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of the votes cast by all electors.

THAT under the authority contained in By-Law 3, Glenn Hainey, having satisfied the requirements contained in subsections 43 (1) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation as benchner to fill the vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of the votes cast by all electors.

Carried

The Treasurer and benchers welcomed Mr. Hainey to Convocation.

#### DRAFT MINUTES OF CONVOCAATION

The Draft Minutes of Convocation of May 22, 2008 were confirmed.

#### MOTION – COMMITTEE APPOINTMENTS

It was moved by Mr. Banack, seconded by Ms. Warkentin, that the following list of committee and other appointments be approved. –

COMMITTEE, TASK FORCE, WORKING GROUP AND OTHER APPOINTMENTS  
June 26, 2008

#### Access to Justice

Marion Boyd (Co-Chair)  
Paul Schabas (Co-Chair)  
Avvy Go (Vice-Chair)  
Paul Dray  
Glenn Hainey  
Allan Lawrence  
Susan McGrath  
Julian Porter  
Jack Rabinovitch  
Catherine Strosberg  
Bonnie Tough

#### Appeal Panel

The following people shall be appointed to the Law Society Appeal Panel for a term of two years, pursuant to section 49.29(3) and (4) of the *Law Society Act*.

Mark Sandler (Chair)  
Ab Chahbar  
Dan Chilcott

Seymour Epstein  
Janet Minor  
Sydney Robins  
Clayton Ruby  
Bradley Wright  
Audit

Beth Symes (Chair)  
Ab Chahbar (Vice-Chair)  
Melanie Aitken  
Larry Banack  
Marshall Crowe  
Seymour Epstein  
Glenn Hainey  
Doug Lewis

Compensation

Derry Millar (Chair)  
Jack Rabinovitch  
Beth Symes  
Bonnie Warkentin

Compensation Fund

Tom Heintzman (Chair)  
Marshall Crowe  
Aslam Daud  
Michelle Haigh  
Susan McGrath  
Stephen Parker  
Nicholas Pustina  
Baljit Sikand  
Gerald Swaye

Equity and Aboriginal Issues

Janet Minor (Chair)  
Raj Anand (Vice-Chair)  
Paul Copeland  
Mary Louise Dickson  
Avvy Go  
Susan Hare  
Doug Lewis  
Dow Marmur  
Judith Potter  
Linda Rothstein  
Mark Sandler  
Beth Symes  
Robert Topp

Federation of Law Societies Representative

John Campion

Thomas Conway [Effective Upon John Campion Becoming First Vice-President]

Finance

Bonnie Warkentin (Chair)

Carol Hartman (Vice-Chair)

Jack Braithwaite

Chris Bredt

Mary Louise Dickson

Jack Ground

Susan Hare

Janet Minor

Ross Murray

Judith Potter

Jack Rabinovitch

Paul Schabas

Gerald Swaye

Brad Wright

Governance Task Force

Tom Heintzman (Chair)

Vern Krishna (Vice-Chair)

Raj Anand [EAIC representative]

Larry Banack

Chris Bredt

Abe Feinstein

Janet Minor [EAIC representative]

Linda Rothstein

Bonnie Warkentin

Government Relations

James Caskey (Co-Chair)

Doug Lewis (Co-Chair)

Laurie Pawlitza (Vice-Chair)

Bob Aaron

Marion Boyd

Jack Braithwaite

Chris Bredt

Allan Lawrence

Dow Marmur

Susan McGrath

Judith Potter

Heather Ross

Alan Silverstein

Hearing Panel

The following people shall be appointed to the Law Society Hearing Panel for a term of two years pursuant to section 49.21(3) and (4) of the *Law Society Act*:

Alan Gold (Chair)  
Thomas Conway (Vice-Chair)  
Robert Aaron  
Melanie Aitken  
Andrea Alexander  
Raj Anand  
Constance Backhouse  
Larry Banack  
Marion Boyd  
Jack Braithwaite  
Christopher Bredt  
John Campion  
James Caskey  
Abdul A. Chahbar  
Dan Chilcott  
Austin Cooper  
Paul Copeland  
Marshall Crowe  
Aslam Daud  
Mary Louise Dickson  
Anne Marie Doyle  
Paul Dray  
Susan Elliott  
Seymour Epstein  
Abraham Feinstein  
Neil Finkelstein  
Patrick Furlong  
Avvy Go  
Gary Lloyd Gottlieb  
Jack Ground  
Michelle Haigh  
Glenn Hainey  
Jennifer Halajian  
Susan Hare  
Carol Hartman  
Thomas Heintzman  
Paul Henderson  
Vern Krishna  
Barbara Laskin  
Brian Lawrie  
Laura Legge  
Doug Lewis  
Margaret Louter  
Gavin MacKenzie  
Ronald Manes

Dow Marmur  
Susan McGrath  
Janet E. Minor  
Daniel Murphy  
Ross Murray  
Stephen Parker  
Laurie Pawlitzka  
Julian Porter  
Judith Potter  
Nicholas Pustina  
Jack Rabinovitch  
Sydney Robins  
Allan Rock  
Heather Ross  
Linda Rothstein  
Clayton Ruby  
Mark Sandler  
Arthur Scace  
Paul Schabas  
Baljit Sikand  
Alan Silverstein  
Joanne St. Lewis  
Catherine Strosberg  
Harvey Strosberg  
Gerald Swaye  
Beth Symes  
Robert Topp  
Bonnie Tough  
James Wardlaw  
Bonnie Warkentin  
Bradley Wright  
Roger Yachetti

#### Heritage

Constance Backhouse (Chair)  
Melanie Aitken (Vice-Chair)  
Bob Aaron  
Patrick Furlong  
Gary Lloyd Gottlieb  
Vern Krishna  
Allan Lawrence  
Laura Legge  
Robert Topp

#### Law Foundation of Ontario Board

Larry Banack  
Mark Sandler  
Paul Schabas

LAWPRO Board

Constance Backhouse  
James Caskey  
Ab Chahbar  
Laurie Pawlitzka  
Bonnie Tough  
Brad Wright

LibraryCo Board

Thomas Conway  
Carol Hartman  
Paul Henderson  
Susan McGrath

Licensing & Accreditation Task Force

Vern Krishna (Chair)  
Raj Anand [EAIC representative]  
Constance Backhouse  
Larry Banack  
Susan Hare  
Carol Hartman  
Janet Minor [EAIC representative]  
Laurie Pawlitzka  
Bonnie Tough  
Bonnie Warkentin

Litigation

John Campion (Chair)  
James Caskey  
Tom Heintzman  
Paul Henderson  
Linda Rothstein  
Bonnie Tough

Paralegal

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  
Catherine Strosberg

Priority Planning

Derry Millar (Chair)  
Bonnie Warkentin (Vice-Chair)  
Marion Boyd  
Heather Ross  
Linda Rothstein

Proceedings Authorization

The following people shall be appointed to the Proceedings Authorization Committee for a term of one year, pursuant to section 44(4) of By-Law 11.

Julian Porter (Chair)  
Beth Symes (Vice-Chair)  
Jennifer Halajian  
Brian Lawrie  
Alan Silverstein

Professional Development & Competence

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



Professional Regulation

Linda Rothstein (Chair)  
Julian Porter (Vice-Chair - PAC)  
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

Tribunals

Mark Sandler (Chair)  
Alan Gold (Vice-Chair)  
Raj Anand  
Thomas Conway  
Tom Heintzman  
Paul Schabas  
Joanne St. Lewis  
Bonnie Warkentin

Human Rights Monitoring Working Group (Equity)

Joanne St. Lewis (Chair)  
Raj Anand  
Paul Copeland  
Avvy Go  
Glenn Hainey  
Heather Ross  
Paul Schabas

Retention of Women Working Group (Equity)

Laurie Pawlitza (Co-Chair)  
Bonnie Warkentin (Co-Chair)  
Nathalie Boutet  
Marion Boyd  
James Caskey  
Soma Choudhury  
Paul Copeland  
Katherine Hensel  
Janet Minor  
Julie Ralhan

Linda Rothstein  
Joanne St. Lewis  
Beth Symes

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, June 26, 2008.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 2008

CANDIDATES FOR CALL TO THE BAR  
June 26th, 2008

Maryse Nicole Elaine Carrière  
Ruby Ming Fong Chan  
Nicolas Charron Charron-Geadah  
Gillian Katherine Graydon  
Jennifer Ann Roper  
Adam Isaac Zasada

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 deemed Call to the Bar candidates, be adopted.

Carried

## LAW COMMISSION OF ONTARIO REPORT

Mr. Bredt presented the Report and introduced Dr. Patricia Hughes, Executive Director of the Law Commission of Ontario.

Report to Convocation  
June 26, 2008

Law Commission of Ontario

Purpose of Report: Information

## APPENDICES

LCO FOUNDATION AGREEMENT..... Appendix 1

LCO STRATEGIC PLAN..... Appendix 2

LCO STRATEGIC PLAN HIGHLIGHTS ..... Appendix 3

## LAW COMMISSION OF ONTARIO

Report to Convocation: June 26, 2008

### The Launch of the LCO

Launched on September 7, 2007, the Law Commission of Ontario is a partnership among the LSUC, the Law Foundation of Ontario, the Ontario Ministry of the Attorney General, Osgoode Hall Law School and the other Ontario law schools. Officially located at Osgoode Hall Law School, the LCO is currently housed elsewhere on the York campus until renovations are completed at Osgoode. Its staff is now at full strength. It has issued consultation papers in three projects, is organizing a roundtable in family law for September 2008 and is planning a conference on law reform for spring 2009. Its website operates in English and French and the LCO's documents are released in both languages.

The Launch was held at Osgoode Hall Law School with members of the legal community, government, Osgoode faculty and staff members and media attending. Derry Millar, then Chair of the Finance & Audit Committee, brought the LSUC's greetings. Other speakers were Larry Banack, Chair of the Law Foundation of Ontario; former Ontario Attorney General Michael Bryant; Patrick Monahan, Chair of the LCO's Board of Governors and Dean of Osgoode Hall Law School; Mamdouh Shoukri, York University President & Vice-Chancellor and Patricia Hughes, the LCO's Executive Director.

## Source of the LCO's Authority, its Mandate and its Governance

The LCO's "authority" or mandate lies in the Foundation Agreement to which the LSUC is a signatory (attached to this Report). The Agreement has a term of five years, beginning January 1, 2007, and establishes the mandate of the LCO and the governance structure, as well as the relations between the LCO and the partners.

As set out in section 2(1) of the Foundation Agreement, the LCO's purpose is to recommend law reform measures to: (a) Enhance the legal system's relevance, effectiveness and accessibility; (b) Improve the administration of justice through the clarification and simplification of the law; and (c) Consider the effectiveness and use of technology as a means to enhance access to justice. In addition, the Foundation Agreement states that the LCO shall: (a) Stimulate critical debate about law and promote scholarly legal research; and (b) Develop priority areas for study which are underserved by other research, determine ways to disseminate the information to those who need it and foster links with communities, groups and agencies.

The LCO is governed by a Board of Governors whose members are appointed by the partners, along with two "at-large" members. The current LSUC appointee is Christopher D. Bredt. The Board of Governors establishes policy and approves the budget, projects and recommendations. The Research Advisory Board, chaired by the Executive Director and comprised of representatives from the Ontario law schools, LSUC and MAG, an Ontario practitioner and an academic in a discipline other than Law, recommends projects to the Board of Governors.

## Funding

The LCO is funded by the LSUC, the LFO, MAG and OHLS for five years, beginning January 1, 2007. Annual funding is as follows: LSUC, \$100,000; LFO, \$485,000; MAG, \$150,000; and OHLS, \$125,000. OHLS also annually seconds a faculty member to the LCO for twelve months (or two faculty members for six months each) and provides administrative, communication and IT support and MAG annually seconds a government counsel for twelve months.

## Staff

Dr. Patricia Hughes (Osgoode '82, called to the Ontario ('84) and Alberta ('06) bars) was appointed as Executive Director (the CEO and chief spokesperson of the LCO), effective September 15, 2007. Dr. Hughes was formerly Dean of the Faculty of Law at the University of Calgary and most recently the Executive Director of Education (Alberta) and Scholar in Residence at the Calgary office of Bennett Jones LLP. She also served as Counsel with the Policy Development Division of the Ministry of the Attorney-General (Ontario), as a Vice-chair of the Ontario Labour Relations Board and as Alternate Chair of the Ontario Pay Equity Hearings Tribunal and taught law at the University of New Brunswick's Faculty of Law.

The LCO Staff Lawyer is Lauren Bates (Osgoode '91, called to Ontario bar '93) who had been a Senior Policy Analyst at the Ontario Human Rights Commission from 2000 to 2007. She was awarded the Amethyst Award for public service in 2001 for her role in the development of the Human Rights Commission's groundbreaking Policy and Guidelines on *Disability and the Duty to Accommodate*. She is responsible for conducting research, coordinating major projects and supervising contract researchers and students. She joined the LCO on February 1, 2008.

The LCO's part-time Research Lawyer is Julie Lassonde (McGill '01, called to Ontario bar '05). She is trained in both the civil and common law and is bilingual.

Selected as the inaugural Ministry of the Attorney General LCO Counsel in Residence, John Hill (U of T '80, called to Ontario bar '82) joined the LCO on March 17, 2008. He is General Counsel with the Ontario Ministry of Labour Legal Services Branch, where he has served as lead counsel on several major legislative projects, including the *Labour Relations Act*, 1995, the *Public Sector Labour Relations Transition Act*, 1997 and the *Employment Standards Act*, 2000, as well as numerous amending Acts.

The Osgoode Hall Law School LCO Scholars in Residence for 2008-2009 are Professors Janet Walker (July to December 2008) and Roxanne Mykitiuk (January to June 2009).

Janice Williams joined the LCO as the Executive Director's Administrative Assistant on September 15, 2007. She most recently was the Administrative Coordinator in the Office of the Executive Officer at Osgoode Hall Law School.

The LCO has hired four summer students: Revital Goldhar is a doctoral student at the University of Toronto's Faculty of Law; Sahra Panjwani, Miriam Stein and Layla Hassan are LLB students at Osgoode, Ottawa Common Law and Western Law, respectively. Laila Said is serving her six week placement with the LCO as part of her course in Comparative Public Policy and Law Reform at the Faculty of Law at the University of Maryland.

The LCO will also be hiring contract researchers for some of its projects and students for the fall and winter terms 2008-2009.

### Strategic Plan and Policies

The Board of Governors has approved a Strategic Plan for the LCO. It is available on the website at <http://www.lco-cdo.org/en/thestrategicplan.html>, along with a shorter "Highlights of the LCO's Strategic Plan". These documents are both attached to this Report.

The Strategic Plan identifies the following goals for the first five year mandate: completion or substantial completion of eight to ten major and eight to ten narrowly focused projects; organization or co-organization of three conferences; achievement of recognition for the high quality of the LCO's work and consultative process; acknowledgement as a leader in law reform in Canada; and achievement of widespread acceptance of the LCO's value to Ontario.

The LCO has committed to carrying out all its work in conformity to the following values, explained more fully in the Strategic Plan: independence; integrity; excellence in its work and employment and administrative practices; innovation; relevance; open-mindedness; transparency; diversity; inclusiveness; multidisciplinary in its research and recommendations; collaboration with other law reform commissions and other organizations; pragmatism in its recommendations; efficiency without endangering the excellence of its work and its interaction with employees; and accountability to its partners and to the public for the quality of its work and adherence to its values.

The Board has approved a Good Governance policy for its own guidance; performance measures for the Executive Director; a Language and Translation Policy; a Copyright and Attribution Policy; Hiring of Consultants Policy; and a Communications Plan.

## Projects

The LCO's Strategic Plan articulates the LCO's philosophy of law reform as to undertake both focused questions when there is a particular reason for doing so and the large social issues for which law commissions are particularly suited. It will, indeed, offer in appropriate cases, the "reconceptualization of law" which Neave considered signalled the purpose of a separate law reform body. It recognizes that while law may be the primary discipline as far as law reform is concerned, it must be viewed in the context of other disciplines and expertise, such as sociology, economics and psychology and the natural sciences, for example. It will employ the most modern research tools and both qualitative and quantitative analysis, as appropriate. Its researchers will consult both academic experts and those who have had real life experiences in order to form a picture of the topic at hand from a variety of perspectives. Law commissions today are "of the world," legal and non-legal, and must, therefore, develop extensive consultation, collaboration and communication processes. A contemporary law reform commission must be concerned not only with the subjects it chooses to research, but also with its research, consultative and communicative processes.

More specifically, the Strategic Plan explains that

the LCO's projects will potentially encompass all areas of law within provincial jurisdiction, including those overlapping with federal jurisdiction. They will affect a wide range of communities, including those defined geographically, linguistically, socially and demographically. The projects will address socially relevant justice issues and narrower questions of law, always with the objective of making the legal system more relevant, effective and accessible. In the usual course, the LCO will have on-going at least two or three narrowly focused projects and at least two complex projects. In all its work, including the selection of projects, the LCO will conform to the values articulated [in the Strategic Plan].

In November 2007, the Board of Governors approved three initial projects: charging fees for cashing government cheques; the timing of the valuation and division of pensions on marital breakdown; and the development of a framework for the law as it affects older persons. In addition, it approved in principle a project on the development of a framework for the law as it affects persons with disabilities on which work will begin in Fall 2008.

Work on these projects began when the Staff Lawyer joined the LCO in February 2008. The LCO has released consultation papers in its projects on fees for cashing government cheques (March 25, 2008); older adults (May 6, 2008); and the division of pensions (May 15, 2008). All the papers were sent to stakeholders and posted on the LCO website in English and French. The papers in the fees and the pension division projects both set out the question the LCO expects to address, with some discussion of relevant issues and options and invites submissions; the paper in the older persons project invites submissions that will assist the LCO in shaping the project more definitively. The LCO expects to issue final reports in the fees and pension projects by the end of 2008. The older adults project is a lengthy project expected to take between two and three years; another paper in this project, setting out the parameters of the project, will be issued in Fall 2008.

More information about these projects can be found on the LCO website at <http://www.lco-cdo.org/en/currentprojects.html>

In addition to these projects, Professor Walker will research and propose recommendations relating to cross border litigation, particularly updating the *Court Jurisdiction and Proceedings Transfer Act* for possible adoption in Ontario, and also possibly including development of a framework for court to court communications and consideration of enforcement of foreign judgments. Professor Mykitiuk will be contributing to the project on the development of a framework for the law as it affects persons with disabilities.

The LCO is holding a family law roundtable in September 2008 to consult with persons involved in a wide range of family law matters in order to develop a project in family law that will address the most serious issues in the area.

#### Partner Communication

The Executive Director has developed regular communication processes to enable the LCO's partners to maintain currency with the LCO's work. She has met with Malcolm Heins, the CEO of the LSUC, and attended the LSUC's Access to Justice Committee meeting on May 7, 2008; the Executive Director will meet with the Access to Justice Committee on an annual basis, or more frequently if appropriate. The LSUC's representative on the Board of Governors, Christopher Bredt, reports to Convocation on the LCO's activities.

The Executive Director meets regularly with the Dean of Osgoode, Patrick Monahan, who is also Chair of the Board of Governors, and has visited all the Ontario law schools to meet the Dean and Associate Dean (Research), faculty members and students and will schedule annual, or if appropriate, more frequent visits with the schools.

The Executive Director maintains regular contact with the CEO of the LFO and files reports and budgets with the LFO and meets frequently with representatives from MAG.

In addition to in-person meetings, partners will receive updates of significant events, the LCO newsletters and the Annual Report.

#### Community Outreach

In selecting, researching and developing recommendations the LCO seeks the input of members of the legal profession, others who are particularly affected by the subject matter of a particular project and the general public to ensure that it is addressing the needs of Ontarians in the projects it undertakes and that its recommendations are both innovative and feasible.

Accordingly, one of the Executive Director's main responsibilities is to enhance public participation by meeting with legal and other professional organizations and community groups to inform them of the LCO's activities and to encourage their involvement in projects. Over the past few months, the Executive Director has met with approximately 45 groups, in addition to holding meetings with partners, including the LSUC, and others, such as representatives of other law commissions in Canada.

## Appendix 2

LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO

LCO STRATEGIC PLAN  
2008 – 2012  
LCO STRATEGIC PLAN 2008 – 2012  
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EXECUTIVE SUMMARY

## II. INTRODUCTION

The LCO, launched on September 7, 2007, was established by an Agreement among the Ministry of the Attorney General, the Law Foundation of Ontario, the Law Society of Upper Canada, Osgoode Hall Law School and the other Ontario law school deans, for a period of five years.

## III. GOALS TO BE ACHIEVED BY 2012

The LCO's goals for its first mandate are to complete or substantially implement eight to ten major projects and eight to ten focused projects, organize (in collaboration) three conferences, achieve recognition for the high quality of its work, achieve recognition for its consultative process and achieve widespread acceptance of its value.



#### IV. THE LCO'S MANDATE AND UNDERLYING VALUES

The LCO's mandate is to make recommendations to improve the legal system's relevance, effectiveness and accessibility; to clarify and simplify the law; and to consider how technology might make the legal system more accessible. It is also mandated to create critical debate about law reform and promote scholarly research. The LCO's mission is to become a leading voice in law reform. Its values are independence; integrity; excellence; innovation; relevance; open-mindedness; transparency; diversity; inclusiveness; multi/interdisciplinarity; collaboration; pragmatism; efficiency and accountability.

#### V. THE LCO'S APPROACH TO LAW REFORM

The evolution of law reform indicates that over time commissions have changes in nature. While law reform began in limited form in the fifteenth century, its modern manifestation did not occur until 1925 in the United States and 1934 in Britain. Ontario created the first law reform commission in Canada, the Ontario Law Reform Commission, in 1964, followed by other provincial commissions and a federal commission. The current LCO differs from the OLRC in not being established by government and in having complete autonomy over its research agenda. The LCO is premised on a vision of law reform as a creative yet pragmatic endeavour.

The LCO will undertake both narrowly focused and complex, socially oriented projects, engage in multi/interdisciplinary research and analysis and make holistic recommendations. It will collaborate with other bodies and consult with affected groups and the public generally. It will be responsive to the need to see its recommendations translated into law, but will also engage in projects that will not become part of the government's agenda, but that may have a longer term impact in a different forum.

#### VI. THE LCO'S PROJECTS

The LCO is open to project proposals from the public, community groups, academics and legal organizations and from individuals and groups. It will accept proposals at any time, but will also issue a "call" for proposals at times when it is clear that resources will become available.

The Board of Governors approves projects, after receiving recommendations and advice from the Research Advisory Board and the Executive Director. The LCO applies a wide ranging set of criteria in determining whether it is appropriate to undertake a particular project: relevance of the proposed project to the LCO's mandate and objectives; its impact on the law and communities; and using resources efficiently.

The LCO's current projects are fees for cashing government cheques; division of pensions on marital breakdown; and the development of a coherent approach to law as it affects older persons. In addition, the LCO will carry out a pre-study for a project relating to persons with disabilities.

The staff lawyer and Executive Director will develop a plan for each project, including timelines, resources required, methods of consultation and list of interested groups, taking into account previous work in the area. The knowledge required for each project and consideration of the relevance of technology for each project will be factors in determining the nature of the research required. Narrowly focused projects will usually result only in a draft report distributed for feedback, while complex projects will also involve discussion papers, also distributed for

feedback. Complex projects will begin with a pre-study to determine their parameters and will involve multi/interdisciplinary analysis and holistic recommendations.

## VII. THE LCO AS A RESPONSIVE ORGANIZATION

The Board of Governors is required to submit a budget and projected expenditures to the partners. The LCO is required to report annually to the partners, but the Executive Director will also develop communication plans that include formal and informal means of communication, including in person communication. The release of the Annual Report will provide an opportunity to bring together the funding partners, the Board of Governors and the Research Advisory Board.

The LCO is committed to public consultation and communication in person, through its website, via a newsletter and through its discussion papers and draft and final reports.

## VIII. MEASURING SUCCESS

Measures of success include translation of recommendations into legislation; reference to research, analysis and recommendations by courts, academics and other bodies interested in law reform; quality of work produced; adoption of recommendations or frameworks by other jurisdictions; contribution to or leading dialogue on law reform; collaboration with others; number of proposals submitted to the LCO; extent the LCO is known; and extent to which it meets its own values and satisfies its own identified processes. The LCO will be externally evaluated beginning early in 2010.

## IX. OBJECTIVES AND ACTIVITIES FOR 2008

The LCO will complete its appointment of personnel, complete the two narrowly focused projects and complete the pre-study for and begin research on the older persons project, organize, likely in collaboration with a law school partner, a conference on law reform, prepare communication plans and implement its website and newsletter.

# THE LAW COMMISSION OF ONTARIO: STRATEGIC PLAN, 2008-2012

## I. INTRODUCTION

The Law Commission of Ontario ("the LCO") was launched on September 7, 2007, as a partnership among the Ontario Ministry of the Attorney General, the Dean of Osgoode Hall Law School, the law deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada. Officially located at Osgoode Hall Law School, the LCO is temporarily housed elsewhere at York University until Osgoode completes extensive renovations that will include space allocated to the LCO.

The LCO's mandate as articulated by the Foundation Agreement is to recommend law reform measures to increase access to and the relevance and effectiveness of the legal system, to clarify and simplify the law and to consider technology as a means of increasing access to justice. The LCO is also to stimulate debate about law and promote scholarly legal research.

The LCO's mission is to become a leading voice in law reform. Leadership includes helping to identify the parameters of law reform; encouraging debate about law reform and law reform initiatives; producing scholarly research that identifies areas of law in need of reform and

providing high level analysis of the areas identified; and making holistic and multidisciplinary recommendations directed at making the law forwardlooking, responsive to the needs of affected communities and comprehensive in approach.

The LCO is premised on a vision of law reform as a creative yet pragmatic endeavour. It has made a commitment to widespread consultation in selecting law reform projects and in making its recommendations. It is also committed to collaboration with other law reform bodies and other organizations engaged in law reform activities. This Strategic Plan not only describes the organization of the LCO and its objectives, but also relates it to the various perspectives on law reform that have informed law reform activities in Canada and elsewhere.

The LCO has the following goals for its first mandate: the completion or substantial completion of eight to ten major projects and eight to ten narrowly-focused projects; the organization (in collaboration) of three conferences; achieve recognition for the high quality of its work; be recognized as a leader in law reform; be recognized for its consultative process; and achieve widespread recognition of its positive contribution to the legal landscape not only in Ontario, but also nationally.

The remainder of the Strategic Plan explains the approach of the LCO to law reform and to the selection and study of projects; it identifies the values that govern the LCO's work; it suggests measures by which its performance can be measured; and it sets out the LCO's objectives for 2008.

## II. GOALS TO BE ACHIEVED BY 2012

- Completion or substantial implementation of eight to ten major projects and eight to ten more narrowly focused projects: this number recognizes that it will not be until 2009 that the LCO is likely to produce any substantial work on the initial large projects and it also recognizes that, while it continues to select narrowly focused projects, the majority of its work is likely to be in relation to large projects;
- Organization of three conferences or symposia: these are likely to be organized in conjunction with Ontario law faculties and other partners;
- Achieve recognition for the high quality of its discussion papers and reports: this includes the quality of the analysis and the feasibility of the recommendations;
- Acknowledgement as a leader in law reform: this means that its partners, other law commissions, the legal community and the community more generally view the LCO as playing a major role in law reform in Ontario and in Canada generally;
- Achieve recognition for its consultative processes: this refers to consultation in relation to project selection and throughout the project implementation process with affected groups and the public generally, as appropriate for the project; and
- Develop widespread acceptance of the value of the LCO to the Ontario legal system: this will include the view among identified constituencies, such as legal and community organizations, the government and the partners that the mandate of the LCO be extended.

## III. THE LCO'S MANDATE AND UNDERLYING VALUES

As set out in section 2(1) of the Foundation Agreement, the LCO's purpose is

to recommend law reform measures to:

- (a) Enhance the legal system's relevance, effectiveness and accessibility;
- (b) Improve the administration of justice through the clarification and simplification of the law; and
- (c) Consider the effectiveness and use of technology as a means to enhance access to justice.

In addition, the Foundation Agreement states that the LCO shall

- (a) Stimulate critical debate about law and promote scholarly legal research; and
- (b) Develop priority areas for study which are underserved by other research, determine ways to disseminate the information to those who need it and foster links with communities, groups and agencies.

The LCO is independent of both government and interest groups. It does not receive its agenda from the government, nor is it obliged to review matters at the request of the government. Furthermore, the government is only one of the LCO's five funders. Nevertheless, the LCO recognizes that at least one measure of success is the extent to which its recommendations are "taken up" by the government of the day. Therefore, government's interest in a proposed project is a factor in selecting among potential projects. This process is facilitated by the inclusion of the Deputy Attorney General on the Board of Governors and the inclusion of an appointee of the Ministry of the Attorney General on the Research Advisory Board. Nevertheless, the LCO may conclude that it has other reasons to implement a project, even if the government does not evidence interest in it, since it will be difficult to identify the government's future interest in the results of complex project and consistent with the injunction to "stimulate critical debate about law and promote scholarly legal research."

The LCO will be guided by the following values in all its work:

1. *independence*: the LCO is an independent body, the recommendations of which will be determined by the results of research, including consultations with the public and experts in the area;
2. *integrity*: the LCO is committed to ethical practice and will select projects, carry out research and develop recommendations based on merit and not on the basis of pressure from any quarter;
3. *excellence*: the LCO is committed to high quality research carried out for a project, analysis, solutions and production of discussion papers and reports and in its employment and administrative practices;
4. *innovation*: the LCO will approach law reform with a commitment to innovation in law and the reconceptualization of legal frameworks;
5. *relevance*: the LCO will select projects and make recommendations that are relevant to Ontario society today and in the future;
6. *open-mindedness*: the LCO will be open to views from different constituencies at all stages of its projects and will be responsive to suggestions for improvement in all aspects of its operations;

7. *transparency*: the LCO will have an open process for project proposals, will explain its process for selection and will disseminate its work widely;
8. *diversity*: the LCO is committed to diversity in its selection of projects, its approach to analysis and recommendations and in its interaction with community organizations and groups;
9. *inclusiveness*: the LCO will encourage participation by interested groups and individuals, legal and non-legal, in its project selection and project implementation processes and will make every effort to seek out the views of marginalized communities when appropriate to its projects;
10. *multidisciplinarity*: the LCO's research and recommendations will be based on a multi/interdisciplinary and holistic approach;
11. *collaboration*: the LCO will collaborate with other law reform commissions and with other organizations involved in (law) reform as appropriate;
12. *pragmatism*: the LCO will advance recommendations that can be realistically implemented;
13. *efficiency*: the LCO will use its resources efficiently without endangering the high quality of its work and its approach to employees and will not duplicate work done by others or more appropriately done by others; and
14. *accountability*: the LCO will be accountable to its partners and to the public for the quality of its work and its adherence to its values.

#### IV. THE LCO'S APPROACH TO LAW REFORM

##### A. Placing the LCO in Context

Law reform as a limited activity goes back to the fifteenth century, but the modern notion of deliberative law reform began in the United States with the 1925 Law Revision Commission and in Britain with the establishment of the Law Revision Committee in 1934 which, with a break for World War II, was reestablished as the Law Reform Committee in 1952.<sup>1</sup> The Ontario attorney general established a Law Revision Committee in 1941 and an Advisory Committee on the Administration of Justice in 1956. The former apparently did no work, but the latter, according to Murphy, "produced a significant body of work, mostly on technical issues" and it was successful in having many of its recommendations adopted by the government.

Ontario established the first "modern" law reform commission in Canada, in 1964. The Ontario Law Reform Commission ("OLRC") was created by statute and was required to look into any issue requested by the Attorney General, but it also had the freedom to study and make recommendations about any area it considered appropriate. Its personnel included one senior and four legal research officers and it otherwise relied on contract researchers drawn from the Ontario law schools. An advisory board, comprised of legal and non-legal members, was also established. The Ontario Law Reform Commission was abolished in 1996 after releasing a significant number of reports, a good number of which, as Hurlburt explains, influenced the development of law in Ontario and elsewhere.<sup>2</sup>

A little over a decade after the abolition of the OLRC, the Law Commission of Ontario was established on June 25, 2007. In November 2006, a group of individuals, including law school deans, members of the bar, members of the already appointed Board of Governors and the Research Advisory Board of the LCO and members of the Ministry of the Attorney General met in a “Creative Symposium” to discuss issues related to establishing a law reform commission in Ontario.

The LCO is a partnership among the Ministry of the Attorney General of Ontario, the Dean of Osgoode Hall Law School, the Law Deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada, with funding and in-kind contributions from MAG, the LFO, the LSUC and Osgoode Hall Law School for five years, beginning January 1, 2007. The LCO is a not-for-profit unincorporated institution that finds its authority in the Foundation Agreement among the founding partners and not in statute. The Law Commission of Ontario was officially launched in a public ceremony at Osgoode Hall Law School on September 7, 2007. The LCO’s Executive Director was appointed effective September 15, 2007. Its staff complement includes a full-time staff lawyer, a part-time research lawyer, the MAG LCO Counsel in Residence (seconded by the Ministry of the Attorney General), the Osgoode Hall Law School LCO Scholar in Residence (seconded by Osgoode) and the Executive Assistant.

The new Law Commission of Ontario joins sister provincial commissions in Nova Scotia, Manitoba, Saskatchewan, Alberta and British Columbia. These commissions vary in their origins, organizations and resources. The Law Reform Commission of Nova Scotia, the Manitoba Law Reform Commission and The Law Reform Commission of Saskatchewan were all created by specific provincial statute. The British Columbia Law Reform Institute was incorporated under the Provincial Society Act in 1997 and was a successor to the Law Reform Commission of British Columbia, established in 1969, from which the Ministry of the Attorney General had withdrawn funding. The Institute of Law Research and Reform was created by the Province of Alberta, the University of Alberta and the Law Society of Alberta in November 1967; it was renamed the Alberta Law Reform Institute in 1989. The Nova Scotia, Manitoba and Saskatchewan Commissions all receive funding from their provincial departments of justice and law foundations. The Alberta Institute is funded by the Department of Justice and the Alberta Law Foundation and it also receives in-kind contributions from the University of Alberta (the University of Calgary provides office space for two ALRI counsel) and the British Columbia Institute by the British Columbia Law Foundation and more recently, by the Notary and the Real Estate Foundations.

The Law Reform Commission of Canada was established by statute in 1971. It was closely tied with government and was given a legislative mandate heavily directed at maintaining currency in law, but it also was given responsibility for developing new approaches to law, a part of its mandate it took very seriously. Although slow to have recommendations acted upon by government (this did not occur until 1983 with respect to a relatively narrow question, the abolition of the immunity of federal employees’ salaries from garnishment), the commission saw more recommendations translated into law during the next decade. It was abolished in 1993; revived in 1996, its funding was withdrawn again in 2006.

Internationally, law reform as a deliberate activity has been recognized in countries around the world. Commissions in England and Wales, Scotland, Ireland, Australia (federal and state), New Zealand, South Africa, various states of the United States, Hong Kong, Fiji and Tanzania are among those whose discussion papers and reports are available on the web.

## B. The LCO's Approach

From an emphasis on the initial narrow, focused and often technical questions that were the concern of the first law commissions or specialized law reform bodies, law commissions evolved into bodies concerned with large social questions requiring multi/interdisciplinary and empirical research and non-legal expertise. Today law reform commissions are generally responsible for both kinds of "reform." The Report from the Creative Symposium observed that the spectrum of approaches to law reform runs from "philosophy (informative, contemplative and foundational) and politics (immediately relevant and responsive)." The LCO intends to take a creative and visionary, yet pragmatic, approach to law reform, combining qualities of both approaches. The LCO also recognizes that law reform is not the sole purview of law reform commissions. Law is changed or "reformed" in a variety of ways. Law becomes outmoded and atrophied, not observed or enforced even though not repealed. Governments introduce and legislatures enact new laws, often explicitly replacing existing law in the process, but sometimes legislating in heretofore uncharted areas. Courts make law even as they interpret it. Law reform arises in response to many laws; scholarly articles that analyse the problems with existing law; lobbying by groups with particular interests; and societal or technological developments that warrant regulation, among others. It may be planned or responsive to immediate and unanticipated need.

Although law reform commissions constitute only one means by which law is reformed and even transformed, they do have a distinctive capacity to contribute to the process of law reform. They are able to engage in thorough analyses of difficult legal problems and propose innovative solutions that encompass recommendations in areas other than law, in addition to law. They are able to identify the advantages and disadvantages of different options, weighing them in the balance. They have more time for research than does either the government's legislative or even policy development branches or the courts. While academics have the capacity to engage in major research, they do not often have the association with government and the explicit mandate to engage in law reform that characterizes law reform commissions.

While they do not by themselves have the political or legal authority of either government/legislature or the courts, law reform commissions with reputations for excellence and pragmatism may have a "moral" authority that transcends their legal status. Law reform bodies must acknowledge practical and political realities and must couple their high quality scholarship and philosophical contribution with pragmatism in their recommendations: their recommendations must be feasible, even if not popular with a particular government. To be most effective and obtain the trust of the public, law reform commissions must be independent and non-political and must be prepared to accept challenges and deal with difficult and controversial questions.

To achieve legitimacy and maintain it, law reform commissions must take a principled approach to law reform and as a result, commissions that determine their own research agendas may undertake projects that do not necessarily accord with the agenda of the government of the day, knowing that in this instance, at least, its study and recommendations may not have an impact until some time in the future. As suggested below, realization in legislation or even adoption by the government of its recommendations is not the only measure of success for a law commission: it also has a role in contributing to dialogue and education about reform and particular social issues.

Furthermore, a law reform body must be independent not only of government, but also of any particular interest group. Its legitimacy is grounded in the recognition that its work is

independent, based on expertise and a culture that understands the process and implications of recommendations resulting from objective study of a particular problem. As the former Chairperson and the Executive Director of the New South Wales Law Reform Commission observe, “Policy analysis and development is something that law reform commissions do very well.”<sup>3</sup>

In short, as Murphy suggests,

A law reform commission must operate on a different level than legislators and judges, since it has to evaluate the repercussions of reforms objectively and without undue regard to short term political considerations. The benefits of a law commission include independence, expertise, focus and continuity.<sup>4</sup>

The contemporary model of law reform commissions has also been described by Adams and Hennessey of the NSW Commission as “uniquely placed to undertake detailed, principled research into areas of law... They are permanent, independent organizations, able to coordinate large research projects, engage in community consultation, and write detailed, reasoned arguments for their recommendations to government.”<sup>5</sup>

One informed commentator, a former Chair of the Australian State of Victoria Law Reform Commission, goes so far as to suggest that underlying “[t]he creation of standing law reform bodies was that the whole idea of law reform was reconceptualised.”<sup>6</sup> The first Law Reform Commission of Canada, particularly in its early days, considered its mandate to be addressing broad social questions and changing attitudes, not developing “technical” recommendations. Many of its reports were, to use William Hulburt’s phrase, “heavily philosophical.”<sup>7</sup> The later Law Commission of Canada jettisoned the usual categories of law, “categorizing” law instead as law relating to personal relationships, social relationships, economic relationships and governance relationships.

The LCO’s philosophy of law reform is to undertake both focused questions when there is a particular reason for doing so and the large social issues for which law commissions are particularly suited. It will, indeed, offer in appropriate cases, the “reconceptualization of law” which Neave considered signalled the purpose of a separate law reform body. It recognizes that while law may be the primary discipline as far as law reform is concerned, it must be viewed in the context of other disciplines and expertise, such as sociology, economics and psychology and the natural sciences, for example. It will employ the most modern research tools and both qualitative and quantitative analysis, as appropriate. Its researchers will consult both academic experts and those who have had real life experiences in order to form a picture of the topic at hand from a variety of perspectives. Law commissions today are “of the world,” legal and non-legal, and must, therefore, develop extensive consultation, collaboration and communication processes. A contemporary law reform commission must be concerned not only with the subjects it chooses to research, but also with its research, consultative and communicative processes.

## V. THE LCO’S PROJECTS

### A. Selecting the LCO’s Projects

This section describes the process of the selection and approval of research projects. The research and communication processes are described in the next section.



### *1. Sources of Projects*

The Creative Symposium held in November 2006 produced a lengthy list of possible law reform projects in “administrative justice,” “civil justice,” commercial law, criminal law/provincial offences, family law, guardianship and trustee law, torts and insurance law and miscellaneous topics. There was no discussion of these topics, merely a listing; however, they do represent a useful “brainstorming” of potential law reform topics of which the Research Advisory Board was aware in considering the first potential LCO projects. The Board of Governors subsequently asked Professor Lorne Sossin of the Faculty of Law at the University of Toronto to prepare a “Research Priorities” document; Professor Sossin identified seven projects from 60 proposals for law reform from academics, community groups, government and legal organizations in a report released April 27, 2007. The Sossin Report assisted in the identification of the initial LCO projects and will continue to be helpful in the determination of future projects. Other project proposals were subsequently submitted to the LCO by individuals and groups.

In the future, the LCO will invite proposals for law reform projects, using its website and other communication vehicles to reach as many groups as possible with an interest in law reform. Members of the Board of Governors and the Research Advisory Board may also hear about possible projects. Although the LCO will issue “formal” calls for proposals, it encourages the submission of proposals at any time. Ideally, the LCO will have list of projects approved by the Board of Governors from which it can select based on availability of resources.

### *2. Selection of Projects*

The Board of Governors approves the projects to be undertaken by the LCO, on the advice of the Research Advisory Board and the Executive Director.

The LCO’s projects will potentially encompass all areas of law within provincial jurisdiction, including those overlapping with federal jurisdiction. They will affect a wide range of communities, including those defined geographically, linguistically, socially and demographically. The projects will address socially relevant justice issues and narrower questions of law, always with the objective of making the legal system more relevant, effective and accessible. In the usual course, the LCO will have on-going at least two or three narrowly focused projects and at least two complex projects. In all its work, including the selection of projects, the LCO will conform to the values articulated above in Part III.

In selecting projects, the LCO takes into account wide-ranging factors, not all of which are applicable or applicable in the same way to all potential projects. A project must conform to the LCO’s mandate. Preferably, it will contribute to the LCO’s broader objective of producing holistic or multidisciplinary recommendations, but some projects will not lend themselves to this kind of analysis. Many projects will address the exclusion of particular communities from effective access to the law; however, this will not be true of all projects. The LCO has committed to using its resources effectively and to this end, will not duplicate work being done elsewhere. Where appropriate, however, it will collaborate with others working on the same or similar project. At any given time, the LCO will balance a mix of small, focused projects and large projects that will address major social questions about the law and its relationship to other disciplines, as well as a variety of areas of law.

#### *1. Relevance to the LCO’s Mandate and Objectives*

##### *a) Is the project consistent with the LCO’s mandate to make recommendations to*

increase the relevance, effectiveness and accessibility of the legal system, to clarify and simplify the law, to consider the use of technology to enhance access to justice and to contribute to law reform scholarship?

- b) How well might this project contribute to the LCO's goal to be holistic, innovative, socially conscious and pragmatic in its selection of projects, research and recommendations?
- c) Is the project likely to result in feasible recommendations or to influence in a constructive fashion the dialogue on law reform in the area?

## 2. Impact on the Law and Communities

- a) Who is likely to benefit from this project?
- b) How many people will this project benefit?
- c) Will this project likely have a significant impact on improving access to the law?

## 3. Efficient Use of Resources

- a) Is this issue already being addressed by government or another institution or does it more properly fall within another institution's mandate? The LCO does not want to duplicate work being done by others or overstep the mandate of another organization.
- b) Would this project provide the opportunity for collaboration with other law reform bodies or other organizations?
- c) Will this project be understood by the public as a good use of the LCO's resources?
- d) Will the LCO be able to complete this project within the relevant timelines and resources available?

## 4. Other Factors

- a) Is the subject matter of this project being litigated? The LCO will not select as a project an issue that is explicitly the subject of litigation.
- b) How does this project fit into the LCO's on-going mix of narrowly focused and complex projects and areas of law that are already being researched?

### 3. *Available Resources*

The LCO has an in-house research capacity of a full-time staff lawyer, who also has administrative responsibilities, and a part-time research lawyer, in addition to the Executive Director (the CEO and Chief Spokesperson for the LCO) and the Executive Assistant. It also benefits from secondments from Osgoode Hall Law School (the OHLS LCO Scholar in Residence) and the Ministry of the Attorney General (the MAG LCO Counsel in Residence). It will also rely on contract researchers and students. Osgoode Hall Law School provides administrative and IT assistance to the LCO. The LCO researchers have access to the Osgoode and York libraries and electronic databases. The funding partners having committed to providing \$1.2 million in funding and in-kind contributions annually for five years.

## B. Researching a Project: The LCO's Participatory Processes and Approaches

Once a project has been approved by the Board of Governors, the Executive Director will determine when work on it should proceed, given available resources. For narrowly focused projects (expected to take less than a year to complete), the Executive Director and the Staff Lawyer will determine whether the research should be accomplished inhouse or by a contract researcher, possibly with the assistance of a student. For complex projects, a member of staff will be designated "head of project." For each project, the Staff Lawyer or head of project, as appropriate, in consultation with the Executive Director, will develop a plan, including timelines, required resources, methods of consultation and a list of interested groups (this list is likely to evolve as the project proceeds). Consideration of the expertise required for each project will take into account the nature of the knowledge required and the need to consider the place of technology in its analysis and recommendations. For both focused and complex projects, this preliminary stage will include at least a brief look at the work done by other law reform bodies in Canada and elsewhere, as well as by other relevant bodies. Where appropriate, the LCO will collaborate with other organizations in completing the research. The LCO will not knowingly duplicate the work of others, nor carry out projects that can be better implemented by others.

Narrowly focused projects are more likely to be primarily legal issues, but may involve other areas of expertise. In most cases, the LCO will not issue a discussion paper separate from any draft report released on these projects, although it will engage in consultation. Longer, more complex, projects will almost always attract the multi/interdisciplinary, holistic approach to which the LCO is committed. These projects are likely to take two to three years to complete. For complex projects, the Staff Lawyer or head of project will carry out a pre-study to determine the scope of the project. The pre-study will involve public consultation and consultation with experts in the area, legal and otherwise, as appropriate for the project. These longer projects will almost inevitably require expertise in disciplines other than law and this will be taken into account in designing the research team of in-house lawyers, contract researchers and students. These projects will likely make use of the multidisciplinary teams created by the Research Advisory Board, as contemplated by the Foundation Agreement. The LCO will release discussion papers for most longer projects, inviting public input and input specifically from groups evidencing an interest and/or experiential expertise in the area. After consultation, the next stage will be the release of the draft report.

### C. Reporting Recommendations

For both focused and complex projects, the Board of Governors will consider draft or interim reports, possibly with recommendations or optional recommendations, prior to their release for public consultation. (From time to time, a focused project will involve consultation and a draft final, but not interim, report.) Interim reports will be posted on the LCO website and sent to groups likely to be interested in the particular issue. After consideration of the input, the draft report will be finalized or revised, usually with specific recommendations. Once approved by the Board of Governors, it will be distributed through the website and in hard copy to government and again, to those particularly interested in the subject matter. Final reports will be available to the public.

The release of reports and of discussion papers will provide an opportunity to publicize the LCO's work, whether through press conferences, collaborative events with affected groups, the tabling of reports by the Attorney General in the Legislature or through other means. The LCO will take these opportunities to publicize, as well, its processes and approach to law reform, as appropriate.

With all reports, the Executive Director or head of project will follow up with the appropriate government body to determine the fate of the report.

### 1. *Current Projects*

The LCO began the following projects in 2008.

- *Charging fees for cashing government cheques:* individuals who rely on government cheques are often among the most vulnerable members of our society and they are among those least likely to have bank accounts. This raises the question of whether it is appropriate to permit institutions/commercial enterprises to charge fees or to charge unregulated fees to cash these cheques. Other jurisdictions have addressed this question (for example, Manitoba imposed maximum fees effective October 1, 2007). It is anticipated that this project can be completed by an in-house lawyer with the assistance of a student by the end of 2008. A consultation paper has been released on this project.
- *The preferable approach to the valuation and division of pensions on marriage breakdown:* there is disagreement about whether the pension should be valued as if employment were terminated at the time of marital breakdown or whether it should be valued at the time it is paid out. There are advantages and disadvantages of both approaches for the parties involved. The LCO's objective is to bring clarity to this area of law. This project will require expertise in pensions and accounting, as well as family law. The LCO may collaborate with the Ontario Expert Commissions on Pensions on this project. It is expected that building on the work done in other jurisdictions and in Ontario, this project can be completed by the end of 2008.
- *The development of a coherent approach to law affecting older persons and those who interact with them:* the scope of this study will be determined by an initial consultation with those knowledgeable in the area, but it is expected to cover a wide range of subjects of particular relevance to older adults or as they affect older adults, including powers of attorney, treatment in long term care facilities, employment issues, obligations of children for aging parents and restrictions on driving, among others. The LCO will collaborate with others on this project, including the Canadian Centre for Elder Law Studies, associated with the British Columbia Law Institute. The challenge of this project is not merely to develop an analysis and recommendations with respect to discrete topics, but to develop a coherent approach or framework that can apply to the law as it affects older persons and those who interact with them. The analysis for this project will have to consider the extent to which women and men are affected differently by aging, as well as the cultural experience of older persons. The LCO will issue discussion papers, as well as other materials in relation to this project which is expected to take between two and three years to complete. It will require the LCO to retain contract researchers and students to complement the work carried out by the in-house staff and will involve multi/interdisciplinary analysis and holistic recommendations.

In addition, the Board of Governors has approved a fourth project in principle, *the development of a coherent approach to law affecting persons with disabilities and those who interact with them*. A pre-study will determine its scope. Although the LCO will not begin this project

immediately, it will be necessary to note the overlap in issues between the older adults project and this project (in relation to care in long-term facilities and powers of attorney, for example).

## VI. THE LCO AS A RESPONSIVE ORGANIZATION

### A. Accountability to Our Partners

Section 18(1) of the Founding Agreement requires that the Board of Governors prepare a budget for submission to the Attorney General, Osgoode Hall Law School, the LSUC and the LFO, as well as projected expenditures for the second and third years. The Board of Governors is to obtain the approval of the partners of the budget and the projected expenditures.

Pursuant to section 19 of the Agreement, the LCO will prepare an Annual Report for its partners. The release of the Annual Report will provide an opportunity to engage our founding partners in the on-going activities of the LCO and with each other. In addition, the LCO will develop communication plans for each partner that ensure that each partner receives the information it requires in a timely way, using both formal and informal means of communication. See the Language and Translation Policy at [www.lco-cdo.org](http://www.lco-cdo.org).

The Executive Director will also meet annually and in appropriate cases, more often, with the law deans and students and faculty at the Ontario law schools and with the other partners to the Foundation Agreement.

### B. Reaching Out: Public Participation

The LCO is committed to involving interested groups and individuals, legal and nonlegal, and the public generally in the law reform process, from the project proposal to feedback on discussion papers and draft reports.

The Annual Report will be distributed to the public.

The LCO's website will provide a significant vehicle to inform the public about the progress of the LCO's projects, including the posting of consultation papers and interim and draft reports and pre-studies. It will also allow the announcement of projects, on-line discussion about projects and feedback and announcements about research opportunities at the LCO.

The website, consultation papers, interim and final reports, the Strategic Plan and annual reports will be available in English and French, to the extent resources allow.

Members of the LCO will also engage in in-person contact with a wide range of organizations and groups in Ontario, legally-related and community-based, as well as the partners to the Foundation Agreement, both to explain the LCO's mandate and progress and to garner suggestions for law reform projects or to receive feedback on consultation papers and interim reports. Consultations will usually be in English and from time to time in French; consultations in other languages will be subject to the LCO's resources. The LCO will make every effort to provide interpretation and alternate formats for the hearing and sight impaired.

Other constituencies with which the LCO will maintain regular contact include the courts, relevant government ministries, opposition justice (and other) critics and with other organizations particularly involved in law reform, such as other Canadian law reform commissions.

The LCO will publish a thrice-yearly newsletter to be posted on the website and to be sent to partners, other law commissions and interested organizations and groups.

The LCO, with assistance from experts, will develop a communications strategy to gain the fullest realization of our commitment to interact broadly with the public, including those who might not ordinarily come into contact with a legal body.

## VII. MEASURING SUCCESS

As a former President of the Law Reform Commission of Nova Scotia admitted, while evaluation of an entity's performance usually is based on the entity's mandate, "[t]he mandate or purpose of most Law Reform Commissions...is usually set out so broadly that evaluation of the performance of the Commission in any reasonably precise or specific way is very difficult...." He conceded, however, that "a general assessment is perhaps possible."<sup>8</sup> However difficult, it is important to assess the performance of a law reform body, but it is equally important to recognize the range of ways in which success might be measured. The impact of the OLRC also indicates that tracking the impact of a law commission's influence requires openness: some of the OLRC's reports influenced the development of law in provinces other than Ontario, the development of proposed legislation by the Uniform Law Conference of Canada and the approach taken by courts in certain matters.<sup>9</sup> Ways of measuring the performance of a law commission include the following:

- Translation of recommendations or frameworks into legislation: It must be remembered, however, that legislative responses to law reform recommendations do not always occur in the short-term. As Hurlburt points out, it was ten years before any of the first Law Commission of Canada's recommendations were reflected in legislation.<sup>10</sup> Indeed, it has been suggested that no jurisdiction has "effectively tackled" the issue of "how to secure governmental legislative and official attention once law reform reports are produced."<sup>11</sup>
- Acknowledged impact by the judiciary on their decision-making of discussion papers, reports and/or recommendations;
- Use by academics and others of the work carried out by the LCO; in some cases, the result may be to extend the LCO's analysis in a particular area to take into account new developments, while in other cases, academics might base their own analysis on that carried out by the LCO;
- Quality of the work produced by the LCO, as indicated in articles on law reform, for example;
- Adoption by other jurisdictions of LCO analysis or recommendations;
- Contribution to the dialogue on law reform or on substantive areas of law through LCO participation in conferences or conferences organized at least in part by the LCO;
- Collaboration with other law commissions or other bodies and groups in advancing law reform;
- The number of proposals made to the LCO;<sup>12</sup>
- Extent to which the LCO is known in the legal and non-legal communities and its reputation in those communities; and
- The extent to which the LCO meets its own self-professed values and satisfies its identified processes, as articulated in this Strategic Plan.

The LCO will be externally evaluated at the beginning of its third full year of operation (2010). It did not begin operations until the fall of 2007 and will require at least 18 additional months to evidence its capacity to meet its mandate and its preferred method of operation. The beginning of 2010 is an appropriate time for an external evaluation, both because it will allow the LCO to establish itself and will provide sufficient time for the evaluation prior to the time partners will be making decisions about extending funding. The review will have to take into account that realistically, many of the measures identified above will not have had time to ripen; even so, it should be possible for an external reviewer to comment at least on the quality of work produced and the LCO's adherence to its values and processes.

#### VIII. OBJECTIVES/ACTIVITIES FOR 2008

The LCO was launched on September 7, 2007 and the Executive Director was appointed on September 15, 2007, followed shortly by the Executive Assistant. As it neared the end of 2007, the Board of Governors had approved the LCO's initial three projects and the Executive Director had completed the process of hiring a staff lawyer, begun the on-going dialogue with the LCO partners and made contact with some community groups and legal organizations, as well as the Chief Justice of Ontario. By early 2008, the part-time Research Lawyer had been appointed; the first OHLS LCO Scholars and MAG LCO Counsel in Residence had been selected; a brochure had been developed and a new website launched; the Executive Director had been in personal contact with all the partners, at least once and had visited the Chief Justices of the Superior Court of Justice and the Ontario Court of Justice and the Associate Chief Justice of the Superior Court of Justice, as well as a number of community clinics and legal organizations; this Strategic Plan and performance measures for the Executive Director had been developed; and the Board of Governors had approved a Copyright and Attribution Policy, a Translation and Language Policy and principles of good governance in relation to its own performance. The LCO released its first consultation paper, on fees for cashing government cheques, in March 2008.

The LCO's objectives for the rest of 2008 are as follows:

##### Projects

- Completion of the research and consultation for the first two narrowly focused projects (fees for government cheque cashing and the valuation of pensions on marital breakdown), under the supervision of the Staff Lawyer and the MAG LCO Counsel in Residence, respectively. These two projects will use the resources of the part-time research lawyer and student researchers and it is expected that recommendations will be released by the end of 2008 or early 2009;
- Preparation of a pre-study by the Staff Lawyer and beginning of research for the project on the law and older adults. The LCO will hire contract researchers and students to work on this project after the pre-study, including consultation with affected groups, has defined the parameters of the study. In carrying out this project, the LCO will be cognizant of the overlap with its fourth project, developing a coherent approach to the law affecting persons with disabilities, although the pre-study for that project will not begin until Fall 2008; and
- Approval by the Board of Governors, following discussion by the Research Advisory Board of proposal options, of at least two new projects by the fall of 2008 and of an "approved" list of projects for a longer period.
- The LCO will also hold a roundtable about family law in the first half of 2008, in order to identify the most urgent and/or useful areas for the LCO to investigate in family law and closely related areas.

#### Communication and Consultation

- Preparation of a communication plan by May 2008 for the LCO to ensure maximum visibility and public awareness, with the assistance of the Communications Manager of Osgoode Hall Law School and the Director of Communications at the Ministry of the Attorney General;
- Visit by the Executive Director and Chair of the Board of Governors to the Attorney General;
- Scheduling of visits (primarily by the Executive Director, but also by the Staff Lawyer and the Research Lawyer) to interested groups, legal and non-legal, across Ontario;
- Preparation of a newsletter for distribution to other law commissions, partners and interested groups in May, September and December 2008 (to be posted on the website); and
- Consultation with relevant groups on the first three projects, depending on the nature of the project and the stage of implementation.

#### Accountability

- Preparation of the Annual Report by October 2008;
  - Preparation and implementation of individual communication plans for the LCO's partners by the Executive Director, to be developed by April/May 2008;
  - Subsequent visits to the CEO of the Law Foundation, the CEO of the Law Society of Upper Canada and the Attorney General of Ontario;
  - Second visits to the law schools beginning in the Fall of 2008; and
  - Assessment of initial and projected costs of operating the LCO.
- Stimulating Critical Debate about Law Reform
- Organization of a conference or symposium on law reform to be held in early 2009, most likely in collaboration with one or more of the LCO's law faculty partners, in furtherance of the LCO's objective to become a leader in law reform; and
  - Presentation by the Executive Director at the Osgoode Professional Development 11th Annual Analysis of the 2007 Constitutional Cases of the Supreme Court of Canada in April 2008 and co-editorship of and submission of an article on law reform by the Executive Director to a special volume of the Osgoode Hall Law Journal dedicated to access to justice in summer 2008.

#### ENDNOTES

<sup>1</sup> Gavin Murphy, *Law Reform Agencies* (Department of Justice Canada, 2004): [http://www.canadajustice.ca/en/ps/inter/law\\_reform/index.html](http://www.canadajustice.ca/en/ps/inter/law_reform/index.html) [accessed December 21.07]. The history of law reform in Canada is derived primarily from this paper. For a thorough account, see William H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (Juriliber, 1986).

See note 1.

<sup>3</sup> Justice Michael Adams and Peter Hennessy, "Law Reform Commissions: Is there a place for the principled study of criminal law issues?" *The International Society for the Reform of Criminal Law 15<sup>th</sup> International Conference: Politics and Criminal Justice* (Canberra, Australia, August 2001): <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/ph01> [accessed December 31.07].

<sup>4</sup> See note 1.

<sup>5</sup> See note 3.

<sup>6</sup> Marcia Neave, "Law Reform in the 21st Century – Some Challenges for the Future" [c.2000]:



<http://www.lawreform.vic.gov.au/wps/wcm/connect/Law+Reform/Home/Newsroom/Speeches/LAWREFORM+++Law+Reform+in+the+21st+Century+speech> [accessed May 15.07].

<sup>7</sup> See note 1.

<sup>8</sup> William Charles, "Measuring Success in Law Reform," Commonwealth Law Conference (August 1996): <http://www.bcli.org/pages/links/clc/wcharles.htm> [accessed December 31.07].

<sup>9</sup> See Hurlburt, note 1.

<sup>10</sup> See note 1.

<sup>11</sup> Rt. Hon. Sir Geoffrey Palmer, President, Law Commission of New Zealand, "Law Reform and the Law Commission in New Zealand after 20 Years – we need to try a little harder," para. 4 (March 30, 2006): <http://www.lawcom.govt.nz/UploadFiles/SpeechPaper/d0c9b674-5a55-405d-9b3c-2cfd467a0d5d//Law%20Reform%20and%20the%20Law%20Commission%20in%20NZ%20after%2020%20years.pdf> [accessed January 23.08].

<sup>12</sup> William Charles noted that a measure of public approval for the Nova Scotia Commission is the number of enquiries the Commission receives from individuals and groups who want the Commission to embark on particular law reform projects, indicating that they see the Commission "as an important instrument of change." See note 8.

Appendix 3

## LAW COMMISSION OF ONTARIO COMMISSION DU DROIT DE L'ONTARIO

### LCO STRATEGIC PLAN

2008 – 2012

### HIGHLIGHTS

#### HIGHLIGHTS OF THE LCO STRATEGIC PLAN 2008 – 2012

##### The LCO's History

The Law Commission of Ontario ("the LCO") was launched on September 7, 2007, as a partnership among the Ontario Ministry of the Attorney General, the Dean of Osgoode Hall Law School, the law deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada. It is a not-for-profit unincorporated institution that finds its authority in the Foundation Agreement among the founding partners. Officially located at Osgoode Hall Law School, the LCO is temporarily housed elsewhere at York University until Osgoode completes extensive renovations that will include space allocated to the LCO.

The funding partners have committed to five years funding. With cash and in-kind contributions, the LCO's annual budget is \$1.2 million.

##### Goals to be Achieved by 2012

We intend to complete or substantially complete eight to ten major and eight to ten narrowly focused projects; to hold three conferences; to be recognized for the high quality of our work

and consultative process; to be acknowledged as a leader in law reform in Canada; and to achieve widespread acceptance of our value to Ontario.

#### Our Mandate, Underlying Values and Approach to Law Reform

As set out in section 2(1) of the Foundation Agreement, the LCO's purpose is

to recommend law reform measures to:

- (a) Enhance the legal system's relevance, effectiveness and accessibility;
- (b) Improve the administration of justice through the clarification and simplification of the law; and
- (c) Consider the effectiveness and use of technology as a means to enhance access to justice.

In addition, the Foundation Agreement states that the LCO shall

- (a) Stimulate critical debate about law and promote scholarly legal research; and
- (b) Develop priority areas for study which are underserved by other research, determine ways to disseminate the information to those who need it and foster links with communities, groups and agencies.

We will be guided by the following values in all our work:

- 1. *independence*: from government, our partners and interest groups;
- 2. *integrity*: commitment to ethical practice;
- 3. *excellence*: in our work, our employment and our administrative practices;
- 4. *innovation*: reshaping the law when appropriate;
- 5. *relevance*: we will be topical and forward-looking;
- 6. *open-mindedness*: to the views of different constituencies and to suggestions for improvement in all aspects of our operations;
- 7. *transparency*: an open process for project proposals and selection and wide dissemination of our recommendations;
- 8. *diversity*: in all aspects of our work;
- 9. *inclusiveness*: interaction with interested groups and individuals, legal and non-legal, in all our work;
- 10. *multidisciplinarity*: in our research and recommendations;
- 11. *collaboration*: with other law reform commissions and other organizations;
- 12. *pragmatism*: we will ground our recommendations in reality;
- 13. *efficiency*: without endangering the excellence of our work and our interaction with employees;
- 14. *accountability*: the LCO will be accountable to its partners and to the public for the quality of its work and its adherence to its values.

Although we will research narrow, sometimes technical, areas of law, our major projects will involve large social questions requiring multi/interdisciplinary and empirical research and non-legal expertise. We recognize that law must be viewed in the context of other disciplines and knowledge, such as sociology, economics and psychology and the natural sciences, for example. Our research will employ the most modern research tools and both qualitative and quantitative analysis, as appropriate, and our researchers will consult both academic experts and those who have had real life experiences in order to form a picture of the topic at hand from

a variety of perspectives. We will consider the role of technology as an element in all our projects.

To be most effective and obtain the trust of the public, law reform commissions must be independent and non-political, prepared to accept challenges and deal with difficult and controversial questions. To achieve legitimacy and maintain it, law reform commissions must take a principled approach to law reform and as a result, commissions that determine their own research agendas may undertake projects that do not necessarily accord with the agenda of the government of the day, knowing that in these instances, at least, their study and recommendations may not have an impact until some time in the future.

## Our Projects

We encourage the submission of proposals at any time and will invite proposals, using our website and other communication vehicles to reach as many law-reform minded groups as possible. Our projects will cover many areas of law and will be responsive to a wide range of communities, including those defined by geography, language, economic status, race, gender/sexual orientation and demographic identity (such as age), among others. We are concerned with provincial law, but will consider projects that have overlapping federal implications.

In selecting projects, the LCO takes into account wide-ranging factors, not all of which are applicable or applicable in the same way to all potential projects:

### 1. Relevance to the LCO's Mandate and Objectives

- a) Is the project consistent with the LCO's mandate to make recommendations to increase the relevance, effectiveness and accessibility of the legal system, clarify and simplify the law, use technology to enhance access to justice and contribute to law reform scholarship?
- b) How well might this project contribute to the LCO's goal to be holistic, innovative, socially conscious and pragmatic in its selection of projects, research and recommendations?
- c) Is the project likely to result in feasible recommendations or to influence in a constructive fashion the dialogue on law reform in the area?

### 2. Impact on the Law and Communities

- a) Who is likely to benefit from this project?
- b) How many people will this project benefit?
- c) Will this project likely have a significant impact on improving access to the law?

### 3. Efficient Use of Resources

- a) Is this issue already being addressed by government or another institution or does it more properly falls within another institution's mandate? ;The LCO does not want to duplicate work being done by others or overstep the mandate of another organization.
- b) Would this project provide the opportunity for collaboration with other law reform bodies or other organizations?
- c) Will this project be understood by the public as a good use of the LCO's resources?
- d) Will the LCO be able to complete this project within the relevant timelines and resources

available?

#### 4. Other Factors

- a) Is the subject matter of this project being litigated? The LCO will not select as a project an issue that is explicitly the subject of litigation.
- b) How does this project fit into the LCO's on-going mix of narrowly focused and complex projects and areas of law that are already being researched?

The LCO began the following projects in 2008:

- Charging fees for cashing government cheques (a consultation paper has been released on this project);
- The valuation and timing of division of pensions on marriage breakdown; and
- The development of a coherent approach to law as it affects older persons.
- A pre-study for development of a coherent approach to law affecting persons with disabilities will be started later in 2008.

The Research Advisory Board recommends projects to the Board of Governors who, with the advice of the Executive Director, approves projects. A plan for each project will determine timelines, required resources, methods of consultation and a list of interested groups. Where appropriate, the LCO will collaborate with other organizations in completing the research.

Longer, more complex, projects will require consultation to determine their scope and will involve disciplines other than law. The LCO will release discussion papers and draft reports for complex projects, inviting public input and input specifically from groups evidencing an interest and/or (experiential) expertise in the area.

#### The LCO as a Responsive Organization

The LCO will be accountable to its funding partners without compromising its impartiality in selecting appropriate law reform projects and in making appropriate recommendations for law reform. It will publish an Annual Report and the Executive Director will also meet at least annually with the law deans and students and faculty at the Ontario law schools and with the other partners to the Foundation Agreement.

We are committed to interaction with interested groups and individuals, legal and non-legal, and the public generally throughout the law reform process, from the project proposal to feedback on discussion papers and draft reports, through in-person meetings, our website and our newsletter. The LCO will issue significant documents in English and French and accept submissions in English or French; oral consultations will be in English and where resources permit, in French. The website is bilingual. For the LCO's Language and Translation Policy, see [www.lco-cdo.org](http://www.lco-cdo.org).

#### Measuring Success

While it is difficult to measure the performance of a law reform commission, the LCO will be externally evaluated early in 2010, using the following and other criteria:

- Enactment of recommendations into law, with the caveat that responses to law reform recommendations do not always occur in the short-term;
- Judicial references to its reports and discussion papers;

- The quality of the work produced;
- The number of reports and papers produced;
- The contribution of the LCO to the body of scholarship in a particular area;
- The contribution of the LCO to the dialogue around law reform;
- Collaboration with other law reform bodies or groups interested in law reform;
- The number of proposals for law reform made to the LCO; and
- How well we meet our own self-professed values and processes.

#### Objectives for 2008

- Complete fees for cashing cheques and division of pensions projects;
- Complete the pre-study on the older adults project;
- Select at least two new projects;
- Complete and implement communication plans for our partners;
- Improve our website and launch our newsletter;
- Co-organize a conference on law reform to take place in early 2009;
- Hold a roundtable on family law;
- Provide full and timely updates to our partners; and
- Visit the Ontario law schools and meet with community and professional groups across Ontario.

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

- (1) Copy of the Law Foundation of Ontario Agreement.

(Appendix 1, pages 6 – 18)

Dr. Hughes addressed Convocation.

#### ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Boyd presented the Report.

Report to Convocation  
June 26, 2008

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Access to Justice Committee

Committee Members  
Marion Boyd, Co-Chair  
Judith Potter, Co-Chair  
Paul Schabas, Vice-Chair  
Paul Dray  
Avvy Go  
Allan Lawrence  
Susan McGrath  
Bonnie Tough

Purpose of Report: Decision

Prepared by the Equity Initiatives Department  
(Jewel Amoah, Counsel – 416-947-3425)

## COMMITTEE PROCESS

1. The Access to Justice Committee (“the Committee”) met on June 4, 2008. Committee members Marion Boyd, Co-Chair, Paul Schabas, Vice Chair (by telephone), Paul Dray, Avvy Go, Allan Lawrence, Susan McGrath and Bonnie Tough (by telephone) participated. Staff members Jewel Amoah, Josée Bouchard and Sheena Weir attended.

## FOR DECISION

### ONTARIO CIVIL LEGAL NEEDS PROJECT

## MOTION

2. That Convocation approves,
  - a. the Ontario Civil Legal Needs Project proposal as described at Appendix 1,
  - b. the submission of a funding application to the Law Foundation of Ontario; and
  - c. including in the 2009 budget funds in the amount of \$120,000 and in-kind contribution in the amount of \$30,000.

## BACKGROUND

3. At the benchers planning session held in September 2007, benchers identified access to justice as one of Convocation’s priorities. Convocation confirmed this at its meeting in November 2007. Further to that, benchers identified the need for a comprehensive assessment of the legal needs of low and middle income Ontarians.
4. On October 24, 2007, Lynn Burns, Executive Director of Pro Bono Law Ontario (“PBLO”), made a presentation to the Access to Justice Committee, requesting the Law Society to participate as a partner in a comprehensive civil legal needs assessment of low and middle income Ontarians.
5. In designing this project with PBLO, the Committee took into account the important work of Justice Coulter Osborne, head of the Civil Justice Reform Project, *Summary of Findings and Recommendations* (“Osborne Report”) and developed a project that would satisfy some of the Osborne Report recommendations while complementing the findings of Justice Osborne.
6. While the Osborne Report studied issues raised by legal service providers, the Committee proposes the Ontario Civil Legal Needs Project to focus on civil legal needs from the perspective of members of the public. The project will also include the perspective of legal and social service providers. These perspectives will be obtained through focus groups.

7. The Ontario Civil Legal Needs Project has several components, one of which is to identify the broad spectrum of legal needs of low and middle income Ontarians. The project will assess both the legal and social service components of these needs. Finally, the Project seeks to identify strategies for legal and social service providers to best meet those needs. In this way, the collaboration of legal and social service providers is key to improving access to justice for low and middle income persons in Ontario. This broader approach to the identification and strategic resolution of civil legal needs reflects a commitment to the public interest, and is in keeping with the mandate of the Law Society.
8. The Committee notes the Osborne Report recommendation that a needs assessment of unrepresented litigants be undertaken by legal service providers and chaired by PBLO.<sup>1</sup> The Ontario Civil Legal Needs Project directly addresses this recommendation and goes further as it proposes consultations directly with low and middle income Ontarians, regardless of whether they have been litigants. The inclusion of the perspectives of those who have not addressed their legal problems through the civil justice system, as well as the focus group discussions with legal and social service providers will enable the Ontario Civil Legal Needs Project to provide a holistic view of the civil justice system.
9. Interviewing the public directly may reveal trends in civil legal problems that may not be treated or classified as such. For instance, people might experience a variety of problems that they might not identify as having a legal component. As a result, these people might not make themselves known to legal service providers. However, a well-drafted survey would help to identify these types legal problems, as well as legal and non-legal solutions. This research would also provide insight into problems that have legal and non-legal components.
10. Legal needs assessments conducted in Alberta and Nova Scotia, and two needs assessments conducted by the Department of Justice (“DOJ”) employed similar methodology. Data from the DOJ studies was collected on a national level, and it is difficult to extract the information pertaining only to Ontario. Further, given the variation in social, economic and legal contexts in the various provinces, direct application of the findings in other jurisdictions to the Ontario context is inappropriate.

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<sup>1</sup> Recommendation 20 of the Osborne Report reads as follows:

Undertake an independent needs assessment study, guided by a steering committee of civil legal service providers and chaired by PBLO. Funding from possible sources such as The Law Foundation and the Ministry of the Attorney General (“MAG”) should be explored. The objectives of the study should be to:

- a) Develop a profile of civil unrepresented litigants in Ontario and their points of interaction with the civil justice system that give rise to difficulties for unrepresented litigants themselves, court administrators, and the courts;
- b) Determine the legal needs of unrepresented civil litigants, the scope and accessibility of existing legal services and where additional legal services may be provided to fill service gaps, geographically and in substantive civil practice areas; and
- c) Recommend the most cost-efficient and –effective means of providing legal information and assistance.

11. The Ontario Civil Legal Needs Project proposal is presented at Appendix 1. The Ontario Civil Legal Needs Project is different from any needs assessment that would be conducted under the auspices of the Osborne Report in that it includes middle income individuals in its scope, family law matters, and focus group discussions with legal and social service providers. The project proposal seeks to distinguish itself from the needs assessment contemplated in the Osborne Report, and demonstrate that the Ontario Civil Legal Needs Project would be highly beneficial to the people of Ontario.
12. A budget is included in the project proposal. At present, the budget estimates the cost of the project at \$255,000. PBLO has indicated that it will contribute \$75,000 towards this cost. Of the remaining \$180,000, it is anticipated that \$60,000 will be sought from the Law Foundation in the form of a grant, and that the Law Society would contribute \$120,000.
13. As the budget indicates, a financial contribution from the Law Society would be in addition to an in-kind contribution of \$30,000 to reflect the time of Law Society staff in coordinating and co-managing the Ontario Civil Legal Needs Project.
14. The Ontario Civil Legal Needs Project seeks to identify gaps and facilitate the development of strategies to enhance access to civil justice for the people of Ontario. The Access to Justice Committee is of the view that the Law Society should demonstrate strong support and commitment to the principles reflected in the project. In the event that a grant application to the Law Foundation is not successful, the Committee may return to Convocation to seek Law Society funding for the full cost of the study.
15. It is anticipated that the resource implications for this project will impact the 2009 budget. However, the Access to Justice Committee is seeking approval from Convocation in June 2008 to proceed with a funding request to the Law Foundation of Ontario. In the event that Convocation approves this course of action, the Law Society will be committed to contributing both in-kind and financial support to this project as described in this report.
16. On June 5, 2008, the Finance Committee reviewed the Ontario Civil Legal Needs Project proposal and agreed to include it in the 2009 budget.

Appendix 1

June 2008

## ONTARIO CIVIL LEGAL NEEDS PROJECT

### PROJECT DESCRIPTION

1. The Ontario Civil Legal Needs Project is a comprehensive project to promote access to justice by identifying and quantifying the “everyday” legal problems experienced by low and middle income Ontarians. The Project seeks to identify gaps and facilitate the development of strategies to enhance access to civil justice for the people of Ontario. The three core components of the Ontario Civil Legal Needs Project are as follows:



- a. The first component will consist of undertaking a direct empirical assessment of the civil legal needs of low and middle income Ontarians, including in the areas of family, employment and administrative law.
  - b. The second component will consist of a series of comprehensive focus groups with front-line legal and social service providers to identify gaps in services amongst the various agencies, and areas for collaboration. Emerging issues in the provision of legal and social services will also be identified.
  - c. The third component of the project will serve to identify or “map” existing services that promote access to the broad range of civil justice.
2. Taken together, these components will provide a comprehensive picture of the civil legal needs of middle and low income Ontarians and the services dedicated to meet these needs.
3. Where practicable, the project will be conducted in both English and French and, the consultants retained to undertake this project will have the capacity to offer service in both official languages.
4. Having outlined the core components of the Project, further details of the Ontario Civil Legal Needs Project will be discussed as follows:
  - a. Detailed Description of Project Components;
  - b. Why the Ontario Civil Legal Needs Project is Necessary;
  - c. Benefits to Organizations Promoting Access to Justice;
  - d. Project Activities and Deliverables;
  - e. Project Management, Structure and Evaluation;
  - f. Budget; and
  - g. Addendum – Overview of Needs Assessments in other Canadian jurisdictions.

## DETAILED DESCRIPTION OF PROJECT COMPONENTS

### Component 1 - Empirical Needs Assessment

#### *What is An Empirical Needs Study?*

5. At a basic level, empirical needs assessments attempt to,
  - a. identify those people who are most vulnerable to justiciable problems;
  - b. determine the nature and extent of those problems;
  - c. determine how those problems impact on people’s lives; and
  - d. identify how people respond to their problems, including if or how they access the legal system to resolve or prevent problems.
6. The use of empirical needs studies is now deeply entrenched in many common law jurisdictions, particularly in the United Kingdom and the United States. Since 2000, studies have been completed in England and Wales (2004, 2007), Scotland (2001), New Zealand (2006), Northern Ireland (2005), and in approximately 15 U.S. States.

7. There have been also two empirical needs assessments completed in Canada (2004, 2006), both were sponsored by the federal Department of Justice.<sup>2</sup> The objectives of the Department of Justice research were to determine the incidence of law-related problems among the low and middle income segments of the Canadian population and the social and demographic groups that are most vulnerable to problems. Further, the objective of the research was to estimate the prevalence of civil justice problems in Canada, to examine how people respond to problems of this sort, and the consequences of experiencing problems.
8. Usually, these studies take the form of large, empirical telephone surveys or in-person interviews of a representative sampling of the target population. Survey participants are asked a long list of questions to determine whether the person has experienced a problem with a legal dimension (often called “justiciable” events in research literature), what they did to resolve the problem, and how the problem affected them. Participants also provide basic socio-demographic information so that types or “clusters” of legal problems can be compared against broader categories of social need, including income, disability, family status, race, etc.

#### Component 2 - Focus Groups with Front-Line Service Providers

9. The second component in the Ontario Civil Law Needs Project will consist of a series of site visits and focus groups with front-line legal and social service providers. This activity will help stakeholders identify systemic gaps in services, such as when and why clients are being turned away, as well as emerging issues.
10. The focus group discussions will allow service providers to understand each other’s mandates, roles and policies to facilitate effective referrals to clients.
11. Further, the focus groups will allow for legal and social service providers to meet together to discuss the interplay between their services and how best to collaborate in order to meet client demand.

#### Component 3 – Identifying Access to Justice Programs in Ontario

12. The third component of the Ontario Civil Legal Needs Project proposal is an Ontario-wide environmental scan or “mapping” exercise to identify the number, type, range and location of access to justice programs and initiatives (both private and public) directed towards low and middle income Ontarians.
13. This component is important because it will help policy makers and program administrators in Ontario’s justice system to,
  - a. understand the capacity of existing legal service delivery systems to address the civil legal needs of low and middle income Ontarians;

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<sup>2</sup> See Ab Currie, “A National Survey of the Civil Justice Problems of Low- and Moderate-Income Canadians: Incidence and Patterns”, (2006) 13 International Journal of the Legal Profession, pp. 217- 242. This paper discusses a 2004 survey with a sample size of 4501 persons. See also, Ab Currie, “The Legal Problems of Everyday Life”, (July 2007, DRAFT on file with author), which is an analysis of a 2006 survey of 6665 persons by phone.

- b. understand how current administration issues affect the public's ability to obtain high quality legal services regardless of income level;
- c. identify and understand the multitude of new actors, programs, and strategies intended to improve access to civil justice in Ontario;
- d. identify feasible and cost effective opportunities for systemic change and innovation; and
- e. coordinate, plan and deliver civil legal services more effectively.

## WHY THE ONTARIO CIVIL LEGAL NEEDS PROJECT IS NECESSARY

14. The Ontario Civil Legal Needs Project will be a comprehensive project to address some of the obstacles which presently impede full access to legal and social services in Ontario.

### Rising Costs of Legal Services

15. There is growing concern about the ability of low and middle income Ontarians to obtain meaningful access to justice. This is most clearly articulated about the plight of unrepresented litigants who face serious barriers when going to court. This in turn impacts upon the effective administration of justice. From anecdotal evidence, it is clear that self-representation is a growing trend, and that many self-represented litigants are forced into this position due to lack of funds and/or an inability to access legal services. There is concern that family law is a particular area of law that is rife with challenges, including high costs, which often result in the middle-income family law litigant being unrepresented, or completely foregoing any attempt at a resolution of their problem(s) through the justice system.

### Exploring Options Beyond Litigation

16. There is anecdotal evidence to suggest that significant numbers of Ontarians with justiciable issues do not access the mainstream justice system at all. Either they are not aware that they have a legal issue, do not know how to seek appropriate remedies, or seek alternative remedies through ADR or administrative tribunals. The Civil Legal Needs Project would seek to discern legal needs and options to address these needs that are broader than litigation. Thus, although the issue of unrepresented litigants is a concern that ought to be addressed, the project will also seek to identify other avenues for problem resolution. These alternate routes may be more cost-effective and less intimidating for low or middle income Ontarians.
17. Each subset of clients requires different types of interventions – some are relatively easy to provide (e.g. legal information) and others are resource intensive (e.g. full representation). The sheer scope and variety of demands for legal assistance on legal aid service providers, the private bar, the courts, the Law Society as a professional regulator and organizations such as PBLO, influence the ways in which resources are allocated and organizations interact.

### Unique Ontario Perspective

18. Although legal needs assessments have been conducted in Canada as a whole, and in the provinces of Alberta, British Columbia, and Nova Scotia in particular<sup>3</sup>, there has never been a comprehensive legal needs assessment conducted in Ontario. Basic questions regarding the scope of unmet legal needs and the relative urgency of these needs remain unanswered. There is no reliable data regarding the specific civil legal needs of low and middle income Ontarians - how they interact with the justice system, what barriers prevent individuals with litigable claims from accessing the justice system effectively, what the specific causes of problems to the administration of justice are and where the gaps in service exist. As a result, stakeholders must rely on incomplete information when making decisions about allocating existing resources and collaborating with others to enhance access to civil justice.
19. It is important to note how and why the empirical needs assessment proposed in the Ontario Civil Legal Needs Project is different from the recent federal Department of Justice (DOJ) civil needs assessments. Simply put, it is not possible to rely on the DOJ studies and extrapolate their results for the following reasons:
  - a. The DOJ survey is of the general Canadian population, and not specifically Ontario.
  - b. The DOJ did not sample enough low and middle income Ontarians to produce statistically reliable results for this particular client group. The DOJ surveyed all income categories, not just the low-income population. It is a truism in legal aid practice that low-income clients have different legal needs than middle-income clients. By focusing on both low and middle income clients, the Ontario Civil Legal Needs Project will assist in identifying the range of legal needs across a broad income spectrum.
  - c. The DOJ study does not reflect Ontario's regional and cultural diversity.
  - d. The DOJ study did not ask questions about access to justice issues in Ontario.

### A Complementary Project to the Civil Justice Reform Project

20. In November 2007, Justice Coulter Osborne released the *Summary of Findings and Recommendations* (Osborne Report) of the Civil Justice Reform Project. The Osborne Report included recommendations and discussion about unrepresented litigants, noting "no formal study has been conducted on the number of unrepresented litigants, their socioeconomic profile, the nature of the legal problems they face and the gaps in servicing them."<sup>4</sup> There is a need to complement the Osborne Report with an assessment of the civil legal needs of represented and unrepresented litigants.
21. The Report focused on a number of areas of process and procedure.<sup>5</sup> Recognizing the need for "easy to understand plain language" explanations of court processes and

<sup>3</sup> General details regarding these provincial needs assessments is available in the Addendum.

<sup>4</sup> Coulter Osborne, *Civil Justice Reform Project: Summary of Findings & Recommendations* (Ministry of the Attorney General: Toronto, 2007) at p. 44. The report is available online at: [www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp)

<sup>5</sup> The 81 recommendations in the Osborne Report are divided into the following 18 categories: Judicial Resources; Small Claims Court; Simplified Procedure; Summary Disposition of Cases; Unrepresented Litigants; Civil Juries; Discovery; Expert Evidence; Litigation Management; Pre-

substantive areas of law, the Report recommended that a committee of providers of legal information be introduced to facilitate the production and distribution of these explanations.

22. The recommendations in the Osborne Report focused on individuals already interacting with the civil justice system. The proposed Civil Legal Needs Project differs by looking at the problems that low and middle income individuals have, and how and why they face their problems in the way that they do, including those who opt not to address their problems through the civil justice system. In this way, the proposed Civil Legal Needs Project is broader from the examination of unrepresented litigants contemplated in the Osborne Report.
23. The Ontario Civil Legal Needs Project assumes that low and middle income earners experience problems in accessing the civil justice system, and have concerns that ought to be addressed. These concerns might not be strictly or primarily legal, but might instead reflect an intersection of legal and social problems to which both low and middle income individuals are vulnerable. If these issues are not addressed, they often cause a cascading effect on people's lives. For example, what begins as a family law matter may spiral into a criminal, housing, and/or child protection matter, all of which multiply the civil legal interventions necessary to resolve them.
24. For quite some time now, the rising cost of legal services has made these services inaccessible and unaffordable for a growing population of Ontarians.<sup>6</sup> Of particular concern has been the inaccessibility of affordable legal services in the area of family law. The Ontario Civil Legal Needs Project would include a focus on family law and unrepresented litigants in this area of law and the complications that arise when family law matters are not dealt with properly at first instance.
25. The proposed legal needs assessment project would acknowledge the interconnection between legal, social and economic problems, and the reality that a problem in one area of law often cascades into other areas of law. In view of this, focus group discussions will be held jointly with legal and social service providers, to identify issues and strategize about the most effective and efficient ways to provide services in a coordinated manner. Further, discussions between legal and social service providers will assist in identifying service gaps which hamper full access to justice, hence multiplying the civil legal needs for a wide population of Ontarians. This broad-based consultation process would be complementary to what is contemplated in the Osborne Report.
26. The Civil Legal Needs Project is a companion initiative to the needs assessment contemplated in the Osborne Report. Together, both assessment projects will provide insight into the gamut of issues that affect represented and unrepresented litigants, as well as those who have yet to enter the civil justice system in any formal litigant capacity.

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Trials and Trial Management; Appeals; Motion and Trial Scheduling; Venue; Civility; Technology in the Civil Justice System; Civil Rules Committee; Automobile Negligence Claims; Proportionality and Cost of Litigation.

<sup>6</sup> See Osborne Report at p. 44.

27. Further, an empirical needs study conducted by entities other than the provincial government will unearth issues and solutions from a different perspective, thus allowing for broader collaboration amongst stakeholders. The result will be broader supports for the public.
28. The Ontario Civil Legal Needs Project will also be a complementary initiative to the Linguistic and Rural to Access to Justice Project. With its focus on access to legal information and legal services by linguistic minorities and persons in rural or remote areas, the Linguistics and Rural Access to Justice Project does not address self-help tools for self-represented persons, numbers of lawyers and legal workers, processes with courts and tribunals or the availability of legal aid; these are components of access to justice that will be explored in the Ontario Civil Legal Needs Project.

## BENEFITS TO ORGANIZATIONS PROMOTING ACCESS TO JUSTICE

29. Experience in other jurisdictions has proven that empirical needs studies are valuable and important tools to advance access to justice. Specifically, they,
  - a. provide a better understanding of client needs and priorities;
  - b. identify new and innovative services; and
  - c. promote access to justice and justice system coordination.
30. The proposed Ontario Civil Legal Needs Project will benefit numerous stakeholders in Ontario, as discussed below.

### Benefit To Stakeholders

#### *The People of Ontario*

31. The Ontario Civil Legal Needs Project will benefit the people of Ontario, namely those who have encountered unmet civil legal needs, by providing them with an opportunity to discuss the parameters of their problems and provide input as to how to make the civil justice system more effective from the perspective of the end-user.
32. The public will benefit from any programs or initiatives implemented as a result of the project findings. If the Project goal is to streamline and coordinate the provision of legal and social services, then the public will benefit from a more effective and efficient system to address their needs. Ideally, the ability to identify problems at an early stage before they cascade into other areas will prevent protracted entanglement in the legal and social service systems.

#### *Ministry of the Attorney General of Ontario (MAG) and other Government Ministries*

33. This project is a proactive response to the recent report by Mr. Justice Coulter Osborne on the civil law justice system in Ontario. Mr. Justice Osborne notes that at least four Canadian jurisdictions (Alberta, British Columbia, Nova Scotia<sup>7</sup> and Quebec), have studied the needs of unrepresented litigants and how to meet them. As a result, the report recommended that an independent needs assessment study be undertaken under

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<sup>7</sup> An overview of the needs assessments conducted in Alberta, British Columbia and Nova Scotia is included as an Addendum to the project proposal.

the guidance of a steering committee of civil legal service providers and chaired by PBLO. The Ontario Civil Legal Needs Project meets this recommendation, and goes beyond it to include low and middle income represented and unrepresented litigants as well as those who, for whatever reason, have been unable to access the civil justice system.

34. The link between this project and the provincial government's objective of improving access to justice is based on the following:
  - a. The study will assist in providing a better understanding of the civil law access issues and legal needs of Ontarians. This will assist in the development of strategies to increase access to justice.
  - b. The study will provide an empirical basis with which to test the programs and priorities of civil justice agencies.
  - c. The study will allow governmental and non-governmental agencies to work together for the common benefit of improving access to justice in Ontario.

#### *Social Service Providers*

35. Studies like the Ontario Civil Legal Needs Project are explicitly designed to compare legal needs against broader categories of social needs, including income, disability, family status, and race. As a result, civil law needs studies help policy-makers better identify initiatives - both legal and otherwise – to assist the vulnerable. In so doing, these studies facilitate the inclusion of vulnerable citizens and increase awareness of legal rights and responsibilities. Meeting this need can be viewed as a form of capacity building, particularly among those at risk of poverty and social exclusion.
36. The proposed project will not only assess the effectiveness of existing programs, but will also strategically identify ways for service providers to enhance the coordination of their programs in cost-effective and time-efficient ways.

#### *Law Society of Upper Canada*

37. In view of its mandate to regulate the legal profession in the public interest, the Law Society of Upper Canada has embarked on a series of research projects that have examined the way in which a diverse profession is able to serve the diverse public of the province of Ontario. The conduct of a civil legal needs assessment of members of the public will complement existing research, and increase the awareness of the regulator in terms of the needs and interests of the public.

#### *Legal Aid Ontario*

38. The community legal aid clinics throughout the province are a first point of contact for many seeking civil justice assistance and information. Legal aid clinics are a necessary resource for those who qualify for representation, as well as those seeking information in order to prepare themselves for self-representation.
39. The Ontario Civil Legal Needs Project will assess the general legal service and information needs of the Ontario public to assist LAO clinics in their service delivery. This assessment information could then be used to assist the clinics in focusing the legal assistance and informational support that they are able to provide to the public.

*The Law Foundation of Ontario*

40. This project will advance the Law Foundation of Ontario's mission, vision, and statutory objects<sup>8</sup> by,
- a. promoting access to justice by significantly improving the knowledge and understanding of the civil legal needs of middle and low income Ontarians;
  - b. helping to identify client priorities more effectively;
  - c. identifying opportunities for new and innovative services promoting access to justice for a diverse public;
  - d. promoting better system-wide co-ordination of access to justice initiatives;
  - e. increasing awareness of systemic access to justice issues; and
  - f. promoting socio-legal research on issues which impact on the ability of the public to gain access to justice.

## PROJECT ACTIVITIES AND DELIVERABLES

### Activities, Deliverables and Specific Methodology

41. The project's major activities will include the following:
- a. A comprehensive province-wide telephone survey of middle and low-income Ontarians;
  - b. Focus groups of a wide range of legal and social service providers;
  - c. Writing and circulating a high-quality, accessible report summarizing the research;
  - d. Building stakeholder networks dedicated to improving access to civil justice in Ontario; and
  - e. Providing data to be used by justice system and other stakeholders.
42. Civil legal needs studies can be conducted as telephone surveys or in-person interviews in which the interviewer asks a long series of structured questions. The latter approach tends to be very expensive. As a result, the working assumption for this project is that a telephone survey is more appropriate.

## METHODOLOGY

43. Empirical needs assessment surveys are sophisticated social science research projects that raise important methodological issues, including the following questions:
- a. *What is the definition of legal need?*  
For the present purpose, legal need will be simply defined as a problem that was difficult to solve. Survey respondents will be asked whether they have experienced any of a list of problems that have legal aspects and possible solutions.
  - b. *Should the project focus on low-income Ontarians, middle income Ontarians, or the general population?*

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<sup>8</sup> The mission of the Law Foundation includes a commitment to funding programs and initiatives that promote and enhance access to justice for all Ontarians. The vision of the Law Foundation includes advancing the ideal of a truly accessible justice system. See [www.lawfoundation.on.ca/mission.php](http://www.lawfoundation.on.ca/mission.php).



The Ontario Civil Legal Needs Project will focus on both low and middle income Ontarians. The survey sample will be comprised of those with an annual household income of under \$75,000<sup>9</sup>. This income level would capture approximately the bottom 50 percent of Ontario households in Ontario.

- c. *If the focus is on middle and low-income Ontarians, how should these income brackets be defined?*  
As indicated above, the maximum household income level will be \$75,000. The survey will not set a minimum income level; all those with household incomes below \$75,000 may participate in the survey.
- d. *How many questions should the survey ask?*  
A telephone survey of 15 minutes would permit approximately 45 questions, depending on length and complexity.
- e. *What is the time sample or reference period?*  
As with the Department of Justice surveys, a suggested reference period would be 0-3 years.
- f. *What is the appropriate sample size?*  
The appropriate sample size will be 2000 Ontarians, with a regional distribution as follows:

	Sample Size	Population %	Margin of Error
Eastern Ontario	240	12	+/-6.3
Central Ontario	200	10	+/-7.1
City of Toronto	430	22	+/-4.8
Outer GTA	450	23	+/-4.7
Hamilton/Niagara	160	8	+/-8.1
Western Ontario	380	18	+/-5.1
Northern Ontario	140	7	+/-8.2
TOTAL	2000	100	+/-2.2

- g. *What indicators will be used to define and track vulnerable groups?*  
The indicators that will be used to define and track vulnerable groups include, but are not limited to, membership in an equality seeking community, age, education and income levels and employment status. The extent to which survey respondents indicate that they require assistance from two or more legal or social service providers may also be an indicator of vulnerability.

<sup>9</sup> This figure is somewhat higher than the figure of \$66,917 determined by Statistics Canada as the median family earnings in Ontario, based on data from the 2006 Census. See: <http://www12.statcan.ca/english/census06/data/highlights/income/pages/Page.cfm?Lang=E&Geo=PR&Code=01&Table=5&Data1=1&Data2=1&StartRec=1&Sort=2&Display=Page>.

The median individual earnings for Ontario is \$44,748. See: <http://www12.statcan.ca/english/census06/data/highlights/earnings/Table801.cfm?Lang=E&T=801&GH=4&SC=1&SO=99&O=A>

44. Civil legal needs studies typically seek to measure the incidence of civil legal problems or disputes that arise in everyday life and that,
  - a. raise legal issues in the sense that legal advice or a legal remedy would be appropriate;
  - b. are “serious” in the sense that the person would suffer some kind of loss or disadvantage as a result of the problem or dispute.
45. A key conceptual issue for all legal needs studies is the definition of “legal need” or “unmet legal needs.” In order to be workable, any definition of “legal need” or “unmet legal needs” must acknowledge that not all problems with a legal *dimension* necessarily create legal *needs*. There may be many occasions where people choose to resolve their problem by themselves or where a legal solution is not necessarily the best solution. These people should not be counted as having an unmet legal need.
46. Relying only on input from legal service providers excludes the perspective of those who, for a variety of reasons, are prevented from accessing the civil justice system. The proposed methodology in the Ontario Civil Legal Needs Project of seeking the input of low and middle income members of the public will provide the perspective of the public with regard to their own civil legal needs. Further, the methodology of interviewing the public directly may reveal trends in civil legal problems that may not be treated or classified as such. For instance, members of the public might experience a variety of problems that they might not initially identify as having a legal component. As a result, these individuals might not make themselves known to legal service providers. However, a well-drafted survey would help to identify common legal problems, as well as legal and non-legal solutions. This research would also provide insight into problems that reflect a myriad of legal and non-legal components.
47. Consequently, the research will identify other categories of need that may be common, and through consultation with both legal and social service providers, identify strategies to meet the broad range of needs that affect low and middle income Ontarians.
48. It appears that there are two general approaches to large-scale civil legal needs assessments. These approaches represent important, conceptual, methodological and financial differences. American legal needs studies tend to be telephone surveys that include all events that raise a legal issue as a legal “need”. By way of contrast, U.K. needs studies tend to be in-person interviews that intentionally test “legal needs” against a high “seriousness” threshold that reduces the number of legal *problems* considered legal *needs*.
49. A common theme in all civil legal needs research is the connection between legal needs and social needs. The premise for this link is that different life circumstances raise different legal risks. Studies also prove that some legal problems tend to be experienced in clusters or combinations.
50. Sample size and methodology are two crucial issues. The study cannot be too small for fear of losing reliability. This is because as the sample sizes decline, the confidence intervals in any given survey estimate will decrease. This will reduce the utility of the survey, particularly if the survey is to be used regionally, to identify problem clusters, or to target specific groups. As a result, the survey needs to be large enough for sub-regional analysis and for sub-legal type.

51. The proposed sample size of low and middle income Ontarians for this project is 2000. Those who fall outside of the income parameters will not be asked to participate in the survey.
52. Data from a 20% sample size of the 2006 census reveals that the median individual full-time employment earnings in Ontario was \$44,748.<sup>10</sup> The median income for an economic family<sup>11</sup> in Ontario was \$66,917.<sup>12</sup> The income cut-off for participation in the empirical needs assessment survey will be somewhat above the median family income, or \$75,000.

## PROJECT MANAGEMENT, STRUCTURE AND EVALUATION

### Project Structure

53. This project is a unique partnership between two important organizations providing access to justice for low and middle income Ontarians – Pro Bono Law Ontario and the Law Society of Upper Canada. PBLO is the provincial organization dedicated to promoting opportunities for lawyers to provide *pro bono* (free) legal services to persons of limited means. The Law Society is the governing body of the legal profession (lawyers and paralegals) in Ontario. In the course of carrying out its function, the Law Society has a duty to act so as to facilitate access to justice and to protect the public interest. Together, PBLO and the Law Society provide legal information, advice and representation to hundreds of thousands low and middle income Ontarians seeking access to civil justice in the province.

### Project Charter

54. The partners, PBLO and the Law Society, will develop and sign a project charter and agreement that establishes their respective roles and responsibilities. The project charter will also establish clear lines of accountability and formal reporting mechanisms to the project's funders, including the Law Foundation of Ontario.

### Steering Committee

55. The partners propose that project will be overseen by a steering committee of representatives of major organizations dedicated to promoting access to justice in Ontario, including: Legal Aid Ontario, PBLO, the Law Society of Upper Canada, the Ministry of the Attorney General, the Superior Court, the Ontario Court of Justice and community legal clinics. The Law Foundation of Ontario will also be invited to sit on the Steering Committee. The steering committee will have up to ten members to ensure it reflects Ontario's regional diversity.

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<sup>10</sup> See Statistics Canada 2006 Census data previously referred to in footnote 9.

<sup>11</sup> An economic family refers to a group of two or more persons who live in the same dwelling and are related to each other by blood, marriage, common-law or adoption. A couple may be of opposite or same sex. Foster children are included. See Statistics Canada, Definitions, Data Sources and Methods at: <http://www.statcan.ca/english/concepts/definitions/eco-family.htm>

<sup>12</sup> See Statistics Canada 2006 Census data previously referred to in footnote 9.

56. The former Chief Justice of Ontario, the Honourable Roy McMurtry, has agreed to chair the Steering Committee. The Steering Committee will be the sponsor of the study. The Committee members will review the study methodology, set guidelines for prioritizing areas of inquiry and the allocation of resources, provide oversight for study expenditures, and help draft and approve the study's findings and final recommendations. Steering Committee members will also serve as liaisons to the organization that appointed them.
57. The Steering Committee will meet on a quarterly basis for the duration of the study to receive updates and review information submitted by study project staff and consultants. Project Managers, Project Staffing and External Support
58. The project will be managed on a day-to-day basis by designated staff from PBLO and the Law Society. PBLO, and the Law Society will provide in-kind staffing and logistical support for the project in addition to their financial contributions.
59. The project managers will be supported by an external consultant with significant experience researching and writing civil legal needs studies. The project managers will also be assisted by design and communications consultants. Finally, a staff member of the Research and Statistics Division of the federal Department of Justice will also provide technical assistance.
60. The project managers, staff, and consultants will be responsible for managing project planning and day-to-day implementation of the project's activities, including,
- recommending and defining the scope of inquiry and resource allocation;
  - developing the methodology;
  - developing the project budget and funding proposals;
  - managing expenditures;
  - developing RFP's for sub-contractors and vetting subsequent proposals;
  - coordinating all logistics related to the implementation of the needs assessment;
  - analyzing research findings;
  - assisting in drafting the report and recommendations; and
  - reporting to the steering committee on a regular basis.
61. Collectively, the staff and consultant team dedicated to this project have significant project management, needs assessment, and access to justice experience.

Revenue	\$	Expenditures	\$
Partner Contributions			
Pro Bono Law Ontario	75,000 <sup>1</sup>	Salaries and benefits <sup>2</sup>	
		Telephone survey <sup>3</sup>	150,000

<sup>1</sup> PBLO's contribution consists of unspent 2006/07 funds received from Legal Aid Ontario and the Law Foundation of Ontario.

<sup>2</sup> The salary and benefits of the project managers and project staff will be in-kind contributions from the Law Society and PBLO. The Law Society estimates its in-kind contribution to be \$30,000 over the course of the project.

<sup>3</sup> This is an estimate for the cost of a market research study based on the following parameters: A province wide telephone survey of 2,000 low and middle income respondents; survey length

The Law Society of Upper Canada	(Cash) 120,000	Focus groups	30,000
	(In kind) 30,000	Mapping Project:	
		Consultant - Research and Analysis	40,000
Grants		Consultant – Communications	10,000
The Law Foundation of Ontario	60,000	Report Design and Printing	15,000
		Office Supplies	1,000
		Mail and Courier	1,000
		Steering Committee support <sup>4</sup>	6,000
		Miscellaneous	2,000
Total Revenue	255,000	Total Expenditures	255,000

approximately 15 minutes; survey questions based on previous surveys; no focus groups to develop or test survey questions. (Focus groups to test the questions could add another \$20,000 to the project budget, assuming there were four focus groups across Ontario.) This estimate is based on a preliminary consultation with a market research firm. The RFP for the telephone survey would request a cost estimate for each phase of the project and the incremental costs for enlarging or contracting the sample size and/or likely length of the survey in order to meet the project's research/statistical requirements and to conform to the budget.

<sup>4</sup> The budget assumes that the steering committee will not be paid a per diem. This line item includes travel and related expenses for out-of-town committee members and reasonable meeting expenses (refreshments, photocopying) for up to six committee meetings. Meetings will be organized by teleconference as often as possible to reduce expenses.

## Addendum

## OVERVIEW OF NEEDS ASSESSMENTS IN OTHER CANADIAN JURISDICTIONS

1. Apart from the needs assessments undertaken by the Department of Justice, research has revealed that legal needs assessments have recently taken place in Alberta, British Columbia and Nova Scotia.

*Legal Aid Alberta Needs Assessment, 2007<sup>1</sup>*

2. As part of its commitment to facilitate access to justice, Legal Aid Alberta (LAA) recently completed a needs assessment to review its programs and services. The objectives of the needs assessment were to determine whether Legal Aid Alberta is meeting the legal needs of low income Albertans, and to assist LAA in providing programming.
3. The needs assessment considered whether the changes in Alberta – the increasing population; growing diversity, especially with the rising number of Aboriginal peoples and immigrants; and rapid economic expansion – have affected the types of legal issues faced by low-income Albertans. The findings show that generally the types of legal issues have not changed, although the volume of legal disputes and the difficulties in obtaining legal representation have increased.
4. The assessment included the following main research areas:
  - a. What are the legal issues experienced by low-income Albertans, and is LAA meeting those needs?
  - b. Are the legal services for low-income Albertans accessible?
  - c. Is the current LAA delivery model effective?
  - d. What is LAA doing that it should not change?
5. Data for the needs assessment was collected from the following sources:
  - a. Site visits were conducted in the 11 LAA regional offices. Site visits included 140 group and individual interviews with a total of 221 stakeholders. Focus groups were held on some of the sites with a total of 43 low-income individuals who had experienced legal problems.
  - b. Survey of the underserved population. A general telephone survey was directed at postal codes with low to medium incomes. Over 9,500 numbers were called. 640 individuals completed the survey, of which 400 individuals had an annual household income below \$50,000.
  - c. Survey with community and government organizations. A mail-in survey was sent to 211 organizations that assist low-income Albertans. 131 organizations responded.

*Law Foundation of British Columbia Poverty Law Needs Assessment and Gap/Overlap Analysis Report, November 2005.<sup>2</sup>*

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<sup>1</sup> The Full Report of the 2007 Legal Aid Alberta Needs Assessment is available at: [http://www.legalaid.ab.ca/NR/rdonlyres/C824C23C-524F-4311-8ABD-1CE66BDAF651/0/2007needsassessment\\_FULLREPORT.pdf](http://www.legalaid.ab.ca/NR/rdonlyres/C824C23C-524F-4311-8ABD-1CE66BDAF651/0/2007needsassessment_FULLREPORT.pdf)

<sup>2</sup> The full text of the Report is available at: [http://www.lawfoundationbc.org/files/PovertyLawNeedsAssessment\\_NOV05.pdf](http://www.lawfoundationbc.org/files/PovertyLawNeedsAssessment_NOV05.pdf)

6. The British Columbia Assessment was intended to gather information to assist the Law Foundation in considering options for allocating resources as part of the Foundation's Funding Strategies Review. The overall purpose was to look at what services are provided to ensure that there is no overlap.
7. Although the Law Foundation of British Columbia's report looked at similar areas to those proposed in the Ontario Civil Legal Needs Assessment Project, the BC Report adopted a very different approach. This assessment examined statistics and other available information and consulted only with organizations and individuals who work within the legal system.

*Self-Represented Litigants in Nova Scotia: Needs Assessment Study, March 2004<sup>3</sup>*

8. The Self-Represented Litigants Project of the Court Services Division of the Nova Scotia Department of Justice surveyed 40 judges, 163 court staff and 58 self-represented litigants to identify the greatest needs for courts and self-represented litigants. The project team observed 20 court hearings that involved one or more self-represented litigant.
9. The self-represented litigants who participated in the study had the following characteristics:
  - a. 45% were between the ages of 35 and 44 years; 19 were between the ages of 45 and 54
  - b. 29.3% had some university education; 24.1% were community college graduates
  - c. 31% had an annual income between \$15,000 and \$29,000; 29% had less than \$15,000
10. The self-represented litigants indicated that they did not have a lawyer for varying reasons:
  - a. 40% did not need or want one;
  - b. 34% could not afford one;
  - c. 26% were denied legal aid.
11. The interviews, focus groups and questionnaires used by the self-represented litigant Project Team confirmed the following:
  - a. self-represented litigants often do not have sufficient knowledge to adequately represent themselves and may be disadvantaged by representing themselves;
  - b. self-represented litigants are most common in family and criminal matters, and before Small Claims Court;
  - c. self-represented litigants are significantly impacting on the day to day administration of the courts;
  - d. self-represented litigants usually do not distinguish between "legal information" that can be provided by staff and "legal advice" that can be provided by a lawyer;
  - e. the other party in a dispute with a self-represented litigant may be disadvantaged by the fact that the other side is not represented.
12. The various assessment results from other Canadian jurisdictions are fair indications of what may be discovered through a needs assessment in Ontario. However, the

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<sup>3</sup> The full text of the Report is available at:

<http://www.gov.ns.ca/just/publications/docs/SRL%20Report%20March%202004.pdf>

resources and strategies to deal with some of the common legal problems may differ between Ontario and the other provinces. A specific Ontario-focused civil legal needs assessment is necessary to discern the unique legal needs of middle and low income Ontarians, as well as the options available to meet these needs.

Re: Ontario Civil Legal Needs Project

It was moved by Ms. Boyd, seconded by Ms. Potter, that Convocation approves

- a. the Ontario Civil Legal Needs Project proposal as described at Appendix 1 of the Report,
- b. the submission of a funding application to the Law Foundation of Ontario; and
- c. including in the 2009 budget funds in the amount of \$120,000 and in-kind contribution in the amount of \$30,000.

Carried

FINANCE COMMITTEE REPORT

Mr. Wright presented the Report.

Report to Convocation  
June 26, 2008

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Finance Committee

Committee Members  
Derry Millar, Chair  
Brad Wright, Vice-Chair  
Melanie Aitken  
Jack Ground  
Susan Hare  
Carol Hartman  
Janet Minor  
Jack Rabinovitch  
Paul Schabas  
Gerald Swaye

Purpose of Report: Decision  
Information

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



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## COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on June 5, 2008. Committee members in attendance were: Derry Millar(C.), Brad Wright (vc.), Melanie Aitken, Carol Hartman (phone), Janet Minor, Jack Rabinovitch, Paul Schabas and Gerald Swaye.

Also in attendance were Constance Backhouse, Marion Boyd, Jack Braithwaite, James Caskey, Ab Chahbar, Tom Conway, Marshall Crowe, Mary Louise Dickson, Paul Dray, Joanne St. Lewis, Seymour Epstein, Susan McGrath, Tom Heintzman, Vern Krishna, Doug Lewis, Dan Murphy, Catherine Strosberg and Beth Symes.

2. Staff in attendance were: Malcolm Heins, Wendy Tysall, Katherine Corrick, Terry Knott, Fred Grady, Brenda Albuquerque Boutilier, Jewel Amoah and Andrew Cawse.

## FOR DECISION

### BY-LAW 3 AMENDMENT - BENCHER REMUNERATION

Motion

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

### BY-LAW 3

#### [BENCHERS, CONVOCATION AND COMMITTEES]

1. The definition of "full day" in subsection 49(1) of By-Law 3 is revoked and the following substituted:

"full day" means a total of more than 3 hours in a period of 24 hours;

2. The definition of “half day” in subsection 49(1) of By-Law 3 is revoked and the following substituted:

“half day” means a total of not more than 3 hours in a period of 24 hours;

3. The definition of “work” in subsection 49(1) of By-Law 3 is revoked and the following substituted:

“work” means any of the following activities and includes reasonable time traveling to or from the activity:

1. Attending a Convocation,
2. Attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is a member,
3. Attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is not a member, at the request of the chair of the committee,
4. Attending an information session organized by the Society for benchers,
5. Attending a program of education or training required by the Society for benchers,
6. Hearing a hearing before the Hearing Panel or Appeal Panel,
7. Preparing written reasons for a decision or order of the Hearing Panel or Appeal Panel,
8. Conducting a pre-hearing conference in a proceeding before the Hearing Panel,
9. Performing activities, as a chair or vice-chair of the Hearing Panel or Appeal Panel, that are integral to the office of chair or vice-chair of the Hearing Panel or Appeal Panel,
10. Performing activities, as a member of the Hearing Panel or Appeal Panel, that relate to the management of a proceeding before the Hearing Panel or Appeal Panel,
11. Performing activities, as a bencher appointed by Convocation for the purpose of making orders under sections 46, 47, 47.1, 48 and 49 of the Act, that are integral to the role of a bencher under sections 46, 47, 47.1, 48 and 49 of the Act,
12. Attending a meeting, other than a Convocation or a meeting of a standing or other committee, at the direction of the Treasurer or Convocation,

13. Performing activities as a director of an organization, to which position the bencher was appointed, or nominated for appointment, by Convocation, provided that the performing of the activities would entitle any other director of the organization to be remunerated by the organization for performing the activities.

4. Section 50 of By-Law 3 is revoked and the following substituted:

#### Entitlement

50. (1) Subject to subsections (2) and (3), every elected bencher, every bencher who holds office under subsection 12 (1) of the Act, every bencher who holds office under subsection 12 (2) of the Act, every bencher who holds office under section 14 of the Act and every person who is elected as a member of the Paralegal Standing Committee is entitled to receive from the Society remuneration,

- (a) for each half day of work performed for the Society in a bencher year, after the first 26 half or full days of work performed for the Society in that bencher year, in an amount determined by Convocation from time to time; and
- (b) for each full day of work performed for the Society in a bencher year, after the first 26 half or full days of work performed for the Society in that bencher year, in an amount determined by Convocation from time to time.

#### Limits on remuneration: preparing reasons

(2) A payee is entitled only to receive from the Society remuneration for a reasonable amount of time preparing written reasons for any decision or order of the Hearing Panel or Appeal Panel.

#### Limits on remuneration: performing activities as director of another organization

(3) A payee is not entitled to receive from the Society remuneration for performing activities as a director of an organization if the payee is remunerated, directly or indirectly, by the organization for performing the activities.

#### Background

4. In May 2008 at a joint meeting of the Finance and Audit Committees, the Committee considered a report previously prepared for the Audit Committee evaluating the experience of the current bencher remuneration model.
5. Recommendations from that joint meeting included modifications to the existing bencher remuneration model for travel time and reason writing. A copy of the report prepared for the joint meeting of the Finance and Audit Committees is attached at Schedule 1.
6. Subsequent to the joint meeting in May, the Finance Committee requested that a review of By-Law 3 be undertaken and the necessary changes to By-Law 3 be made to incorporate a provision for reasonable time for the remuneration of travel and reason writing, where previously no remuneration was provided for travel and one day was allowed for reason writing.

### Changes to By-Law 3 on Benchers Remuneration

7. As set out in the above changes to By-Law 3, the Finance Committee is requesting Convocation approve the following changes to benchers remuneration.
  - a) Replace the limit of one day's remuneration for writing hearing and appeal panel decisions with remuneration allowed for a reasonable time for writing decisions.
  - b) Replace the prohibition on travel time as an activity eligible for remuneration with remuneration allowed for reasonable travel time.
    - This change means that the definition of a "full day" will no longer include the provision that a full day's remunerated activity will be allowed if work is performed outside a reasonable distance of the benchers' business address or home address, whether the work takes up a half day or full day.
8. Changes to benchers remuneration, including eligible activities and rates, affect both benchers and non-benchers adjudicators. In April 2007, Convocation approved the recommendation that non-benchers adjudicators be remunerated on the same basis as benchers except that non-benchers adjudicators are not required to donate 26 days before being eligible for remuneration.

### Overall financial impact of changes to the policy and per diem rates

9. A summary of the projected overall financial impact of the proposed recommendations is set out below.

Recommendation	Estimated Annual Incremental Cost
Allow a reasonable time for decision writing	\$40,000
Allow a reasonable time for travel	\$300,000
Contingency and provision for increases in administration	<u>\$20,000</u>
TOTAL	<u>\$360,000</u>

10. The results of above changes (\$360,000) and the changes to the per diem rate (\$40,000) approximating \$400,000 per year will have the greatest impact in 2009 as the new benchers year begins in June 2008. The addition of travel time and the increase in days eligible for reason writing will reduce the typical time period required for eligibility for paid remuneration. Consequently, there will be an impact in 2008, however it is likely to be in the order of \$100,000. Funding for this amount can either come from the existing budget or the contingency. Funding for 2009 in the amount of \$400,000 will be included in the 2009 Budget.
11. The 2008 budget contained a contingency amount of \$725,000 of which \$50,000 has been allocated for increased expenses for the Discrimination and Harassment Counsel. The balance could be used for benchers remuneration expenses in excess of \$300,000, which is the budget for benchers remuneration for 2008.
12. A black-lined version of the By-Law 3 Part III, Benchers: Administration, Remuneration is attached as Appendix 1.

Provided to Convocation for Clarification, in support of the By-Law

QUESTIONS / ANSWERS

1. *Who qualifies for benchers remuneration?*

Elected benchers, former treasurers and ex-officio benchers for remuneration. Appointed benchers will not be eligible for remuneration beyond amounts paid by the province.

2. *How will the rates for remuneration be maintained?*

The current framework sets remuneration at \$300 per half day and \$500 per full day.

3. *What is half a day and a day for remuneration purposes?*

The definition of half a day is intended to include eligible activity lasting up to 3 hours within a 24-hour period.

The definition of a full day is eligible activity in excess of three hours in a 24-hour period. For all benchers, any eligible activity completed out of the bencher's office area (e.g. Ottawa benchers in Toronto, Toronto benchers in Ottawa) qualifies as a full day.

4. *How is the deductible calculated?*

The framework sets a deductible of 26 days before benchers can be remunerated for their time. For purposes of calculating the deductible of 26 days, half days and full days will all count as one day of attendance until the deductible of 26 days is exceeded. This means that 26 half days and not 52 half days will fulfill the 26 attendances required by the deductible.

5. *Is the deductible calculated on a calendar year or bencher year?*

The bencher year is generally June 1 – May 31 not calendar year (January 1 – December 31) with the exception of an election year.

In an election year, the bencher year starts on the day on which Convocation has its first regular meeting after an election of benchers licensed to practice law and runs until May 31 of the following year. This bencher year starts on May 25, 2007 and ends on May 31, 2008.

6. *What are eligible activities?*

Attendance at Convocation, meetings of committees, task forces, working groups (including the Ontario Lawyers Gazette Advisory Board), special convocations, calls to the bar, bencher information sessions, mandatory bencher education sessions, hearing panels, appeal panels, pre-hearing conferences and meetings attended as the Law Society's official representative.

Benchers will only be remunerated for attending meetings of committees, task forces and working groups where they are a member of the committee, task force or working group or where they have been formally invited to participate by the relevant chair.

Eligible activities also include:

- a) The maximum of one day allowed for writing reasons for a panel's decisions.
- b) Work integral to the offices of Chairs of the Hearing and Appeal Panels and the Summary Disposition Bencher.

Meetings between benchers and staff will not be eligible against the deductible or for remuneration. This is because these meetings are typically of the nature of pre- or post-meeting work (i.e. preparation time). The only exception to this would be work integral to the offices of Chairs of the Hearing and Appeal Panels and the Summary Disposition Bencher.

7. *Will a bencher acting as the Law Society's appointed representative be remunerated? (as opposed to the Law Society's official representative – see below).*

The Law Society, through Convocation, appoints a significant number of benchers to the boards of subsidiary and related organizations. These organizations are:

- a) LawPro
- b) LibraryCo
- c) BAR-eX
- d) the Canadian National Exhibition
- e) CanLII
- f) Civil Rules Committee
- g) Criminal Rules Committee
- h) Diane Martin Medal Selection Committee
- i) Family Rules Committee
- j) the Federal Judicial Advisory Committee
- k) the Federation of Law Societies
- l) the Judicial Appointments Advisory Committee
- m) Legal Aid
- n) Law Foundation of Ontario
- o) Law Society Foundation
- p) LINK / OBAP
- q) Ontario Bar Association Council
- r) Ontario Centre for Advocacy Training
- s) Ontario Judicial Council
- t) OJEN
- u) Pro Bono Law Ontario

Benchers, other than benchers appointed by the Provincial Government, appointed to external boards may not accept director's fees or other remuneration from these other organizations. A bencher appointed to an external organization, who is not barred by that organization by laws or legislation from receiving remuneration, will be eligible for remuneration by the Law Society for the time spent, and the time spent on the external organization's business will count toward the 26-day deductible. A bylaw passed in November 2005 by the LawPro Board, requires that remuneration for which lawyer

benchers are eligible, will be paid directly to the Law Society from LawPro for Board activities.

8. *What is an official representative of the Law Society? (as opposed to the Law Society's appointed representative – see above).*

Where a bencher has been appointed by Convocation or requested by the Treasurer to represent the Law Society at a meeting, occasion or event, then that attendance would be eligible for remuneration as the Law Society's official representative.

It was agreed in Convocation in October 2004 that "only official representatives of the Law Society who attend meetings are compensated."

In certain instances, the Treasurer may request a bencher to attend a meeting, such as a swearing in ceremony, as representative of the Law Society or as a replacement for the Treasurer. Such meetings often require the official Law Society representative to play a role in proceedings. These types of meetings would be eligible for remuneration – whether the meeting takes the form of a business meeting, ceremonial event or swearing-in ceremony.

In the Treasurer's remarks, Convocation may be informed either in arrears or in advance, of the events attended by the Law Society's official representatives. This will confirm the bencher's attendance in an official capacity as the Law Society's representative, assist benchers in their attendance reporting, as well as informing Convocation of ongoing events.

9. *What other bencher activities are specifically excluded from remuneration?*

Benchers attending meetings of organizations such as the Law Society Foundation, the Osgoode Society or CDLPA where their role may not be as official Law Society representative and have not been requested by the Treasurer or approved by Convocation are not be eligible for remuneration. The Law Society Foundation is illustrative because certain benchers are nominated to be members by the Treasurer, not appointed, with their role as member and trustee later approved by the Law Society Foundation Board of Trustees.

Attendance at receptions, dinners, symposia and other like events will not be applied to the 26-day deductible nor be remunerated.

Reason writing time in excess of one day, travel time and preparation time will not be applied to the 26-day deductible nor be remunerated.

10. *How will emerging issues and questions on bencher remuneration be resolved?*

Questions relating to whether any specific activity is an eligible activity may be directed to the Chief Executive Officer. Any changes to these guidelines must be approved by the Finance & Audit Committee.

11. *Does attending a meeting by telephone qualify for remuneration?*

Attending a meeting by telephone qualifies as an eligible activity.

12. Examples of suggested eligible and ineligible activities for benchers remuneration are set out in Appendix A.

#### Processes for Recording Bencher Activities

##### Quarterly Activity Sheets Submitted by Benchers Opting For Remuneration

13. Benchers who opt for remuneration should submit quarterly activity sheets.
14. The activity sheets must be certified by benchers as being correct.
15. Attendance sheets should be submitted by the 15th of the month following quarter end to allow complete, accurate and prompt reporting and payment of remuneration.

##### Required Remuneration Documentation

16. Benchers receiving remuneration for their services must provide the following:
  - a. Their Social Insurance Number.
  - b. The Canada Revenue Agency Personal Tax Credits Return Forms (TD1 series).
  - c. A bank account number for the electronic funds transfer of remuneration is strongly encouraged.
17. The SIN and TD1 forms are required for income tax purposes. Benchers will receive a T4 for all remuneration received and, if applicable, taxes and other deductions such as CPP will be withheld by the Law Society and remitted to the Canada Revenue Agency. Withholding tax will depend on the amount of individual remuneration expected to be paid. Annual remuneration under \$8,100 will probably not have tax withheld, although all remuneration will require the deduction of "employee / director" CPP and the payment of employer CPP and employer health tax. These "taxes" will approximate \$11,000 in total per year if total bencher remuneration in the year approximates \$160,000 (CPP: 5%, EHT: 2%)

##### Payment of Remuneration

18. Bencher remuneration will be paid on a quarterly basis. Benchers eligible for remuneration who submit forms by the middle of the following month, will see payment made by the end of that following month if all required documentation (SIN etc) is in place. For example, for fourth quarter (March, April and May of bencher year) activity sheets submitted by June 15, payment will be made by June 30.
19. Deferral of remuneration will not be allowed.
20. Payment of remuneration will only be made directly to individual benchers or their firm. Redirection of remuneration to charities is considered to be unworkable primarily because:
  - a) The bencher must still receive a T4 for the gross amount of remuneration with the associated withholding tax implications.



- b) Once remuneration has been received by individual benchers, those benchers can redirect the money based on their own objectives and there is no difference in financial implication.
- c) The designation of numerous charities will be administratively onerous.
- d) Redirection will complicate reporting of remuneration.
- e) This redirection appears to defeat the motivating principles for bencher remuneration.

#### Retroactive Amounts

21. The proposal on bencher remuneration presented to members as part of the referendum package stated that remuneration would be effective from May 28, 2004. Those benchers who believe they have exceeded the deductible in the bencher year June 1, 2004 to May 31, 2005 and wish to be remunerated should submit attendance records for the period on the required forms discussed above.

#### Opting Out of Remuneration

22. Benchers can decide not to accept remuneration for their services as bencher. Benchers who decide to forego remuneration must communicate this choice in writing to the Chief Financial Officer.

#### Reporting

23. The Finance Department will report on remuneration and expense reimbursements paid to individual benchers to the Audit Sub-Committee. Total amounts paid for bencher remuneration and expense reimbursements will be reported to the Finance & Audit Committee and Convocation on a quarterly basis.
24. In addition remuneration will be reported in total in the Annual Report. Information to support accruals for bencher remuneration will be required for year-end reporting purposes.
25. Individual benchers will also receive an individual report on their own attendance on a quarterly basis.

### FOR DECISION

#### BENCHER REMUNERATION - PER DIEM RATES

#### Motion

13. That Convocation approve an increase in the per diem rates for bencher remuneration to \$530 per full day and \$320 per half day, effective for work commencing June 1, 2008, the beginning of the bencher calendar year.
14. By-Law 3 provides for the per diem rates to be determined by Convocation from time to time.
15. The per diem rates of \$500 per day and \$300 per half day were first set in November 2005, with the provision for an annual adjustment for changes in the cost of living. No adjustments have been made since the implementation of bencher remuneration. The

accumulated inflation rate for the three years ending April 2008 is 5.6%. This rate is based on Federal Government statistics in the “all-items index, same month for previous year for Ontario”. The new per diem rates are rounded amounts of \$530 per day and \$320 per half day.

16. The cost of the increase in the per diem rate is estimated at \$40,000 based on the total remuneration of elected and ex-officio benchers and non-bencher adjudicators for 2007 of \$367,000, increased by the proposed changes to decision writing and travel time.
17. In 2008, this increase, and the increased expense as a result of the changes to By-law 3, is to be funded from the existing budget for bencher remuneration or the contingency in the budget that currently has an unused balance of \$675,000. For 2009, the estimated \$360,000 for proposed changes to decision writing and travel time plus the \$40,000 for the increase in the per diem rates will be included in the 2009 budget.
18. The 2008 budget for bencher remuneration is \$300,000 and payments processed to the end of May amount to \$83,000. Given the timing of the bencher year it is difficult to extrapolate payments over the year. The second quarter of the financial is the final quarter of the bencher year so payments will increase. However it is likely there will be some room in the budget for bencher remuneration in 2008 for the additional payments discussed above.
19. Changes to Bencher Remuneration, including eligible activities and rates, affect both benchers and non-bencher adjudicators. In April 2007, Convocation approved the recommendation that non-bencher adjudicators be remunerated on the same basis as benchers except that non-bencher adjudicators are not required to donate 26 days before being eligible for remuneration.

#### FOR INFORMATION

#### 2009 BUDGET PROCESS

20. The Committee received the operational reviews for the Client Service Centre and Policy & Government Relations which are available on BencherNet.

#### FOR INFORMATION

#### ONTARIO CIVIL LEGAL NEEDS PROJECT

21. The Committee reviewed the financial implications of proceeding with the Ontario Civil Legal Needs Project which requires funding of \$120,000 in the 2009 budget and an in-kind contribution of \$30,000. The policy decision is being brought before Convocation by the Access to Justice Committee.

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

(1) Copy of the Joint Finance Committee and Audit Committee on May 8, 2008 re: Benchers Remuneration.

(Schedule A, pages 9 – 31)

(2) Copy of a black-lined version of By-Law 3, Part III.

(Appendix 1, pages 32 – 36)

Re: Amendments to By-Law 3 [Benchers Remuneration]

It was moved by Mr. Wright, seconded by Ms. Warkentin, that By-Law 3 be amended as set out in the motion distributed at Convocation.

Carried

*[By-law amendments referred to in the Finance Committee Report at Tab 6A, paragraph 3]*

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER

SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

BY-LAW 3

[BENCHERS, CONVOCATION AND COMMITTEES]

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

1. The definition of “full day” in subsection 49(1) of By-Law 3 is revoked and the following substituted:

“full day” means a total of more than 3 hours in a period of 24 hours;	“journée entière” s’entend d’un minimum de trois heures par période de 24 heures (full day);
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2. The definition of “half day” in subsection 49(1) of By-Law 3 is revoked and the following substituted:

“half day” means a total of not more than 3 hours in a period of 24 hours;	“demi-journée” s’entend d’un maximum de trois heures par période de 24 heures (half day);
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3. The definition of “work” in subsection 49(1) of By-Law 3 is revoked and the following substituted:

“work” means any of the following activities and includes reasonable time traveling to or from the activity:

“travail” signifie une des activités suivantes, y compris un délai raisonnable pour se rendre à l’activité et en revenir :

- |   |   |
|---|---|
| <p>1. Attending a Convocation,</p>  | <p>1. Assister à une réunion du Conseil;</p>  |
| <p>2. Attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is a member,</p>   | <p>2. Participer à une réunion d’un comité permanent ou autre, y compris le Comité d’autorisation des instances ainsi que tout autre sous-comité mis sur pied par un comité permanent ou autre ou par le Comité d’autorisation des instances, duquel la ou le prestataire est membre;</p>   |
| <p>3. Attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is not a member, at the request of the chair of the committee,</p> | <p>3. Participer à une réunion d’un comité permanent ou autre, y compris le Comité d’autorisation des instances ainsi que tout autre sous-comité mis sur pied par un comité permanent ou autre ou par le Comité d’autorisation des instances, duquel la ou le prestataire n’est pas membre, à la demande de la directrice ou du directeur du comité visé;</p> |
| <p>4. Attending an information session organized by the Society for benchers,</p>   | <p>4. Assister à une séance d’information organisée par le Barreau à l’intention des conseillères et des conseillers;</p>   |
| <p>5. Attending a program of education or training required by the Society for benchers,</p>  | <p>5. Assister à un programme de perfectionnement ou de formation à l’intention des conseillères et des conseillers conformément aux exigences du Barreau;</p>  |
| <p>6. Hearing a hearing before the Hearing Panel or Appeal Panel,</p>   | <p>6. Instruire une audience devant le Comité d’audition ou le Comité d’appel;</p>  |
| <p>7. Preparing reasons for a decision or order of the Hearing Panel or Appeal Panel,</p>   | <p>7. Rédiger les motifs à l’appui d’une décision ou d’une ordonnance rendue par le Comité d’audition ou le Comité d’appel;</p>   |

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|---|--|
| <p>8. Conducting a pre-hearing conference in a proceeding before the Hearing Panel,</p>   | <p>8. Mener une conférence préparatoire à l'audience dans un dossier instruit devant le Comité d'audition;</p>   |
| <p>9. Performing activities, as a chair or vice-chair of the Hearing Panel or Appeal Panel, that are integral to the office of chair or vice-chair of the Hearing Panel or Appeal Panel,</p>  | <p>9. Exécuter des fonctions inhérentes à la présidence ou la vice-présidence du Comité d'audition ou du Comité d'appel;</p>   |
| <p>10. Performing activities, as a member of the Hearing Panel or Appeal Panel, that relate to the management of a proceeding before the Hearing Panel or Appeal Panel,</p>   | <p>10. Exécuter des fonctions, en qualité de membre du Comité d'audition ou du Comité d'appel, liées à la gestion des dossiers soumis au Comité d'audition ou au Comité d'appel;</p>   |
| <p>11. Performing activities, as a benchner appointed by Convocation for the purpose of making orders under sections 46, 47, 47.1, 48 and 49 of the Act, that are integral to the role of a benchner under sections 46, 47, 47.1, 48 and 49 of the Act,</p>   | <p>11. Exécuter des fonctions, en qualité de conseillère ou de conseiller nommé par le Conseil afin de rendre des ordonnances en vertu des articles 46, 47, 47.1, 48 et 49 de la Loi, qui s'inscrivent dans le rôle de conseiller, conformément aux articles 46, 47, 47.1, 48 et 49 de la Loi;</p>   |
| <p>12. Attending a meeting, other than a Convocation or a meeting of a standing or other committee, at the direction of the Treasurer or Convocation,</p>   | <p>12. Assister à une réunion, autre que celle du Conseil, d'un comité permanent ou d'un autre comité, sur demande de la trésorière ou du trésorier ou du Conseil;</p>   |
| <p>13. Performing activities as a director of an organization, to which position the benchner was appointed, or nominated for appointment, by Convocation, provided that the performing of the activities would entitle any other director of the organization to be remunerated by the organization for performing the activities.</p> | <p>13. Exécuter des fonctions inhérentes au poste de directrice ou de directeur d'un organisme à l'égard duquel la conseillère ou le conseiller à été nommé ou désigné aux fins de nomination par le Conseil, pourvu qu'une directrice ou qu'un directeur de l'organisme qui exécute des fonctions similaires puisse être rémunéré par l'organisme dans l'accomplissement des activités visées. (work)</p> |

4. Section 50 of By-Law 3 is revoked and the following substituted:

Entitlement

50. (1) Subject to subsection (2), every elected bencher, every bencher who holds office under subsection 12 (1) of the Act, every bencher who holds office under subsection 12 (2) of the Act, every bencher who holds office under section 14 of the Act and every person who is elected as a member of the Paralegal Standing Committee is entitled to receive from the Society remuneration,

(a) for each half day of work performed for the Society in a bencher year, after the first 26 half or full days of work performed for the Society in that bencher year, in an amount determined by Convocation from time to time; and

(b) for each full day of work performed for the Society in a bencher year, after the first 26 half or full days of work performed for the Society in that bencher year, in an amount determined by Convocation from time to time.

Limits on remuneration: performing activities as director of another organization

(2) A payee is not entitled to receive from the Society remuneration for performing activities as a director of an organization if the payee is remunerated, directly or indirectly, by the organization for performing the activities.

Rémunération

50. (1) Sous réserve du paragraphe (2), est habilité à recevoir une rémunération du Barreau la conseillère ou le conseiller élu, la conseillère ou le conseiller qui occupe un poste conformément au paragraphe 12 (1) de la Loi, la conseillère ou le conseiller qui occupe un poste conformément au paragraphe 12 (2) de la Loi, la conseillère ou le conseiller qui occupe un poste conformément à l'article 14 de la Loi et quiconque sont élu membre du Comité permanent des parajuristes

a) à l'égard de chaque demi-journée de travail accompli pour le compte du Barreau dans une année d'exercice à titre de conseiller, à la suite des 26 premières demi-journées ou journées entières de travail accompli pour le compte du Barreau dans une année d'exercice à titre de conseiller, dont le montant est précisé au besoin par le Conseil;

b) à l'égard de chaque journée entière de travail accompli pour le compte du Barreau dans une année d'exercice à titre de conseiller, à la suite des 26 premières demi-journées ou journées entières de travail accompli pour le compte du Barreau dans une année d'exercice à titre de conseiller, dont le montant est précisé au besoin par le Conseil.

Limites à la rémunération : Exécution de fonctions en qualité de directeur d'un autre organisme

(2) Une ou un prestataire n'a pas droit de toucher une rémunération du Barreau relativement à l'exécution de fonctions en qualité de directrice ou de directeur d'un organisme si elle ou il reçoit déjà une rémunération, directe ou indirecte, de l'organisme en question en contrepartie de son travail.

Re: Benchers Remuneration – Per Diem Rates

It was moved by Mr. Wright, seconded by Ms. Symes, that Convocation approve an increase in the per diem rates for benchers remuneration to \$530 per full day and \$320 per half day, effective for work commencing June 1, 2008, the beginning of the benchers calendar year.

Carried

*Items For Information*

- 2009 Budget Update
- Ontario Civil Legal Needs Project

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Ms. Pawlitza presented the Report.

Report to Convocation  
June 26, 2008

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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)  
Robert Aaron  
Jennifer Halajian  
Susan Hare  
Laura Legge  
Daniel Murphy  
Judith Potter  
Nicholas Pustina  
Heather Ross

Purposes of Report: Decision

Prepared by the Policy Secretariat  
(Sophia Sperdakos, 416-947-5209;  
Diana Miles 416-947-3328)

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## For Decision

Supervision of Summer Students – Amendments to By-laws 4 and 7.1 ..... TAB A

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## COMMITTEE PROCESS

1. The Committee met on June 5, 2008. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice Chair), Mary Louise Dickson (Vice Chair), Alan Silverstein (Vice Chair), Robert Aaron, Jennifer Halajian, Laura Legge, Daniel Murphy, Nicholas Pustina and Heather Ross attended. Benchers Brad Wright also attended. Staff members Lisa Mallia, Diana Miles and Sophia Sperdakos also attended.

## SUPERVISION OF SUMMER STUDENTS –AMENDMENTS TO BY-LAWS 4 AND 7.1

## MOTION

2. That Convocation approve the following amendments to By-laws 4 and 7.1:

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008 and April 24, 2008, and By-Law 7.1 [Operational Obligations and Responsibilities], made by Convocation on October 25, 2007 and amended on November 22, 2007, January 24, 2008 and April 24, 2008, be further amended as follows:

BY-LAW 4  
[LICENSING]

1. The definition of “law firm” in section 29 of By-Law 4 is revoked and the following substituted:

“law firm” means,

- (a) a partnership or other association of licensees each of whom holds a Class L1 licence;
- (b) a professional corporation described in clause 61.0.1 (a) of the Act; or
- (c) a multi-discipline practice or partnership described in subsection 17 (1) of By-Law 7 [Business Entities].

2. Section 29 of By-Law 4 is further amended by adding the following:

“legal services firm” means,

- (a) a partnership or other association of licensees each of whom holds a Class P1 licence;



- (b) a professional corporation described in clause 61.0.1 (b) of the Act; or
- (c) a multi-discipline practice or partnership described in subsection 17 (2) of By-Law 7 [Business Entities].

3. Subsection 34 (2) of By-Law 4 is revoked and the following substituted:

Other law student

- (2) A law student may, without a licence, provide legal services in Ontario if the law student,
  - (a) is employed by a licensee who holds a Class L1 licence, a law firm, a professional corporation described in clause 61.0.1 (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;
  - (b) provides the legal services,
    - (i) where the law student is employed by a licensee, through the licensee's professional business,
    - (ii) where the law student is employed by a law firm, through the law firm,
    - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (c) of the Act, through the professional corporation, or
    - (iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and
  - (c) provides the legal services,
    - (i) where the law student is employed by a licensee, under the direct supervision of the licensee,
    - (ii) where the law student is employed by a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,
    - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of a licensee who holds a Class L1 licence who practise law as a barrister and solicitor through the professional corporation, or
    - (iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence who works

for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

4. Subsection 34 (3) of By-Law 4 is revoked and the following substituted:  
Same

(3) A law student may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the law student,

- (a) is employed by a licensee who holds a Class P1 licence, a legal services firm or a professional corporation described in clause 61.0.1 (1) (c) of the Act;
- (b) provides the legal services,
  - (i) where the law student is employed by a licensee, through the licensee's professional business,
  - (ii) where the law student is employed by a legal services firm, through the legal services firm, or
  - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation; and
- (c) provides the legal services,
  - (i) where the law student is employed by a licensee, under the direct supervision of the licensee,
  - (ii) where the law student is employed by a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm, or
  - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,
    - (A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or
    - (B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation.

Interpretation: "law student"

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

#### BY-LAW 7.1

#### OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

5. Subsection 2 (2) of By-Law 7.1 is amended by adding "or (3)" after "subsection 34 (2)".

#### Background

3. In April 2007 Convocation made a number of amendments to Bylaws 4 and 7.1. Some of the amendments applied to summer law students, restoring their rights of appearance that existed before the recent amendments to the *Law Society Act* and entitling them to do the same kind of work that articling students do under the supervision of lawyers [L1 licensees].
4. Two additional issues respecting summer students have arisen that require Convocation's consideration.
5. The first issue relates to the amendments Convocation approved in April. Those amendments referred to law students working under the supervision of lawyers in law firms. They did not refer to law students working under the supervision of lawyers in government or corporations. For summer students to be able to do so further amendment to the bylaws are required.
6. The second issue relates to circumstances in which summer law students wish to work for licensed paralegals [P1 licensees], where their work will be limited to the paralegal scope of practice. To be able to do so, the Bylaw must be amended to entitle a P1 licensee to supervise these students.
7. The Committee is of the view that both amendments are important to contribute to law students' development of skills that will enhance their knowledge and abilities.
8. The Paralegal Standing Committee has also considered the amendment that relates to supervision by licensed paralegals and agrees with it.
9. The formal motion amending the by-laws is found in French and English, under a separate Tab in the Convocation materials.

#### SPOT AUDIT PROGRAM

#### MOTION

10. That Convocation approve an annual increase in the number of random spot audits conducted to accomplish the five-year audit cycle it approved in 1997, with the implementation process for accomplishing this goal to be considered during the 2009 budget process and voted upon as part of the budget debate in October 2008.

### Background

11. At the benchers retreat in 2007 benchers identified priorities for the Law Society. Among them was “maintaining high standards of competence.” The Priorities and Planning Committee has reviewed a number of operational options for accomplishing the priority related to competence. Among the areas of discussion was the Spot Audit Program, a quality assurance process that has had measurable positive outcomes, since its introduction in 1997.
12. The Law Society conducts approximately 1100 financial spot audits per year. That includes at least 1000 new audits and five to ten percent (50 to 100) re-audits of practices found to have deficiencies that warrant a return visit.
13. In 1997, when Convocation approved the pilot spot audit program, it approved 1400 audits per year. The audits were to comprise 1200 random audits and between 150 and 200 focused audits. The difference between random and focused audits is the selection process. Focused audits are selected based on risk indicia (i.e., complaints history, MAR financial indicators, private mortgages, etc).
14. At the time of the approval of the pilot project, the objective was to audit all law firms in the province within five years.
15. In the program proposal, the books and records audits were to be conducted by external chartered accounting firms and the focused audits by internal staff.
16. The number of spot audits conducted since inception of the program is as follows:

1998	424
1999	1,157
2000	1,057
2001	1,037
2002	907
2003	1,058
2004	1,139
2005	1,127
2006	1,075
2007	1,081

17. The number of audits conducted has never met Convocation’s originally approved requirement. An audit of all firms in the province in five years was also not achieved. This is due to a number of factors, including,
  - a. the increasing number of law firms annually, which was not factored into the original concept. At the time of the project proposal in 1997 there were 7065 law firms. By 2008, there were approximately 8,400 firms, an overall increase of 19%;
  - b. the original proposal did not contemplate the need for re-audits of firms with problem practices. Re-audits account for between five and ten percent of annual audits;

- c. the cost of utilizing external chartered accounting firms was higher than anticipated in the original proposal and the audits could not be completed within the budget parameters (the operational model has since been revised, with the majority of audits now being conducted by internal staff, decreasing overall expenditures and increasing consistency in the application of the audit);
  - d. additional requirements in the audit that lengthen the time of each audit including the “no cash” rule, Teranet transactions, LawPRO levies and other matters; and
  - e. reluctance to increase the number of audits, which would increase the budget and, in turn, increase licensees’ annual fees.
18. At this time, given the number of law firms in the province the Law Society is completing a spot audit of a law firm only once every eight years or longer.
  19. To assure financial competence in law firms across the province and reflect Convocation’s original goal for the spot audit cycle there would need to be an increase in the number of spot audits conducted per year. Conducting 1700 spot audits per year, with five to ten percent of those as re-audits, would ensure, based on 2008 statistics for law firms, that the cycle returns to the original five-year timeline contemplated by Convocation.
  20. The increase in audits could be undertaken incrementally. A two-year incremental increase would afford the opportunity to allocate the costs across budget years, while at the same time recognizing the importance of improving the cycle so that audits are conducted at a reasonable interval. Based on a two-year incremental process, in 2009, the increase would be approximately \$700,000 in direct costs, and a 30-35% allocation of indirect costs, with a similar increase in 2010. Based on projected 2009 full-time equivalent lawyer members, this would represent an approximately \$27 per lawyer increase in 2009 and 2010.
  21. Although a two-year implementation is described above, if Convocation approves an increase in the number of annual spot audits, the actual number of years over which the incremental increase would occur would be considered as part of the 2009 budget process.
  22. To avoid a significant increase in the audit cycle in the future, the program would be monitored to ensure that increases in law firms are factored into calculations of the number of annual audits. In this way law firms in the province would continue to be audited every five years. As the number of firms increases, the annual budget would increase accordingly. Historically, the increase in the number of law firms has been less than 2% per year.

Re: Spot Audit Program

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve an annual increase in the number of random spot audits conducted to accomplish the five-year audit cycle it approved in 1997, with the implementation process for accomplishing this goal to be considered during the 2009 budget process and voted upon as part of the budget debate in October 2008.

Carried

ROLL-CALL VOTE

Aitken	For	Krishna	For
Anand	For	Legge	For
Backhouse	For	Lewis	For
Banack	For	McGrath	For
Boyd	For	Marmur	For
Braithwaite	For	Minor	For
Bredt	For	Pawlitza	For
Campion	For	Porter	For
Caskey	For	Potter	For
Chahbar	For	Pustina	For
Chilcott	For	Robins	For
Conway	For	Ross	For
Crowe	For	Rothstein	For
Dickson	For	St. Lewis	For
Dray	For	Sandler	For
Elliott	For	Schabas	For
Epstein	For	Sikand	For
Gold	For	Silverstein	For
Gottlieb	Against	C. Strosberg	For
Hainey	For	Swaye	For
Halajian	For	Symes	For
Hare	For	Tough	For
Hartman	For	Warkentin	For
Heintzman	For	Wright	For
Henderson	For		

Vote: 48 For; 1 Against

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE/  
PROFESSIONAL REGULATION COMMITTEE REPORTS

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Re: Motion – By-Laws 4, 5, 7.1 and 8 Amendments

It was moved by Ms. Pawlitza, seconded by Ms. Rothstein, that Convocation approve the amendments to By-Law 4 [Licensing] and By-Law 7.1 [Operational Obligations and Responsibilities] as set out in the Professional Development and Competence Committee Report and in the motion distributed to Convocation;

and

that Convocation approve the amendments to By-Law 4 [Licensing], By-Law 5 [Annual Fee], By-Law 7.1 [Operational Obligations and Responsibilities] and By-Law 8 [Reporting and Filing Requirements] as set out in the Professional Regulation Committee Report and in the motion distributed to Convocation.

Carried

3-aes (b)

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

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, and May 22, 2008,

AND By-Law 5 [Annual Fee], made by Convocation on January 24, 2008 and amended on April 24, 2008,

AND By-Law 7.1 [Operational Obligations and Responsibilities], made by Convocation on October 25, 2007 and amended on November 22, 2007, January 24, 2008 and April 24, 2008,

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

*[By-law amendments referred to in the Professional Development and Competence Committee Report at Tab 7A, paragraph 2 1-4.]*

BY-LAW 4

[LICENSING]

1. The definition of “law firm/cabinet d’avocats” in section 29 of By-Law 4 is revoked and the following substituted:

“law firm” means,

« cabinet d’avocats » s’entend

(a) a partnership or other association of licensees each of whom holds a Class L1 licence;

a) d’une société de personnes ou d’un autre type d’association de titulaires de permis qui possèdent chacun ou chacune un permis de catégorie L1;

(b) a professional corporation described in clause 61.0.1 (a) of the Act; or

b) d’une société professionnelle visée à l’alinéa 61.0.1 a) de la Loi.

- |  |  |
|--|--|
| (c) a multi-discipline practice or partnership described in subsection 17 (1) of By-Law 7 [Business Entities]. | c) d'un cabinet multidisciplinaire ou d'une société de personnes visés au paragraphe 17 (1) du Règlement administratif n° 7 [Entreprises]. |
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2. Section 29 of By-Law 4 is further amended by adding the following:

“legal services firm” means,

« cabinet de services juridiques » s'entend

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| (a) a partnership or other association of licensees each of whom holds a Class P1 licence;                     | a) d'une société de personnes ou d'un autre type d'association de titulaires de permis qui possèdent chacun ou chacune un permis de catégorie P1; |
| (b) a professional corporation described in clause 61.0.1 (b) of the Act; or                                   | b) d'une société professionnelle visée à l'alinéa 61.0.1 b) de la Loi;  |
| (c) a multi-discipline practice or partnership described in subsection 17 (2) of By-Law 7 [Business Entities]. | c) d'un cabinet multidisciplinaire ou d'une société de personnes visés au paragraphe 17 (2) du Règlement administratif n° 7 [Entreprises].        |

3. Subsection 34 (2) of By-Law 4 is revoked and the following substituted:

Other law student

Autres étudiants en droit

(2) A law student may, without a licence, provide legal services in Ontario if the law student,

(2) Sans permis, un étudiant ou une étudiante en droit peut fournir des services juridiques en Ontario s'il ou elle,

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| (a) is employed by a licensee who holds a Class L1 licence, a law firm, a professional corporation described in clause 61.0.1 (c) of the Act, the | a) est engagé par un ou une titulaire de permis qui détient un permis de catégorie L1, un cabinet d'avocats, une société professionnelle telle que visée à l'alinéa 61.0.1 c) de la Loi, le |
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	Government of Canada, the Government of Ontario or a municipal government in Ontario;		gouvernement du Canada, le gouvernement de l'Ontario ou une administration municipale de l'Ontario;
(b)	provides the legal services,	b)	fournit des services juridiques,
(i)	where the law student is employed by a licensee, through the licensee's professional business,	(i)	lorsqu'il ou elle est engagé par un ou une titulaire de permis, par l'intermédiaire de l'entreprise du titulaire de permis,
(ii)	where the law student is employed by a law firm, through the law firm,	(ii)	lorsqu'il ou elle est engagé par un cabinet d'avocats, par l'intermédiaire du cabinet,
(iii)	where the law student is employed by a professional corporation described in clause 61.0.1 (c) of the Act, through the professional corporation, or	(iii)	lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 c) de la Loi, par l'intermédiaire de la société professionnelle,
(iv)	where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and	(iv)	lorsqu'il ou elle est engagé par le gouvernement du Canada, le gouvernement de l'Ontario ou par une administration municipale en Ontario, seulement pour le gouvernement du Canada, le gouvernement de l'Ontario ou une administration municipale en Ontario, respectivement;

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| <p>(c) provides the legal services,</p> <p>(i) where the law student is employed by a licensee, under the direct supervision of the licensee,</p> <p>(ii) where the law student is employed by a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,</p> <p>(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of a licensee who holds a Class L1 licence who practise law as a barrister and solicitor through the professional corporation, or</p> <p>(iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence who works for the Government of</p> | <p>c) fournit des services juridiques,</p> <p>(i) lorsqu'il ou elle est engagé par un titulaire de permis, sous la surveillance directe de celui-ci,</p> <p>(ii) lorsqu'il ou elle est engagé par un cabinet d'avocats, sous la surveillance directe d'un titulaire de permis qui détient un permis de catégorie L1 et qui fait partie du cabinet,</p> <p>(iii) lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 (1) c) de la Loi, sous la surveillance directe d'un titulaire de permis qui détient un permis de catégorie L1 et qui exerce le droit en qualité d'avocat par l'intermédiaire de la société professionnelle,</p> <p>(iv) lorsqu'il ou elle est engagé par le gouvernement du Canada, le gouvernement de l'Ontario ou une administration municipale en Ontario, sous la surveillance directe d'un titulaire de permis qui détient un permis de catégorie L1 et qui travaille pour le gouvernement du</p> |
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Canada, the Government of Ontario or the municipal government in Ontario, respectively.

Canada, le gouvernement de l'Ontario ou une administration municipale en Ontario, respectivement.

4. Subsection 34 (3) of By-Law 4 is revoked and the following substituted:

Same

(3) A law student may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the law student,

- (a) is employed by a licensee who holds a Class P1 licence, a legal services firm or a professional corporation described in clause 61.0.1 (1) (c) of the Act;
- (b) provides the legal services,
  - (i) where the law student is employed by a licensee, through the licensee's professional business,
  - (ii) where the law student is employed by a legal services firm, through the legal services firm, or
  - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation; and

Idem

(3) Un étudiant ou une étudiante en droit peut, sans permis, fournir les mêmes services juridiques en Ontario qu'un titulaire de permis qui détient un permis de catégorie P1 est autorisé à fournir si l'étudiant en droit,

- a) est engagé par un titulaire de permis qui détient un permis de catégorie P1, un cabinet de services juridiques ou une société professionnelle visée à l'alinéa 61.0.1 (1) c) de la Loi;
- b) fournit des services juridiques,
  - (i) lorsqu'il ou elle est engagé par un ou une titulaire de permis, par l'intermédiaire de l'entreprise du titulaire de permis,
  - (ii) lorsqu'il ou elle est engagé par un cabinet de services juridiques, par l'intermédiaire du cabinet,
  - (iii) lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 c) de la Loi, par l'intermédiaire de la société professionnelle;

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| <p>(c) provides the legal services,</p> <p>(i) where the law student is employed by a licensee, under the direct supervision of the licensee,</p> <p>(ii) where the law student is employed by a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm, or</p> <p>(iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,</p> <p style="padding-left: 40px;">(A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or</p> <p style="padding-left: 40px;">(B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation.</p> | <p>c) fournit des services juridiques,</p> <p>(i) lorsqu'il ou elle est engagé par un titulaire de permis, sous la surveillance directe de celui-ci,</p> <p>(ii) lorsqu'il ou elle est engagé par un cabinet de services juridiques, sous la surveillance directe d'un titulaire de permis qui détient un permis de catégorie P1 et qui fait partie du cabinet,</p> <p>(iii) lorsqu'il ou elle est engagé par une société professionnelle visée à l'alinéa 61.0.1 (1) c) de la Loi, sous la surveillance directe</p> <p style="padding-left: 40px;">(A) d'un titulaire de permis de catégorie P1 qui fournit des services juridiques par l'intermédiaire d'une société professionnelle,</p> <p style="padding-left: 40px;">(B) d'un titulaire de permis de catégorie L1 qui exerce le droit en qualité d'avocat par l'intermédiaire d'une société professionnelle.</p> |
|---|--|

Interpretation: "law student"

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

Interprétation : "étudiant en droit "

(4) Aux fins des paragraphes (2) et (3), "étudiant en droit " s'entend d'une personne inscrite à une faculté de droit agréée.

*[By-law amendments referred to in the Professional Regulation Committee Report at Tab 8D, paragraph 17.]*

5. Subsection 3 (4) of By-Law 4 is amended by striking out paragraph 1 and substituting by the following:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a *pro bono* basis,

i. for or on behalf of non-profit organizations, or

ii. through a program registered with Pro Bono Law Ontario.

1. Les titulaires de permis ne peuvent exercer le droit en Ontario à titre d'avocat ou d'avocate au sein d'une entreprise individuelle, d'une société de personnes, d'une société professionnelle ou en vertu de tout arrangement qui permet à au moins deux titulaires de permis de partager les dépenses communes en totalité ou en partie tout en exerçant le droit à titre de praticien autonome, mais non à titre bénévole,

i. pour le compte ou au nom d'organismes sans but lucratif,

ii. par l'intermédiaire d'un programme agréé par Pro Bono Law Ontario.

## BY-LAW 5

## [ANNUAL FEE]

6. By-Law 5 is amended by adding the following:

## EXEMPTION FROM CHANGE IN STATUS

EXONÉRATION DE CHANGEMENT DE  
SITUATION PROFESSIONNELLE

Exemption from change in status: practising law on *pro bono* basis

Exonération de changement de situation professionnelle : exercice bénévole du droit

3.1 A licensee who is required to pay fifty percent, or twenty-five percent, of an annual fee shall not become required to pay the full amount of an annual fee even though he or she practises law in Ontario as a barrister and solicitor if the following conditions are met:

3.1 Un titulaire de permis tenu de verser cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle n'est pas tenu de payer le montant total de la cotisation annuelle même s'il ou elle exerce le droit en Ontario en qualité d'avocat, s'il ou elle satisfait aux conditions suivantes :

1. The licensee's practice of law in Ontario as a barrister and solicitor is restricted to practising law on a *pro bono* basis through a program registered with Pro Bono Law Ontario.
2. Prior to practising law in Ontario as a barrister and solicitor, the licensee applies to the Society to be exempt from the requirement to pay the full amount of the annual fee.

1. L'exercice du droit par le titulaire de permis en Ontario en qualité d'avocat se limite à l'exercice bénévole du droit dans le cadre d'un programme agréé par Pro Bono Law Ontario.
2. Avant d'exercer le droit en Ontario en qualité d'avocat, le titulaire de permis fait une demande auprès du Barreau pour être exonéré de l'exigence de verser le montant total de la cotisation annuelle.

7. By-Law 5 is further amended by adding the following heading immediately after section 4:

SUMMARY SUSPENSION FOR NON-  
PAYMENT

SUSPENSION SOMMAIRE POUR NON-  
PAIEMENT

[By-law amendments referred to in the Professional Development and Competence Committee Report at Tab 7A, paragraph 2 – 5.]

BY-LAW 7.1

[OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]

8. Subsection 2 (2) of By-Law 7.1 is amended by adding “or/ou (3)” after “subsection/paragraphe 34 (2)”.

*[By-law amendments referred to in the Professional Regulation Committee Report at Tab 8B, paragraph 4.]*

9. Subsection 23 (5) of By-Law 7.1 is amended by striking out “upon/lorsqu’ils” and substituting “immediately after first/dès qu’ils”.

10. Subsection 23 (6) of By-Law 7.1 is amended by striking out “after/suivant” and substituting “after first/dès”.

[By-law amendment referred to in the Professional Regulation Committee Report at Tab 8C, paragraph 13.]

BY-LAW 8

[REPORTING AND FILING REQUIREMENTS]

11. Paragraph 2 of subsection 9 (1) of By-Law 8 is amended by striking out “time/des moments au cours desquels” and substituting “time period/des périodes au cours desquelles”.

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Rothstein presented the Report.

Report to Convocation  
June 26, 2008

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

Purpose of Report: Decision

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

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## COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on June 5, 2008. In attendance were Clay Ruby (Chair), Linda Rothstein (Vice-chair), Melanie Aitken, Christopher Brett, Tom Conway, Patrick Furlong, Gary Gottlieb, Ross Murray and Bonnie Tough. Staff attending were Naomi Bussin, Lesley Cameron, Terry Knott, Zeynep Onen, and Jim Varro.



AMENDMENT TO RULE 3.05 OF THE *RULES OF PROFESSIONAL CONDUCT*

## Motion

2. That Convocation amend the Commentary to subrule 3.05(5) of the *Rules of Professional Conduct* by replacing “27(1)” with “20(2)”.
3. As a result of amendments to By-Law 15, Commentary to subrule 3.05(5) requires amendment to correct a reference to a particular section of By-Law 15<sup>1</sup>, as follows:

## 3.05 ADVERTISING NATURE OF PRACTICE

## General Practice

3.05 (1) A lawyer or law firm may state that the lawyer or law firm is in general practice if such is the case.

## Restricted Practice

(2) A lawyer may state that the lawyer is a specialist in a particular area of the law only if the lawyer has been so certified by the Society.

(3) A lawyer may state that the lawyer's practice is restricted to a particular area or areas of the law or may state that the lawyer practises in a certain area or areas of the law if such is the case.

(4) A law firm may state that it practises in certain areas of the law or that it has a restricted practice if such is the case.

(5) A law firm may specify the area or areas of law in which particular lawyers practise or to which they restrict their practice.

[Amended – June 2007]

## Commentary

Where a lawyer or law firm advertises in accordance with rule 3.05, the advertisement should be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter.

An advertisement should not mislead or confuse a client about the lawyer's qualifications. Although the advertisement may include a description of the lawyer's or law firm's proficiency or experience in an area of law, in accordance with s. 20(2)27(1) of the Society's By-law 15 on Certified Specialists, the lawyer who is not a certified specialist is not permitted to use any

<sup>1</sup> Subsection 20(2) of By-Law 15 reads:

A licensee who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the licensee is a certified specialist.

designation from which a person might reasonably conclude that the lawyer is a certified specialist.

## AMENDMENTS TO BY-LAW 7.1

### Motion

4. That Convocation amend By-Law 7.1 (Operational Obligations and Responsibilities) as follows:

- a. Amend subsection 23(5) by striking out “upon” and substituting “immediately after first”;
- b. Amend subsection 23(6) by adding “first” after “after”.

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

### Introduction

- 5. On April 24, 2008, Convocation amended By-Law 7.1 to add requirements for licensees to identify and verify the identity of clients (in Part III). At that time, a question was raised about how to interpret the time period specified in subsection 23(6). The question was referred to the Committee.
- 6. The Committee and the Paralegal Standing Committee jointly reported back to Convocation on May 22, 2008 with a proposed change to clarify the language. A question was raised by a member of Convocation about the clarifying amendment, and the matter was sent back to the Committee again.
- 7. The Committee and the Paralegal Standing Committee reviewed this matter and are recommending the amendments in this report.

### The Nature of the Amendment

8. Subsection 23(6) of By-Law 7.1 reads:

Timing of verification, organizations

(6) A licensee shall verify the identity of an organization mentioned in subsection (1) by not later than 60 days after engaging in the activities described in clause 22 (1) (b).<sup>2</sup>

- 9. At April Convocation, it was suggested that this language was confusing, as it does not specify “60 days after commencing the engagement.” For example, the current language, “after engaging in the activities”, could permit the verification to take place 60 days after the end of the retainer.
- 10. The Committees determined that this matter may be resolved by using the word “upon” instead of “after”, so that it is clear that the 60 day period runs from the point the licensee commences the activities described. This mirrors the language in subsection 23(5), which prescribes the time an individual’s identity must be verified (“upon engaging in the activities...”). The amended subsection would read:

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<sup>2</sup> This clause refers to the receiving, paying or transferring of funds.

Timing of verification, organizations

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

11. At May Convocation, as noted earlier, a member of Convocation expressed concern that this language did not adequately address the issue.
12. New language is now proposed, which also requires an amendment to s. 23(5) for consistency. The two subsections with the proposed amendments would read:

Timing of verification, individuals

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

Timing of verification, organizations

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

### AMENDMENT TO BY-LAW 8

Motion

13. That Convocation amend By-Law 8 (Reporting and Filing Requirements) by adding “period” after “time” in paragraph 2 of subsection 9 (1). The formal motion to amend the By-law is at Tab ...
14. On April 24, 2008, Convocation amended By-Law 8 to specify the information about licensees to be published in the Law Society register (in Part III). During the discussion at Convocation, a question was raised about the language in paragraph 2 of subsection 9(1). The Committee and the Paralegal Standing Committee reviewed this matter and are recommending the amendment in this report.
15. Paragraph 9(1) 2 of By-Law 8 describes one item in the Law Society’s register<sup>3</sup>. This paragraph states that the register will contain:

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<sup>3</sup> Section 27.1 of the *Law Society Act* provides for the Law Society register as follows: [27.1 \(1\)](#) The Society shall establish and maintain a register of persons who have been issued licences.

Contents of register

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

1. The name of each licensee.
2. The class of licence issued to each licensee.
3. For each licensee, all terms, conditions, limitations and restrictions that are imposed on the licensee under this Act, other than terms, conditions, limitations and restrictions that are imposed by the by-laws on all licences of that class.

An indication of every time that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario

16. At April Convocation, it was suggested that for clarity and for consistency with paragraphs 3 and 4 which reference “time period”<sup>4</sup>, the word “period” be added after the word “time”. The Committees agree with this change, and the proposed amended paragraph reads:

An indication of every time period that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario.

**AMENDMENT TO BY-LAW 5 RESPECTING PRO BONO LEGAL SERVICES AND  
EXEMPTION FROM PAYMENT OF THE LAW SOCIETY’S FULL ANNUAL FEE AND  
AMENDMENT TO BY-LAW 4**

**Motion**

17. That Convocation:
- a. Amend By-Law 5 (Annual Fee) as set out at Appendix 1 to permit lawyers who meet the LawPRO exemption for insurance coverage with respect to PBLO-approved pro bono legal services and who wish to provide such services to apply to be exempt from the requirement to pay 100% of the Law Society’s annual fee,
  - b. Adopt the policy set out in this report with respect to approval by the Law Society of lawyers who apply for the exemption for the pro bono work described in a., and
  - c. Amend By-Law 4 (Licensing) as set out at Appendix 2, with respect to pro bono legal services and the Law Society’s insurance program.

The formal motion to amend the By-Laws is at Tab...

- 
- 4. An indication of every suspension, revocation, abeyance or surrender of a licence.
  - 5. Any other information required by the by-laws.

**Availability to public**

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

<sup>4</sup> 3. For each time period that a licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario,

- i. where and in what capacity the licensee practises law or provides legal services, and
- ii. the licensee’s business contact information, including address, telephone number, facsimile number and e-mail address.

4. For each time period that a licensee does not practise law in Ontario as a barrister and solicitor or provide legal services in Ontario,

- i. if the licensee is otherwise working, the licensee’s business contact information, including address, telephone number, facsimile number and e-mail address, or
- ii. if the licensee is not otherwise working, information as to how a licensee may be contacted by former clients.

### Introduction

18. Under the Law Society's regulations, lawyers who practise law must pay 100% of the Law Society's annual fee. The practice of law includes the provision of pro bono legal services, even if this is the only legal service that the lawyer provides. Thus, a lawyer who is in the 50% or 25% fee category (not practicing law) and who wishes to provide pro bono legal services must pay 100% of the fee (currently \$1653.00).
19. It is incumbent on the lawyer to contact the Law Society and advise that the pro bono services are to be performed, which would require payment of the appropriate amount to bring the fee level to 100%.
20. Lawyers in the 50% fee category wishing to provide pro bono legal services contacted the Law Society and expressed concern about the requirement for payment 100% of the fee, especially since payment of the professional liability insurance levy is not required for certain types of pro bono service. LawPRO will continue to exempt a lawyer who is already exempt from the insurance coverage for practising lawyers if the lawyer wishes to provide pro bono services through an approved Pro Bono Law Ontario (PBLO) program or for a not-for-profit organization with LawPRO approval.
21. The Committee is recommending that lawyers in the 25% and 50% fee category who wish to perform pro bono services for approved PBLO programs be permitted to apply to be exempt from payment of the full (100%) annual fee.

### The Current Fee Structure and Exemptions

22. By-Law 5 (Annual Fee) provides as follows:
  - a. Lawyers over 65 years of age and not providing any legal services may apply for an exemption from payment of the annual fee;
  - b. Lawyers over 65 years of age and who only practise law through a PBLO program or a clinic under the Legal Aid Services Act, 1998 and approved by PBLO (reference is to By-Law 4 (Licensing) s. 3(2)) may apply for an exemption from payment of the annual fee;
  - c. Lawyers who are incapacitated may apply for an exemption from payment of the annual fee;
  - d. A lawyer who has practised law in Ontario for 50 years is exempt from payment of the annual fee;
  - e. A lawyer who does not practise law, including those employed in education, in government or in a corporation in a position where he or she is not required to practise law pays 50% of the annual fee;
  - f. Lawyers who do not practice law and who
    - i. do not engage in any remunerative work,
    - ii. are in full-time attendance at a university, college or designated educational institution, and
    - iii. are on a pregnancy or parental leave
 pay 25% of the annual fee;
  - g. All other lawyers pay 100% of the fee.

### The Current LawPRO Coverage and Exemptions Respecting Pro Bono Work

23. Under the insurance program provided by LawPRO, lawyers in private practice are covered for professional services under the LawPRO policy, including any pro bono services they provide.

24. The following lawyers are exempt from payment of the insurance levy, as set out in By-Law 6 (Professional Liability Insurance):
- a. a lawyer who does not practice law in Ontario;
  - b. a lawyer who resides in Canada outside of Ontario, engages in the practice of law in Ontario on an occasional basis only, and demonstrates proof of coverage for that practice in Ontario under the insurance program of another Canadian jurisdiction;
  - c. a lawyer who resides in a reciprocating jurisdiction, and demonstrates proof of coverage for practice of law in Ontario under the insurance program of the reciprocating jurisdiction;
  - d. a lawyer who is employed by a single employer, and engages in the practice of law only for and on behalf of the employer;
  - e. a lawyer who is a law teacher who does not engage in the practice of law in Ontario other than teaching;
  - f. a lawyer who is employed or volunteers in a legal clinic but is not directly employed by Legal Aid Ontario, and who engages in the practice of law only through the clinic for individuals in communities served by the clinic, and demonstrates proof of insurance coverage for such practice which must be at least equivalent to that required under the Society's insurance plan;
  - g. a lawyer who acts in the capacity of an estate trustee, a trustee for an inter vivos trust or an attorney for property in respect of an estate, a trust or a property of a person other than a related person of the lawyer of which the lawyer was named as estate trustee, trustee or attorney while the lawyer was engaged in the practice of law in Ontario, and will not otherwise engage in the practice of law in Ontario, and who otherwise qualifies for exemption under paragraph d, e or f, and will not practise law in Ontario other than as provided for under this paragraph or paragraph d, e or f;
  - h. a lawyer who is exempt from payment of insurance premium levies under the above paragraphs who continues to be exempt even though he or she practises law in Ontario in contravention of the by-laws if
    - i. the lawyer's law practice is restricted to engaging in the practice of law only on a pro bono basis and only to or on behalf of non-profit organizations, and
    - ii. prior to engaging in this practice, the lawyer applies to LawPRO in accordance with its procedures, to continue to be exempt from payment of insurance premium levies and the insurer approves the application.
25. With respect to h. above, the LawPRO website provides the following information on the type of coverage available for pro bono work.
26. Lawyers exempt from the insurance levy who provide professional services through a LawPRO-approved pro bono program continue to be exempt and have the standard Run-Off Coverage of \$250,000 per claim/in the aggregate.
27. Lawyers exempt from payment of the insurance levy who provide professional services but not through a LawPRO-approved pro bono program are considered to be in private practice and must pay the levy. The only exception is if the lawyer is providing pro bono professional services for not-for profit organizations which must be pre-approved by LawPRO. In such cases, the exemption applies. The lawyer must complete the Pro

Bono Application. The organization must meet specific conditions to be approved by LawPRO, as follows:

- a. The organization benefiting from the pro bono services must be a not-for-profit organization; and
  - b. The lawyer must be providing pro bono services specifically for the organization, and not for any individual(s) in that organization or its clients.
28. There is no liability insurance coverage for these non-profit services. The lawyer will only have the basic Run-Off Insurance Coverage (with limits of only \$250,000 per claim and in the aggregate) for professional services provided before becoming exempt.

The Issue: Two Examples

29. The following matters came to the attention of the Law Society, independently of each other. Case #1 was part of an e-mail communication to the Law Society's records department. Case #2 came through PBLO.

#### Case #1

30. A lawyer employed in education (50% fee category) is not practicing law except for one PBLO-approved case for which LawPRO has provided an exemption from the insurance levy. Because of the lawyer's pro bono work, the lawyer is practicing law and is required to pay 100% of the fee if she is to continue with this work. In a communication to the Law Society about the issue, the lawyer wrote:

It is in my view incongruous that LawPRO would grant an exemption but the Law society would not. It is my hope that the profession wishes to encourage rather than discourage those in circumstance similar to mine to provide pro bono services.

#### Case #2

31. A lawyer was approached by the Children's Project Manager at PBLO for a student expulsion matter. The lawyer, who had experience in this area, was employed by government in a non-practising status (50% fee category) and received permission from his employer to provide pro bono legal services under PBLO auspices. The lawyer was advised by the Law Society that in such cases, the full annual fee was payable. In an e-mail response to PBLO about the student's case, the lawyer said

LSUC is taking a pretty hard line on the type of activity that a "Not Practicing Law - Employed" status member can engage in, that is to say, none, with respect to the provision of legal services, and this, even though Law Pro provides a premium exemption for persons offering pro bono legal services under a PBLO approved program like CAP [Child Advocacy Project]. The issue of membership fees might have something to do with it. I currently pay 50% of the full member rate. Despite the fact that I really want to help CAP out and really believe in the work you're doing, I cannot afford to pay to change my status to the full LSUC rate to do occasional pro bono work. I will take this up more formally with LSUC and with other colleagues of mine (who are lawyers in every sense but also in the 50% rate category) and who've also wanted to provide legal services on an ad hoc basis but have been stymied by the fee rate system. ...Unfortunately, with respect to the expulsion case next week, it appears I can no longer be of assistance.

### Discussion and Proposal

32. While the provision of pro bono legal services by a lawyer is considered part of the practice of law, in the Committee's view, a lawyer who is in the 25% or 50% (non-practising) fee category should not be required to pay 100% of the annual fee to provide such services within an approved pro bono program.
33. Lawyers who practise law, in private practice or otherwise, are the constituency within the profession that requires the most significant outlay of regulatory resources, including audit, investigations and discipline. Thus, it is necessary that these lawyers to pay 100% of the fee to resource the Society's programs that are applied to this constituency.
34. Arguably, lawyers in a 50% or 25% fee category who are not practicing law and who may infrequently provide pro bono legal services through approved PBLO programs do not create the same regulatory case for application of the full Law Society fee.
35. As noted earlier, if a lawyer in the 50% or 25% fee category wishes to perform pro bono services, he or she would be required to advise the Law Society and would be required to pay the balance of the fee, to 100%. In the normal course the lawyer would also contact LawPRO if the pro bono services are such that an exemption from the insurance levy applies.
36. Lawyers performing pro bono services through PBLO-approved programs do so within the ambit of PBLO's volunteer program. This program provides oversight and supervision, with the expectation that the participating lawyer will follow guidelines and best practices established by PBLO for the provision of such legal services (see Appendix 3 for excerpts from PBLO's website for a description). This is not the case for pro bono services for not-for-profit organizations. The pro bono services in these cases would be provided to such organizations without any formal oversight and, as noted above, without any insurance coverage.
37. It is anticipated that the number of lawyers in the 50% or 25% fee categories who would perform the PBLO-related services would be small. The example of lawyers who are exempt from the insurance levy and wish to provide pro bono legal services for non-profit organizations gives some perspective on the numbers. These lawyers must receive LawPRO approval before the exemption from the insurance requirement for this type of service is granted (the same application form for PBLO pro bono work is completed). LawPRO has advised that while it does not maintain statistics specific to this approval, information from a particular section of its tracking database since May, 2006 indicates that there were 70 inquiries and/or forms received concerning this subject over the last 24-month period. Although this would not necessarily represent the number of such forms received, LawPRO estimates that the number of such forms received and processed each year is about 30.
38. The Law Society has the ability to capture information about any pro bono activity that would be performed by lawyers in the 50% or 25% fee category if it considers it necessary to do so for a regulatory purpose, as follows:
  - a. The Member's Annual Report (MAR) currently requires a lawyer to identify himself or herself as an emeritus lawyer (over 65 year of age, retired from law practice and providing pro bono services). The form could be amended to add



- questions about the provision of pro bono services as a lawyer in a non-practising category;
- b. Amendments were made recently to By-Law 8 (Reporting and Filing Requirements) to require lawyers to notify the Society of changes to information about their professional activities as they occur or to provide information as requested by the Society. Under the By-Law, the Society may request “information about whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario, [and] information with respect to where and in what capacity the licensee is practising law or providing legal services” (s. 3.1(1) 4.i and ii). The By-Law also requires licensees to report changes in information, such as “information with respect to whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario” (s. 3.2(1) 4.).
39. With this information, the Law Society would have the ability to analyze the level of pro bono activity by lawyers in non-practising fee categories and respond as required to any issues that might arise from the activity.
  40. Operationally, it is proposed that an approval process similar to that adopted for emeritus lawyers providing pro bono legal services be adopted for non-practising lawyers who wish to apply to provide such services through PBLO programs without paying the full annual fee. In the Committee's view, it is necessary to implement such a process and require that lawyers provide certain information to ensure that an appropriate standard is met. It is likely that the lawyers who perform such services will have varying degrees of expertise and capability.
  41. Convocation's policy with respect to the approval process for emeritus lawyers, set out at Appendix 4, is necessarily more extensive than would be the case for non-practising fee-paying lawyers. It is proposed that selected features of this policy, which are set out in paragraph 42c., be adopted for the non-practising lawyers providing pro bono legal services.

The Proposal – Amendment to By-Law 5 and Policy for Law Society Approval for Pro Bono Work

42. Based on the above information, the Committee recommends the following:
  - a. Permit lawyers who are in the 50% and 25% fee categories who wish to provide pro bono legal services through approved PBLO programs to apply for an exemption from payment of the full annual fee, mirroring the LawPRO exemption for PBLO pro bono practice, and amend By-Law 5 to this effect;<sup>5</sup>
  - b. Amend the MAR to include appropriate questions about the provision of pro bono legal services by lawyers in non-practising categories; and
  - c. Adopt the following policy respecting approval of lawyers who apply for the exemption for the purpose of providing the subject pro bono legal services:
    - i. At the time the lawyer requests to do work for PBLO without a change in fee status, the lawyer must be a member in good standing with the Law

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<sup>5</sup> The Committee plans to consider whether lawyers in these fee categories who wish to do pro bono work for not-for-profit organizations, such as charities, which would be pro bono work outside of the PBLO programs, should also be permitted to do so without paying the full fee.

- Society and must not have been disciplined for any reason by the law society of any jurisdiction within the past 15 years;
  - ii. The lawyer must agree to neither ask for nor receive any compensation of any kind, except for out-of-pocket expenses incurred in connection with the legal service rendered;
  - iii. The lawyer is not permitted to practise law except in the form of pro bono services through PBLO;
  - iv. The lawyer must perform all activities authorized under the supervision of the pro bono programme coordinator or Executive Director, who must be lawyers, or a supervising lawyer;
  - v. The application is to be completed through the Law Society;
  - vi. A lengthy complaints history is a concern even where it has not resulted in discipline. In the case of articling principals, the Law Society conducts a review of a lawyer's complaints history and other issues. All relevant information, including but not limited to records maintained by the Law Society in connection with claims, professional standards, investigation, audit, compensation fund and discipline, may be considered. Prospective principals with negative history in these areas may be denied the privilege of acting as an articling principal for a period of time. The review of matters undertaken with respect to approval of an articling principal should also be performed for those lawyers seeking to do pro bono work without paying the full fee. As with articling principals, applicants with a negative history in these areas *may* be denied permission to perform this work;
  - vii. The lawyer is to be supervised by a lawyer. This general requirement for supervision is necessary as range of individuals with varying degrees of capabilities and expertise are likely to perform this work, and will be servicing clients the majority of whom are likely to be vulnerable or disadvantaged. Particulars of the supervision need not be specified, but the level of supervision should be geared to the individual and the circumstances under which he or she is providing *pro bono* services. The Law Society is to approve all supervisors of these lawyers;
  - viii. The lawyer is not permitted to handle trust funds or have access to a trust account;
  - ix. Three years after implementation, Convocation is to review this matter, based on an analysis to be completed on its use, effectiveness and any regulatory issues that have arisen.

43. The amendment to By-Law 5, which is shown within the By-Law at Appendix 1, consists of new section 3.1 as follows:

#### EXEMPTION FROM CHANGE IN STATUS

Exemption from change in status: practising law on pro bono basis

3.1 A licensee who is required to pay fifty percent, or twenty-five percent, of an annual fee shall not become required to pay the full amount of an annual fee even though he or she practises law in Ontario as a barrister and solicitor if the following conditions are met:

1. The licensee's practice of law in Ontario as a barrister and solicitor is restricted to practising law on a *pro bono* basis through a program registered with Pro Bono Law Ontario.
2. Prior to practising law in Ontario as a barrister and solicitor, the licensee applies to the Society to be exempt from the requirement to pay the full amount of the annual fee.

Amendment to By-Law 4

44. The amendment to By-Law 4 (Licensing) is to clarify the existing exemptions for payment of insurance premium levies for those who qualify for the purposes of the provision of pro bono legal services.

45. The amendment to By-Law 4 makes the following change to subsection 3(4):

Exempt from payment of insurance premium levies

(4) A licensee who is required to pay the annual fee, or who would be required to pay the annual fee but for being granted an exemption from payment of the annual fee on the grounds that he or she has been entitled to practise law in Ontario as a barrister and solicitor for a period of fifty years, and who is exempt from the payment of insurance premium levies is subject to the following terms, conditions, limitations and restrictions:

1. ~~The licensee is prohibited from practising law in Ontario as a barrister and solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a pro bono basis for or on behalf of non-profit organizations.~~

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a pro bono basis,

i. for or on behalf of non-profit organizations, or

ii. through a program registered with Pro Bono Law Ontario.

46. The relevant excerpt from By-Law 4 showing the proposed amendments appears at Appendix 2.

## APPENDIX 1

EXCERPT FROM BY-LAW 5 (ANNUAL FEE)  
WITH PROPOSED AMENDMENT

## CHANGE IN STATUS

3. (1) If a licensee who is required to pay the full amount, or fifty percent, of an annual fee becomes entitled to pay fifty percent, or twenty-five percent, of an annual fee, the licensee

(a) an amount determined by the formula

$$(A \div 12) \times B$$

where A is the full amount, or fifty percent, of an annual fee, and

B is the number of whole or part calendar months during which the licensee is required to pay the full amount, or fifty percent, of the annual fee; and

(b) an amount determined by the formula

$$(C \div 12) \times D$$

where C is fifty percent, or twenty-five percent, of the annual fee, and

D is the number of whole calendar months during which the licensee is required to pay fifty percent, or twenty-five percent, of an annual fee.

(2) If a licensee who is required to pay fifty percent, or twenty-five percent, of an annual fee becomes required to pay the full amount, or fifty percent, of an annual fee, the licensee shall pay, in respect of the period of time during which he or she is required to pay the lesser amount of an annual fee and the period of time during which he or she is required to pay

(a) an amount determined by the formula

$$(E \div 12) \times F$$

where E is fifty percent, or twenty-five percent, of the annual fee, and F is the number of whole calendar months during which the licensee is required to pay fifty percent, or twenty-five percent, of an annual fee; and

(b) an amount determined by the formula

$$(G \div 12) \times H$$

where G is the full amount, or fifty percent, of the annual fee, and H is the number of part or whole calendar months during which the licensee is required to pay the full amount, or fifty percent, of an annual fee.

Same

(3) If a licensee who is required to pay the full amount, fifty percent or twenty-five percent of an annual fee becomes exempt from payment of an annual fee, the licensee shall pay an amount determined by the formula

$$(I \div 12) \times J$$

where I is the full amount, fifty percent or twenty-five percent of the annual fee, and J is the number of whole or part calendar months during which the licensee is required to pay the full amount, fifty percent or twenty-five percent of an annual fee.

#### When payment due

(4) If under this section, a licensee is required to pay, in respect of a year, an amount that is greater than the amount required to be paid under section 2, the difference between the amount that the licensee is required to pay under this section and the amount that the licensee is required to be pay under section 2 shall be due on a date to be specified by the Society.

#### Application for refund

(5) If under this section, a licensee is required to pay, in respect of a year, an amount that is less than the amount required to be paid under section 2, subject to subsections (6) and (7), the licensee is entitled to a refund of the difference between the amount that the licensee is required to pay under section 2 and the amount that the licensee is required to be pay under this section.

#### Application for refund

(6) A licensee shall apply to the Society to claim an entitlement to a refund under subsection (5).

#### Time for making application

(7) An application to the Society under subsection (6) shall be made before the end of the year in respect of which the licensee claims an entitlement to a refund under subsection (5).

#### No entitlement to refund

(8) A licensee who does not comply with subsection (7) is not entitled to receive a refund.

#### Exemption from change in status: practising law on pro bono basis

3.1 A licensee who is required to pay fifty percent, or twenty-five percent, of an annual fee shall not become required to pay the full amount of an annual fee even though he or she practises law in Ontario as a barrister and solicitor if the following conditions are met:

1. The licensee's practice of law in Ontario as a barrister and solicitor is restricted to practising law on a *pro bono* basis through a program registered with Pro Bono Law Ontario.
2. Prior to practising law in Ontario as a barrister and solicitor, the licensee applies to the Society to be exempt from the requirement to pay the full amount of the annual fee.

## APPENDIX 2

## EXCERPTS FROM BY-LAW 4 (LICENSING) WITH PROPOSED AMENDMENT

## BY-LAW 4

## LICENSING

## PART I

## CLASSES OF LICENCE

## LICENCE TO PRACTISE LAW

...

## Application of section

3. (1) This section applies to licensees who hold a Class L1 licence.

## Over 65 years

(2) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (1) of By-Law 5 [Annual Fee] is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is restricted to practising law in Ontario as a barrister and solicitor on a *pro bono* basis through,
  - i. a program registered with Pro Bono Law Ontario, or
  - ii. a clinic, within the meaning of the *Legal Aid Services Act, 1998*, funded by Legal Aid Ontario, that is approved by Pro Bono Law Ontario.

## Incapacity

(3) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (2) of By-Law 5 [Annual Fee] is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor.

## Exempt from payment of insurance premium levies

(4) A licensee who is required to pay the annual fee, or who would be required to pay the annual fee but for being granted an exemption from payment of the annual fee on the grounds that he or she has been entitled to practise law in Ontario as a barrister and solicitor for a period of fifty years, and who is exempt from the payment of insurance premium levies is subject to the following terms, conditions, limitations and restrictions:

- ~~1. The licensee is prohibited from practising law in Ontario as a barrister and~~

~~solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a *pro bono* basis for or on behalf of non-profit organizations.~~

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a *pro bono* basis.

i. for or on behalf of non-profit organizations, or

ii. through a program registered with Pro Bono Law Ontario.

Authorized to practise law outside Ontario

(5) A licensee who is authorized to practise law in a province or territory of Canada outside Ontario is subject to any term, condition, limitation or restriction imposed on the licensee's authority to practise law in that province or territory.

Duration of terms, *etc.*

(6) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 4.

### APPENDIX 3

#### INFORMATION FROM PBLO'S WEBSITE ON THE PROVISION OF PRO BONO LEGAL SERVICES

Pro Bono Law Ontario is mandated to improve access to justice in Ontario by providing strategic guidance, training, and technical assistance to law firms, law associations, and other groups that are dedicated to addressing the unmet legal needs of low-income and disadvantaged individuals, as well as the communities and charitable organizations that serve them.

PBLO engages all areas of the legal profession to encourage support for this mandate as well as to address barriers to pro bono participation and increase the capacity of the private bar to engage in organized pro bono programming.

PBLO has developed pro bono projects that take into account lawyers' areas of expertise and their busy schedules. Moreover, LawPRO has extended insurance coverage to lawyers volunteering through PBLO. [Click here](#) for more information about LawPRO's pro bono coverage.

Pro bono opportunities are available for all segments of the legal profession:

- private practice
- law firms
- law associations
- government
- in-house counsel

- retired lawyers
- law students

...

### Volunteer Guidelines

Pro Bono Law Ontario greatly appreciates the participation of pro bono volunteers. As a volunteer, you agree to adhere to the following guidelines:

1. Abide by the Rules of Professional Conduct.
2. Treat pro bono clients with the same level of professionalism as paying clients.
3. Stay in touch with the pro bono project coordinator who referred the case to you. The project coordinator will contact you periodically to see how the matter is progressing and to see if you require any additional support such as training and mentoring, access to resources, or will provide a referral list of social service agencies that can assist your client.
4. If you find that you are unable to devote sufficient attention to the pro bono matter assigned to you, contact the project coordinator immediately.
5. Keep track of the amount of time you work on the matter and, when the matter is completed, please let us know what your total commitment was.
6. Inform the project coordinator when the matter is complete.
7. Complete and return surveys or evaluation forms (usually just a few quick questions) to the project coordinator. Your feedback is an important means of improving the quality of our pro bono projects, and can even help PBLO tell the story of the good work being done by lawyers in Ontario.
8. If any problems or questions arise in the course of representing your client, contact the project coordinator immediately.

...

### Best Practices Manual

The Pro Bono Law Ontario Best Practices Manual is a resource manual for pro bono projects. It provides guidelines for pro bono projects to help ensure that services are delivered effectively, efficiently and in accordance with the appropriate professional standards. In order for a project to be considered an Approved PBLO Project (and benefit from LawPro insurance coverage) a project must adhere to these best practices.”



## APPENDIX 4

RELEVANT EXCERPTS FROM PROFESSIONAL REGULATION COMMITTEE REPORT TO  
JUNE 2006 CONVOCATION ON “EMERITUS” LAWYERS AND  
PRO BONO LEGAL SERVICES

1. At the time of requesting emeritus status, the lawyer must be a member in good standing with the Law Society and must not have been disciplined for any reason by the law society of any jurisdiction within the past 15 years.
2. The emeritus lawyer must sign a statement that he or she has read and will comply with the *Rules of Professional Conduct* and will submit to the continuing jurisdiction of the Law Society for regulatory purposes.
3. The emeritus lawyer must agree to neither ask for nor receive any compensation of any kind, except for out-of-pocket expenses incurred in connection with the legal service rendered.
4. Emeritus lawyers would not be permitted to practise law except in the form of *pro bono* services through the approved legal assistance organization.
5. An emeritus lawyer must perform all activities authorized by this rule under the supervision of a *pro bono* programme coordinator, supervising lawyer or Executive Director of an approved legal assistance organization.
6. The application and certification of emeritus lawyers would be completed through the Law Society.
7. ...[P]rospective emeritus lawyers should be subject to the requirements of the Law Society's Private Practitioner Refresher Program (PPRP).<sup>6</sup>
8. ...[A]n emeritus lawyer who only practices for a few hours in a year may lose practice skills. ...[T]hese lawyers should be subject to a cyclical review of the requirements for the PPRP on an individual basis, based on the number of hours practiced, if the emeritus lawyer remains in that status for longer than two years.
9. As the emeritus lawyers will be practising law, even if in a limited fashion, they should be expected to complete a minimum number of hours of professional development, in keeping with the general expectation of practising lawyers. The minimum expectation for professional development, currently set at 50 hours self-study and 12 hours of CLE for full time lawyers, should be set at three hours per year for emeritus lawyers, acknowledging that these lawyers will be providing at least 50 hours per year of *pro bono* legal services. PBLO offers free CLE for lawyers providing *pro bono* services, but the Committee agreed that a reduced price for emeritus status lawyers for CLE programmes beyond those offered by PBLO should be considered.

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<sup>6</sup>This was replaced by the Private Practice Re-entry Requirement at April 24, 2008 Convocation.

10. Lawyers granted emeritus status should be required to file the relevant portions of the MAR, and consideration should be given to including a specific question on emeritus status activities.
11. ...A lengthy complaints history is a concern even where it has not resulted in discipline. In the case of articling principals, the Law Society conducts a review of a lawyer's complaints history and other issues. All relevant information, including but not limited to records maintained by the Law Society in connection with claims, professional standards, investigation, audit, compensation fund and discipline, may be considered. Prospective principals with negative history in these areas may be denied the privilege of acting as an articling principal for a period of time. ...[T]he review of matters undertaken with respect to approval of an articling principal should also be performed for those members seeking emeritus status. As with articling principals, applicants with a negative history in these areas may be denied emeritus status.
12. Proper supervision of the emeritus lawyer providing pro bono services is a key element of the proposal from the Society's perspective. ...[T]he emeritus lawyer should be supervised by a lawyer. This general requirement for supervision is necessary as range of individuals with varying degrees of capabilities and expertise are likely to form the emeritus membership class, and will be servicing clients the majority of whom are likely to be vulnerable or disadvantaged. Particulars of the supervision need not be specified, but the level of supervision should be geared to the individual and the circumstances under which he or she is providing pro bono services. ...[T]he Law Society should approve all supervisors of emeritus lawyers.
13. The emeritus lawyer should not be permitted to handle trust funds or have access to a trust account.
14. ...[T]hree years after implementation, Convocation review the emeritus status membership category, based on an analysis to be completed on its use, effectiveness and any regulatory issues that have arisen.

Re: Motion – By-Laws 4, 5, 7.1 and 8 Amendments (see above)

Re: Amendment to Rule 3.05 of the *Rules of Professional Conduct*

It was moved by Ms. Rothstein, seconded by Mr. Sandler, that Convocation amend the Commentary to subrule 3.04(5) of the *Rules of Professional Conduct* by replacing "27(1)" with "20(2)".

Carried

#### AUDIT COMMITTEE REPORT

Re: General Fund, Compensation Fund and LibraryCo Financial Statements for First Quarter  
 Re: Pension Plan Administration

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Ms. Symes spoke to the Report, including the additional material under separate cover for information.

Report to Convocation  
June 26, 2008

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## Audit Committee

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

Purpose of Report: Information

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

## TABLE OF CONTENTS

### FOR INFORMATION:

1. General Fund – Financial Statements for the Three Months Ended March 31, 2008
2. Compensation Fund – Financial Statements for the Three Months Ended March 31, 2008
3. LibraryCo Inc. – Financial Statements for the Three Months Ended March 31, 2008
4. Pension Plan Annual Financial Statements for the Year Ended December 31, 2007 and the Pension Plan Governance Report
5. Investment Compliance Reporting – as at March 31, 2008

### COMMITTEE PROCESS

1. The Audit Committee (“the Committee” ) met on June 6, 2008. Committee members in attendance were Beth Symes (c.), Marshall Crowe (vc), Ab Chahbar, Vern Krishna and Ross Murray.
2. Staff in attendance were Malcolm Heins, Wendy Tysall, Laura Cohen, Fred Grady, Brenda Albuquerque-Boutilier and Jim Varro.

## FOR INFORMATION

GENERAL FUND - FINANCIAL STATEMENTS FOR THE THREE MONTHS  
ENDED MARCH 31, 2008

3. Convocation is requested to receive the financial statements for the General Fund for the first quarter of 2008 for information.

Law Society of Upper Canada  
General Fund  
Financial Statement Highlights  
For the three months ended March 31, 2008

4. The first quarter of 2008 has been completed for the General Fund ("the Fund") with a surplus of \$2.5 million compared to a deficit of \$224,000 for the same period in 2007. The Unrestricted Fund balance is \$5.0 million (2007: \$2.4 million)

## Balance Sheet

5. Cash and short-term investments have increased by \$4.4 million compared to the first quarter of 2007 primarily as a result of the inflow of cash related to paralegals and the increase in the unrestricted fund balance in 2007.
6. At this time of year, accounts receivable balances depend on when lawyers make their annual fee payments. The accounts receivable total is \$1.4 million greater than 2007 at \$30.6 million.
7. Portfolio investments of \$11.6 million have increased by \$400,000 compared to the same time last year.
8. Accounts payable and accrued liabilities are virtually unchanged from 2007.
9. Deferred revenue of \$39.9 million is comprised largely of lawyers' fees billed but not yet earned, Licensing Process revenue billed but not yet earned and CLE revenues collected from programs offered in future periods.

## Fund Balances

10. The Unrestricted Fund balance will decrease by \$2.7 million in the next quarter with the transfer to the Working Capital Reserve as recently approved by Convocation. This will bring the Working Capital Reserve to \$10.7 million, approximately two months operating expenses in line with the maximum reserve approved by Convocation policy.
11. The Special Projects Fund is comprised of funding for activities begun in 2007 and carrying forward to 2008. These include the Accreditation Task Force and The Retention of Women in Private Practice.

12. The Repayable Allowance Fund has awarded five grants for a total of \$4,780 in the first quarter.

#### First Quarter Revenue and Expenses

13. Annual fee revenue is recognized on a monthly basis. Lawyers' fees have increased from \$10.5 million in 2007 to \$11.1 million in 2008 with an increase of approximately 750 lawyers and a fee increase of \$53 per lawyer.
14. Professional development and competence revenues report \$2.9 million in Restricted Fund revenues. This revenue is for paralegal grandparent examinations and application fees. There is no comparable amount for 2007 as the paralegal application process had not begun in the first quarter of 2007.
15. Investment income has increased from \$1.1 million in the first quarter of 2007 to \$1.4 million for the same period in 2008 primarily because of increased capital gains and a budgeted increase of \$500,000 in the transfer of investment income from the E&O fund to the General Fund.
16. Other Income has increased by \$286,000 to \$1.6 million primarily due to the recognition of LibraryCo administration revenue and increased recoveries from the monitoring and enforcement unit.
17. Overall, expenses are tracking close to 2007 with a few exceptions:
  - o Professional regulation expenses are down from 2007 primarily because of lower outside counsel expenses in 2008.
  - o Other expenses have increased primarily due to the timing of payment for OLAP in 2008. Full payment of \$255,000 was made in February 2008.
  - o Policy spending is below the 2007 level primarily due to spending that occurred in 2007 related to the Heritage Committee and the Tribunals Task Force that has not repeated in 2008.
18. County library transfers have increased in 2008 primarily due to the timing of transfers to LibraryCo. In 2008, the transfer in the first quarter was increased to provide the payment for electronic materials.
19. A separate fund to track activity related to paralegal regulation has been set up and expenses are up significantly as the program for licensing paralegal grandparents is in full operation.

## FOR INFORMATION

COMPENSATION FUND - FINANCIAL STATEMENTS FOR THE THREE  
MONTHS ENDED MARCH 31, 2008

20. Convocation is requested to receive the financial statements for the Compensation Fund for the first quarter of 2008 for information.

Law Society of Upper Canada

Compensation Fund  
Financial Statement Highlights  
For the three months ended March 31, 2008

21. The first quarter of 2008 has been completed for the Compensation Fund ("the Fund") and the Fund's balance of \$22.3 million has increased from what was reported in March and December of 2007 (\$21.4 million). The Fund's Statement of Revenues and Expenses and Change in Fund Balance reports a surplus of \$885,000 for the three months ended March 31, 2008 compared to a surplus of \$853,000 for the first quarter of 2007.
22. Due to the departure of LawPro's actuary, an actuarial valuation of the reserve for unpaid grants was not prepared as at March 31, 2008 and therefore, for reporting purposes no adjustment has been made to the reserve reported at December 31, 2007. Information on claims provided by Compensation Fund staff indicate little change in the number and actual dollar value of claims outstanding at March 31, 2008 compared to March 31, 2007.
23. Grants paid of \$174,000 are approximately one third of the comparable payments in the first quarter of 2007. Net grants expense of \$169,000 compared to (\$108,000) is not significantly changed from the first quarter of 2007.

## First Quarter Balance Sheet

24. Portfolio investments of \$25.9 million compared to \$25.0 million in March of 2007 have increased by \$900,000.
25. Deferred revenue of \$4.9 million represents fee revenue billed but not yet recognized as income. The slight increase over 2007 is a result of growth in the number of members billed. The annual fee for the Fund of \$200 is unchanged from 2007.
26. There is no change in the reserve for unpaid grants from December 31, 2007 as no actuarial review has been completed.

## First Quarter Revenue and Expenses and Change in Fund Balance

27. Fee revenues of \$1.6 million have increased by \$42,000 from the first quarter of 2007. The annual levy of \$200 per member is consistent between the years with slightly more

members in the current quarter. Annualized fee revenue for the Fund will approximate \$6.3 million.

28. Investment income has increased to \$705,000 from \$360,000, primarily because of unrealized capital gains now reported as income. Unrealized gains reported in 2008 are \$472,000 compared to \$29,000 in 2007.
29. Recoveries of claims paid has decreased to \$5,000 from \$141,000 in the same quarter of 2007. Recoveries do not follow any pattern and are difficult to predict.

#### FOR INFORMATION

#### LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE THREE MONTHS ENDED MARCH 31, 2008

32. Convocation is requested to receive the 2008 first quarter financial statements for LibraryCo Inc. for information.

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Schedule of Revenues and Expenses for 3 months ended March 31, 2008 (LibraryCo and County Law Libraries) .....	10

#### KEY POINT SUMMARY

Statement of Operating Revenues and Expenses - LibraryCo only (see page 7)  
Comparison of Actual to Budget

#### Revenues

- Law Society grant (line 1) is the lawyer-based fee that is transferred to LibraryCo. This transfer includes amounts for central administration, quarterly transfers to the 48 libraries, and in the first quarter, funding for electronic products.

- The Law Foundation of Ontario grant (line 2) – The full grant of \$850,000 for purchases of electronic resources has been received (\$212,500 in December 2007 and \$637,500 in March 2008) and is included in the first quarter to match expenditures incurred. In addition, grants of \$102,000, representing the second and third instalments for computer upgrades was received in January 2008. Of the \$102,000, \$35,021 was for receivables outstanding at March 31, 2007, \$60,485 is included in first quarter results and the remainder of \$6,494 is deferred revenue. No amount was budgeted in 2008 for computer upgrades as it was anticipated that all upgrades would be completed by the end of the 2007 fiscal year. However, this was not the case and the computer upgrade program was extended to June 30, 2008.

### Expenses

- Salaries & administration expense (line 5) is in line with budgeted amounts and includes salaries, benefits and costs per the Administrative Services Agreement with the Law Society.
- Professional fees (line 6) consist of audit, consulting, and counsel fees. The first quarter expenses consist entirely of audit expenses that have been accrued for three months. Consulting and counsel fees are budgeted for later in the year.
- Other expenses (line 7) – these expenses are lower than budget for the quarter by \$13,000 because of decreased costs for courier service/postage, board of directors, and promotion and public relations, which may occur later in the year.
- Electronic products and services (line 9) expenditures have been fully incurred in the first quarter of the year. Actual costs are \$15,000 higher than amounts originally budgeted due to increases in publishing costs.
- Group benefits (line 10) of \$60,547 is lower than budget for the quarter by \$14,000. Benefit plans for the counties will be renewed in May when new rates will come into effect. LTD costs for the benefit plans are being recovered from the individual libraries resulting in lower costs to LibraryCo.
- Computer expenses (line 11) relate to grants to assist libraries with replacing and upgrading of aging computers and related accessories. Expenses of \$60,000 are funded by matching grants from LFO as noted above.
- Other – law libraries (line 12) include expenses related to staff travel, COLAL and CDLPA Library Committee meetings, COLAL continuing education and bulk purchases of publications for the library system. Many of these expenses are incurred in later months based on the timing of various meetings and billings from the Law Society.
- Law Libraries – grants (line 14) is greater than the budget for the period because of the 2% salary increase related to the LTD benefit and the special \$106,064 grant for severance costs made to the Carleton Law Library.
- Capital and special needs grants (line 15) are provided to assist the libraries with replacing and upgrading of aging furniture and equipment, library renovations



and/or library relocations, and items that were not part of the budgeted expenditures. In this first quarter, \$3,210 was paid to one county because of an approved increase in the number of hours and pay rate.

- The overall excess of expenses over revenues (line 18) for the first quarter was \$74,312 compared to a budgeted surplus for the quarter of \$5,390. This is primarily a result of the special grant payments to CCLA (\$106,064) and Lambton (\$3,210), partially offset by lower expenditures for the period.

#### Balance Sheet - LibraryCo only (see page 8)

- Cash and short-term investments (line 1) of \$950,181 is higher than the previous year due to the timing of receipts from the Law Society for electronic resources. LibraryCo has invested excess funds in a \$500,000 GIC maturing in September 2008.
- Accounts receivable (line 2) of \$62,462 relate primarily to GST refunds from purchases of electronic products and services. The amount is lower than the previous year as some of the expenditures for electronic resources were incurred in January and the related GST component for those expenditures had already been recovered. Last year also included amounts due from the Law Society for electronic resources paid in the first quarter but reimbursed later in the year.
- There are no Capital Assets (Line 5) as they were written off during the 2007 year with the closure of LibraryCo's Burlington head office.
- Accounts payable and accrued liabilities (line 7) consist of amounts payable for goods and services and amounts due to the Law Society for payroll, the administrative services fee and publications. The total of \$85,525 is higher than the previous year due to timing differences particularly on the administrative services agreement, which was signed in March 2007.
- Deferred revenue (line 8) pertains to LFO funding for computer upgrades and replacement of aging computers. The amount of \$6,494 will be paid out as the Libraries make additional claims.

#### Statement of Changes in Fund Balances – LibraryCo (see page 9)

- The Reserve fund declined by the payment of \$106,064, approved by the Board for severance costs at the CCLA.

#### Schedule of Revenues and Expenses - LibraryCo and County Law Libraries (see page 10)

#### Comparison of 2008 to 2007 Actuals Year-to-Date

- Law Society grant (line 1) shows an increase over the prior year because the portion of funding for electronic products was paid in the first quarter of 2008.
- Law Foundation of Ontario Grant (line 2) increased by \$30,000 from the 2007 period as a result of the computer rejuvenation program.

- Other income (line 3) of \$110,937 noted under the Law Libraries columns is lower by about \$12,000 from the 2007 quarter and represents income from local members' dues, photocopying, faxing, printing charges, and fees charged for specific research services.
- Salaries and administration expenses (line 5) of \$129,011 at the LibraryCo level are higher than the previous year due to the administration agreement that came into effect in March 2007. At the law library level, salaries of \$598,109 were \$30,169 higher than the previous year due to a 3% salary increase and new hires at a couple of libraries. Administration costs were higher by \$42,483 as travel, computer, and miscellaneous expenses were higher in the current period.
- Electronic products and services (line 8) expenditures have been fully incurred in the first quarter of the year. Costs are higher by about 5% as publishing costs increase year over year.
- Collections (line 9). Collections of \$495,828 are \$65,574 higher than the previous period as Cochrane has started to purchase library materials and there has been a general increase in the costs of materials.
- Group benefits (line 10) of \$60,547 are lower than the previous year by \$8,590 as LTD premiums paid on behalf of library employees are being recovered.
- Law Library grants (line 14) of \$1,519,029 at LibraryCo level is higher than the previous year as grants were increased by about three percent over the previous period. Also, there was a special payment for severance in the amount of \$106,064. At the Law Library level, the association to which the grant was paid recorded the transaction in the 4th quarter of the previous year resulting in a timing difference of \$106,064.

#### Other Items of Note

- First quarter data for Dufferin has been estimated, as the information has not been received from the library.
- Although not presented in these statements, total Cash balances at all 48 law libraries amounted to approximately \$485,297. This represents an average balance per library of approximately \$10,110.
- The total Accounts payable at all 48 law libraries amounted to approximately \$545,554. This represents an average balance per library of approximately \$11,365.

## FOR INFORMATION

## PENSION PLAN ANNUAL FINANCIAL STATEMENTS

## PENSION PLAN GOVERNANCE REPORT

Pension Plan Annual Financial Statements

33. Convocation has delegated the administrative oversight duties set out in the Pension Fund Governance Guidelines to the Audit Committee. The Committee received and reviewed the financial statements of the Fund of the Pension Plan for the Employees of the Law Society of Upper Canada for the year ended December 31, 2007.
34. The financial statements were audited by Deloitte & Touche LLP, Chartered Accountants. The financial statements were prepared for purposes of filing with the Ontario Ministry of Finance under the Pension Benefits Act and the Federal Income Tax Act which require audited financial statements be prepared and filed each year in respect of pension funds in excess of \$3 million. The information reported in the financial statements follows the requirements specified in the Pension Benefits Act.
35. The financial statements are attached for information.

Pension Fund Governance Report

36. In the Pension Plan Governance Guidelines it states that the Pension Committee will prepare an annual report to the Audit Committee that includes the following:
  - Confirmation that required reports have been filed with the authorities and required disclosure made to Plan members
  - Confirmation the Plan has been administered in accordance with legislation and Plan documents
  - A summary of investment performance
37. The Committee reviewed the annual report on Pension Plan activities, from the Law Society's Pension Committee for the 2007 year.

## FOR INFORMATION

## INVESTMENT COMPLIANCE REPORTING

## INVESTMENT PORTFOLIOS

38. Convocation is requested to receive the Compliance Statements for the General Fund and Compensation Fund portfolios as at March 31, 2008 for information.

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

- (1) Copy of the General Fund Financial Statements for the three months ended March 31, 2008.  
(pages 8 – 10)
- (2) Copy of the Compensation Fund Financial Statements for the three months ended March 31, 2008.  
(pages 15 – 16)
- (3) Copy of LibraryCo Inc. Financial Statements for the three months ended March 31, 2008.  
(pages 23 – 26)
- (4) Copy of the Pension Plan Annual Financial Statements for the Year ended December 31, 2007 and the Pension Plan Governance Report.  
(pages 28 – 35)
- (5) Copy of Investment Compliance Report as at March 31, 2008.  
(pages 37 – 40)

Audit Committee – Additional Material

FOR INFORMATION

PENSION PLAN FOR THE EMPLOYEES OF THE LAW SOCIETY OF UPPER CANADA

The Audit Committee at its meeting on June 6, 2008, adopted resolutions to amend:

- 1. The Pension Plan for the Employees of The Law Society of Upper Canada to reflect the recent change in the maximum age of pension commencement in the *Income Tax Act (Canada)*.
- 2. The Pension Plan Governance Structure and Guidelines to incorporate the mission statement and to change the delegation from the Finance and Audit Committee to the Audit Committee.
- 3. The Statement of Investment Policy and Procedures for the Pension Plan to change some of the investment options.

Introduction and Background

- 4. Pursuant to By-Law 3, Convocation of the Law Society of Upper Canada, delegated to the Audit Committee its responsibilities as administrator and sponsor of the Pension Plan for the Employees of the Law Society of Upper Canada (the "Plan"), including the responsibility to amend the Plan.
- 5. On June 22, 2005, Convocation most recently amended and restated the Plan text effective January 1, 2003 (dated January 2005).

Information Relevant to the Amendment to the Pension Plan

6. The amendment changes the Plan to bring it in line with the following legislative developments:
- a. Recent changes to the *Income Tax Act (Canada)* applicable to registered plans. The *Income Tax Act (Canada)* and its Regulations (the "ITA") place limitations on benefits that can be provided on a tax-deferred basis under a registered pension plan such as the Plan. The ITA has been amended effective January 1, 2007, to increase the maximum age for a plan member to be entitled to earn pension benefits under a pension plan from age 69 to age 71.
  - b. Recent elimination of mandatory retirement in Ontario. The changes to the ITA give employers such as the Law Society more flexibility to retain older, more experienced workers, consistent with the recent elimination of mandatory retirement in Ontario.
  - c. Currently, under the terms of the Plan, member and Law Society contributions must cease by the end of the calendar year in which the member reaches age 69. In order to allow contributions to continue to be made in respect of Plan members between ages 69 and 71, the Plan needs to be amended.
  - d. The amendment reflects the recent changes to the ITA by allowing contributions to be made on behalf of Plan members attaining age 69 in 2007 and later until the end of the calendar year in which they reach age 71. This amendment to the Plan is not mandatory. However, where the Plan provides for contributions to cease based on the current age 69 limit that is no longer required by the ITA, this restriction may be found to be discriminatory within the meaning of the Ontario *Human Rights Code*, which, due to the elimination of mandatory retirement, now includes individuals over age 65.

7. The text of the Resolution of the amendment is as follows:

WHEREAS Convocation of The Law Society of Upper Canada (the "Law Society") sponsors the Pension Plan for the Employees of the Law Society of Upper Canada, FSCO and CRA Registration No. 268052 (the "Plan") and is the administrator of the Plan;

AND WHEREAS in accordance with Section 15 of the Plan, the Law Society has reserved the right to amend the Plan;

AND WHEREAS the Law Society amended and restated the Plan text as at January 1, 2003;

AND WHEREAS the Law Society has delegated to the Audit Committee of Convocation the authority to make amendments to the Plan;

AND WHEREAS the Pension Committee has the authority to make amendments to the Plan of a technical or administrative nature, subject to the approval of the Audit Committee;

AND WHEREAS the Pension Committee has reviewed, and recommends that the Audit Committee adopt, the following Amendment 1 to the Plan to reflect the recent change in the maximum age of pension commencement in the *Income Tax Act (Canada)*;

NOW THEREFORE BE IT RESOLVED THAT:

Effective January 1, 2007, Section 5 of the Plan is deleted and replaced as follows:

- “5. RETIREMENT BEFORE OR AFTER NORMAL RETIREMENT DATE  
A Member may retire early on the first day of any month within the 10 years prior to his or her Normal Retirement Date. If a Member defers retirement, contributions will continue to be made and the Member will receive his or her pension on the first day of the month following retirement but not later than the 31st of December of the year in which the Member attains age 71, or such other maximum age of pension commencement as may be permitted by Applicable Legislation.”

AND BE IT FURTHER RESOLVED THAT

any signing officer of the Law Society of Upper Canada is authorized, empowered and directed to execute and deliver all documents, amendments and instruments and to take all other such action as may be appropriate and requisite for the purpose of carrying into effect the foregoing resolutions, including revising the amendment to correct typographical errors or as necessary to register the amendment with the applicable regulatory authorities.

Information Relevant to the Amendment to the Pension Plan Governance Structure and Guidelines and to the Statement of Investment Policy and Procedures for the Pension Plan

8. The Audit Committee adopted, as recommended by the Pension Committee, the Pension Plan Governance Structure and Guidelines, revised May 2008, reflecting the following changes:
  - a. Delegation to the Audit Committee of Convocation's responsibilities as administrator and sponsor of the Pension Plan pursuant to By-Law 3.
  - b. Incorporation of a mission statement setting out the purpose of the Pension Plan as required by the Canadian Association of Pension Supervisory Authorities (CAPSA) Governance Guidelines. The Pension Committee approved the mission statement on January 30, 2006.
  - c. Inclusion of certain references to legislative requirements.
  - d. Incorporation of the Statement of Investment Policies and Procedures (SIP&P) for the Pension Plan.
9. The Audit Committee adopted, as recommended by the Pension Committee, the SIP&P for the Plan as revised effective July 1, 2007. The SIP&P is the most recently amended version effective July 1, 2007 and reflects the following three changes:
  - a. The default investment option (the option used when a plan member fails to make investment selections) was changed effective July 1, 2007 from the Daily Interest Accumulator to the Standard Life Pre-determined Portfolio "Conservative – Between 3 and 10 years" to retirement investment option. Of the 9 box pre-determined investment portfolios available for the default option on the Standard Life investment platform, the "Conservative - Between 3 and 10 years" to retirement investment option was chosen by the Pension Committee as having the appropriate equity exposure for the default option. The change was made on the recommendation of the Pension Plan's independent investment advisor, Aon.

- b. On Aon's recommendation, the Jarislowsky Fraser International Equity Fund was removed from the 9-box pre-determined investment portfolios effective July 1, 2007 due to its underperformance against its benchmark. The Standard Life International Fund replaced the Jarislowsky Fraser International Equity Fund.
  - c. On Aon's recommendation, the 9 box pre determined investment portfolios were rebalanced to provide for more foreign exposure effective July 1, 2007. This change reflects the removal of the restriction on foreign content on registered pension plans by the CRA.
10. The text of the Resolution to amend the Pension Plan Governance Structure and Guidelines and the Statement of Investment Policy and Procedures for the Pension Plan is as follows:

WHEREAS Convocation of The Law Society of Upper Canada (the "Law Society") sponsors the Pension Plan for the Employees of the Law Society of Upper Canada (the "Plan") and is the administrator of the Plan;

AND WHEREAS the Law Society has delegated to the Audit Committee of Convocation certain sponsor and administrative functions with respect to the Plan;

AND WHEREAS in accordance with the Law Society of Upper Canada Pension Plan Governance Structure and Guidelines (the "Guidelines") dated January 2005, the Audit Committee shall adopt and amend the governance guidelines for the Plan on the recommendation of the Pension Committee;

AND WHEREAS in accordance with the Guidelines, the Audit Committee shall adopt the Statement of Investment Policies and Procedures (SIP&P) for the Plan and any amendments to the SIP&P, based on the recommendations of the Pension Committee;

AND WHEREAS the Pension Committee has reviewed and recommends the certain revisions to the Guidelines; including, (a) the inclusion of a mission statement for the Plan ; (b) the incorporation of the SIP&P; and (c) the delegation to the Audit Committee of the Law Society's responsibilities as administrator and sponsor of the Plan.

NOW THEREFORE BE IT RESOLVED THAT the Audit Committee adopts:

- 1. The revised Law Society of Upper Canada Pension Plan Governance Structure and Guidelines, May 2008.
- 2. The Statement of Investment Policies and Procedures (SIP&P) for Plan, as amended effective July 1, 2007.

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*ITEM FOR INFORMATION*

Equity and Aboriginal Issues Committee

- Career Choices Survey Report

Report to Convocation  
June 26, 2008

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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  
Paul Henderson

Doug Lewis  
Judith Potter  
Robert Topp

Purposes of Report: Decision and Information

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

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Request for Law Society interventions (*in camera*) .....TAB A

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Career Choices Survey Report

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on June 5, 2008. Committee members Janet Minor, Chair, Mary Louise Dickson and Judith Potter participated. Milé Komlen, Chair of the Equity Advisory Group (the "EAG"), also participated. Staff members Josée Bouchard, Marisha Roman and Rudy Ticzon attended.

## FOR INFORMATION

### CAREER CHOICE SURVEY FINDINGS

65. On May 26, 2006, Convocation approved the allocation of funds to enable the Equity and Aboriginal Issues Committee (the Equity Committee) to conduct a survey with candidates in the Licensing Process and lawyers called to the bar in the two most recent years of call to identify factors that affect career choices, including the debt load of students, the impact of bursaries, financial support programs and back-end debt relief programs. The Law Society retained The Strategic Counsel to conduct the survey.
66. Invitations to participate were sent to 5,310 licensing candidates and new licensees, representing 2501 licensees called to the bar in the past two years, 1,366 candidates enrolled in the 2006-2007 Licensing Program and 1,443 candidates enrolled in the 2007-2008 Licensing Program. The survey was available in both English and French. Surveys were completed by 1,303 of those who were invited to participate in the research, representing a response rate of 24.54%.
67. The Career Choice Survey Findings are available on the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca) or by contacting the Equity Initiatives Department at the Law Society of

Upper Canada. The Law Society of Upper Canada will continue to survey lawyers annually at the end of their first year of call to the bar. The benchmark report and longitudinal findings will be used to inform the work of benchers and staff members.

*MATTERS NOT REACHED (deferred to September 2008)*

Paralegal Standing Committee

- Paralegal Professional Conduct Guidelines
- Exemption Application of Canadian Society of Professionals in Disability Management  
*For Information*
- Summer Students – Amendments to By-Laws 4 and 7.1
- Wording Changes to By-Laws 7.1 and 8

Committee of the Whole (*M. Sandler*) (in camera)

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 25<sup>th</sup> day of September, 2008

Treasurer