

MINUTES OF SPECIAL CONVOCATION

Friday, 10th December, 1999
8:30 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Backhouse, Banack, Bindman, Bobesich, Braithwaite, Carey, Chahbar, Cherniak, Coffey, Cronk, Crowe, Curtis, Diamond, E. Ducharme, Feinstein, Furlong, Goodman, Gottlieb, Harnick, Hunter, Jarvis, Krishna, Laskin, Lawrence, MacKenzie, Marrocco, Millar, Mulligan, Murphy, O'Brien, Ortved, Porter, Potter, Ross, Simpson, Swaye, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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REPORT OF THE FINANCE & AUDIT COMMITTEE - BUDGET
(continued from November 26, 1999)

Mr. Krishna presented the Budget and the outstanding amended motion that the Law Society adopt for the year 2000 the fee of \$1,340 net of the \$50 discount for early payment.

Finance and Audit Committee
November 25, 1999

Report to Convocation

Purpose of Report: Decision Making
 Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on October 21, 1999. Committee members in attendance were: Krishna, V. (c), Crowe, M. (v-c), Swaye, G. (v-c), Cass, R., Chabar, A., Lamont, D., Epstein, S., Feinstein A., Furlong P., Murphy, D., Puccini, H. (by phone), Wardlaw, J., White, D., Wilson, R., Wright, B. Also in attendance were Armstrong R., and Marroco, F. Staff in attendance were Saso, J., Tinsley, R., Tysall, W., Lalonde, G., Husain, A., Smith, C., Bernhardt, R., Grady, F., White, R., Cawse, A., Corrick, K., Yakimovich, J., Kerr, S., Kanargelidis, V.
2. The Committee met on November 11, 1999. Committee members in attendance were: Krishna, V. (c), Crowe, M. (v-c), Swaye, G. (v-c), Chabar, A., Lamont, D., Epstein, S., Feinstein A., Murphy, D., Puccini, H., Wardlaw, J., White, D., Wilson, R., Wright, B. Also in attendance were Armstrong R., MacKenzie, G., Banack, L., Ross, H., Elliott, S., and Lawrence, A. Staff in attendance were Saso, J., Tinsley, R., Tysall, W., Lalonde, G., Smith, C., Grady, F., White, R., Cawse, A., Corrick, K., Yakimovich, J., S., Kanargelidis, V.
3. The Committee is reporting on the following matters:

For Decision

- The 2000 operating budget - under separate cover;
- Relief and Assistance Fund - attached;
- A grant of \$2,976.20 to be paid from the J.S. Denison Fund attached, in camera;
The third quarter general fund financial statements - attached.

Information

- Law Society catering operations and the Lawyer Referral Service;
- Capital and Technology Fund;
- Lawyer's Feed the Hungry Program.

FOR DECISION

2000 OPERATING BUDGET

4. The 2000 budget process began in June 1999. The budget is prepared on a breakeven basis with the following objectives and assumptions:
 - The budget has been prepared on the basis of "Full Indirect Expense Allocation" consistent with the 1999 Approved Budget.
 - The budget will allow the Chief Executive Officer to comply with Executive Limitations.
 - The budget provides funding to meet new legislative requirements and recent Convocation initiatives.

- Investment returns estimated at 4.5% (4.0% in 1999).
- Full fee paying membership projected to be 25,000 for 2000 (24,300 in 1999).
- Bar Admission Course admission projected at 1,200 students for each phase (1,130 in 1999).
- Bar Admission Course tuition fee is recommended to increase by 20%.
- Law Foundation Grants for the Bar Admission Course, County and District Libraries and Archives are assumed to remain at 1999 levels.
- Osgoode Hall Capital Levy maintained at \$50 per member.
- A levy of \$25 per member for the Technology Fund.
- Funding has been provided for the lease of additional space as approved by Convocation in 1999.

Overview

5. Two significant developments in the 2000 operating budget are the reduction in the surplus investment income from the Errors & Omissions Fund and the elimination of the Legal Aid Levy.
6. During the 1999 budget deliberations Convocation approved a one time increase in the County Library Levy of \$79 per member. Subsequent to this, Convocation adopted the principle of universal access and universal funding for County and District Libraries. With the elimination of local fees, a Levy of \$210 per member is recommended.
7. The passing of the amended Law Society Act has placed additional requirements on the Society in its role of professional regulator with the creation a Complaints Review Commissioner. Committees and Task Forces have requested funding in areas as diverse as professional competency initiatives, paralegal studies and strategic planning.
8. This budget raises the funds required to meet the full cost of the Spot and Focussed Audit program initiated in 1998. As part of the 1999 budget process, a surplus generated in 1998 as a result of delayed implementation of the program was used to offset the program's cost in 1999. The 2000 budget includes a surplus of \$350,000 to be carried forward from 1999 for the continuation of the Spot and Focussed Audit program at a combined level of 1400 audits.
9. Operationally, the restructuring of the Society is substantially complete and full implementation is underway. Members and the public will find their interactions with the Society greatly improved with most matters able to be dealt with through an initial telephone contact with the newly created Service Centre. Operating budgets for most departments remain static, without the additional requirements identified in the budget as legislative, Committee or Convocation initiatives. There are several exceptions:
 - The Education Department has reduced direct expenses for 2000 and is anticipating an increase in budgeted enrollment from 1,130 students in 1999 to 1,200 for 2000. In addition, the budget includes a 20% increase in the cost of tuition reducing the subsidy, on a full cost basis, for Bar Admission Course to \$30 per member from \$94 in 1999.
 - The Society has expanded the role of technology in its dealings with members and the public. The increased operating budget for information systems is a reflection of the expanding role played by technology in the business of the Society.
 - The Human Resources Department is proposing an increase in its annual operation budget. The budget recognizes the vital role played by staff in the business of the Society and this budget will enable the Society to hire, properly train and retain those most qualified to meet the increasingly complex needs of a knowledge and information based workplace.
 - The budget reflects an increase in the budget for public affairs as our need to communicate with a broad range of stakeholders on the role and value of the Society has been under resourced in the past.

10. The Relief and Assistance Fund was established to assist in reducing the impact of the large increases in insurance premiums required by the refinancing of the Lawyer's Professional Indemnity Company. This budget is based on the abolition of this fund, and the transfer of the fund balance of \$234,000 to a Working Capital Reserve.
11. This budget forms the basis for the full implementation of the Osgoode Hall Capital Fund. This will enable the Society to provide for its future capital requirements in all areas including facilities, technology and equipment. In addition to the Osgoode Hall Capital Fund, this budget proposes a Technology Fund which will be used to assist the Law Society with the replacement or updating of old technology. This costs \$25 per member.
12. The Committee made the following recommendations for amendments at its meeting on November 11, 1999.
 - The Committee recommended that the Equity Department budget be maintained at the base amount of \$480,000, without the additional \$270,000 identified in the draft 2000 budget presented to the Committee on November 11, 1999.
 - The Committee recommended that the County and District Library Levy be increased from \$204 to \$210 per member.
 - The Committee accepted the actuary's recommendation that the Lawyers Fund for Client Compensation Levy be reduced by \$43, resulting in the total for this Levy and the fee to finance the costs of the Spot and Focussed Audit Program being set at \$210 per member.

Fee per Member

Request of Convocation

13. That the total fee per member, after \$50 discount for early repayment is taken, of \$1,290 be adopted.

Relief and Assistance Fund (memorandum attached)

Request of Convocation

14. That the Relief and Assistance Fund be abolished, and the balance of \$234,000 be transferred to a Working Capital Reserve.

Grant of \$2,976.20 from the J.S. Denison Fund (attached) (in camera)

Request of Convocation

15. That the single application for assistance be approved in the requested amount of \$2,976.20.

General Fund Third Quarter Financial Statements (attached)

16. Staff presented a report, projecting a consolidated general fund surplus of \$430,000 for the year ended December 31, 1999. The Committee endorsed the recommendations contained within the report.

Request of Convocation

- That funds be transferred from the Unrestricted Fund to the Project 200 Fund to eliminate the deficit generated in the latter fund in 1999 rather than in 2002;
- That funds be transferred from the Unrestricted Fund to the Legal Aid Levy Fund to eliminate the deficit generated in the latter fund in 1999.
- That the Project 200 and Legal Aid Levy Funds be eliminated at the end of 1999.
- That the residual elements of Project 200, to be completed in 2000, be funded from the operational surplus of the Unrestricted Fund.

FOR INFORMATION

Catering

20. Staff presented a memorandum setting out the costs and revenues associated with the current catering operation. The limited ability of the current catering operation model to break even was discussed. Staff had presented five options for consideration, which were to be expanded upon for a future meeting.

21. Capital and Technology Fund

A memorandum titled "Capital and Technology Replacement and Upgrade Fund" is attached.

Lawyer Feed the Hungry Program

22. The Law Society's role in the program was discussed. The current role of the Law Society as directed by Convocation states that the program will continue at no cost to the Law Society. The current sponsors of the program have identified annual costs of approximately \$150,000. A motion to Convocation, to be made by Nancy Backhouse, and previously circulated to Benchers, proposes that funds to support the program could be donated by members to the Law Society Foundation. An additional amount of \$41,000 per year is required to support the cost of a "check-off" on annual fee invoices to members.

Lawyer Referral Service

23. Staff provided an update on the Lawyer Referral Service which is undergoing an operational review. Alternatives such as a 1-900 number are being considered.

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

- (1) Copy of a Memorandum from Mr. Raymond White, Controller to the Finance & Audit Committee dated November 4, 1999 re: Relief & Assistance Fund - CONFIDENTIAL. (pages 8 - 9)
- (2) Copy of Memorandum from Mr. Raymond White, Controller to the Finance & Audit Committee dated October 12, 1999 re: Relief & Assistance Fund - CONFIDENTIAL. Pages 10 - 14)
- (3) Copy of Schedule 'A' - Staffing Requirements for Grant Programme (With 500 grant applications). (page 15)
- (4) Copy of Schedule 'B' - Staffing Requirements for Loan Programme (With \$500,000 in outstanding loans). (page 16)

- (5) Copy of the General Fund Balance Sheet. (page 18)
- (6) Copy of the Law Society of Upper Canada Unrestricted Fund for the nine months ended September 30, 1999. (page 19)
- (7) Copy of the General Fund Statement of Fund Balances for the nine months ended September 30, 1999. (page 20)
- (8) Copy of the General Fund Statement of Fund Balances projected for the period ended December 31, 1999. (page 21)
- (9) Copy of the General Fund Statement of Cash Flows. (page 22)
- (10) Copy of a Memorandum from Ms. Wendy Tysall to the Chair and Members of Finance & Audit Committee dated November 4, 1999 re: Capital and Technology Replacement and Upgrade Fund. (pages 23 - 25)
- (11) Copy of material - in camera - re: J. S. Denison Fund.

A debate followed.

It was moved by Ms. Curtis, seconded by Ms. Backhouse that the allocation in the budget of \$90,000 for CDLPA be eliminated.

Tabled

It was moved by Mr. MacKenzie, seconded by Mr. Wright that the Curtis/Backhouse motion be tabled.

Carried

ROLL-CALL VOTE

Backhouse	For
Banack	Abstain
Bindman	For
Bobesich	Against
Braithwaite	Against
Carey	Against
Chahbar	Against
Cherniak	For
Coffey	Against
Crowe	Against
Curtis	Against
Diamond	For
E. Ducharme	For
Feinstein	Against
Gottlieb	Against
Hunter	For
Krishna	For
Laskin	For
MacKenzie	For

Marrocco	For
Millar	For
Mulligan	For
O'Brien	Against
Ortved	For
Porter	Against
Potter	For
Ross	For
Simpson	Abstain
Swaye	Against
White	For
Wilson	Against
Wright	For

Vote - 17-For, 13-Against, 2-Abstentions

It was moved by Ms. Curtis, seconded by Ms. Potter and Mr. Carey that the \$50 discount for early payment of the annual fee be eliminated.

Lost

ROLL-CALL VOTE

Aaron	Against
Backhouse	For
Banack	For
Bindman	Against
Bobesich	For
Braithwaite	For
Carey	For
Chahbar	Abstain
Cherniak	Against
Coffey	Against
Cronk	Against
Crowe	Against
Curtis	For
Diamond	For
E. Ducharme	Against
Feinstein	Against
Gottlieb	Against
Hunter	Against
Krishna	Against
Laskin	For
MacKenzie	Against
Marrocco	Against
Millar	For
Mulligan	For
O'Brien	Against
Ortved	Against

Porter	Against
Potter	For
Ross	For
Simpson	Against
Swaye	Against
White	Against
Wilson	Against
Wright	Against

Vote - 12-For, 21-Against, 1-Abstention

It was moved by Mr. Millar, seconded by Mr. Hunter that if the motion to eliminate the discount for early payment passed that the annual fee for the year 2000 be \$1,362 (Option 2, page 48 of the Budget).

Not Put

It was moved by Mr. Wright, seconded by Mr. Bindman that the discount for early payment of the annual fee be \$40 for the year 2000. (Option 1, page 48 of the Budget)

Lost

November 26th, 1999 motion

It was moved by Ms. Ross, seconded by Ms. Puccini that \$200,000 in addition to the amount being recommended by the Finance & Audit Committee be approved for the Equity Initiatives Department.

Carried

ROLL-CALL VOTE

Aaron	For
Backhouse	For
Banack	For
Bindman	For
Bobesich	Against
Braithwaite	For
Carey	For
Chahbar	Against
Cherniak	Against
Coffey	For
Cronk	For
Crowe	Against
Curtis	For
Diamond	For
E. Ducharme	For
Feinstein	For
Gottlieb	Against
Hunter	For
Krishna	For
Laskin	For
MacKenzie	For

Marrocco	For
Millar	For
Mulligan	For
O'Brien	For
Ortved	For
Porter	For
Potter	For
Ross	For
Simpson	For
Swaye	Against
White	For
Wilson	For
Wright	Against

Vote - 27-For, 7-Against

It was moved by Mr. Wilson, seconded by Mr. Crowe that the money allocated to the Bar Admission Course portion of the Law Society budget be reduced by \$300,000.

Lost

November 26th, 1999 motion

It was moved by Mr. Carey, seconded by Mr. Copeland that the tuition fee for the Bar Admission Course be reduced and Option 5 be adopted.

Lost

November 26th, 1999 motion

It was moved by Ms. Backhouse, seconded by Mr. E. Ducharme that there be no increase in the Bar Admission Course tuition for the year 2000.

Carried

ROLL-CALL VOTE

Aaron	Against
Backhouse	For
Banack	For
Bindman	For
Bobesich	Against
Braithwaite	For
Carey	For
Chahbar	For
Cherniak	For
Coffey	For
Cronk	For
Crowe	Against
Curtis	For
Diamond	For
E. Ducharme	For
Feinstein	For

Gottlieb	Against
Hunter	For
Krishna	For
Laskin	For
MacKenzie	For
Marrocco	For
Millar	For
Mulligan	For
O'Brien	For
Ortved	For
Porter	For
Potter	For
Ross	For
Simpson	For
Swaye	For
White	For
Wilson	Against
Wright	For

Vote: 29-For, 5-Against

It was moved by Mr. Gottlieb, seconded by Mr. Bobesich that the fee for the year 2000 be the same as the year 1999.

Lost

ROLL-CALL VOTE

Aaron	For
Backhouse	Against
Banack	Against
Bindman	Against
Bobesich	For
Braithwaite	For
Carey	Against
Chahbar	Against
Cherniak	Against
Coffey	Against
Cronk	Against
Crowe	Against
Curtis	Against
Diamond	Against
E. Ducharme	Against
Feinstein	Against
Gottlieb	For
Hunter	Against
Krishna	Against
Laskin	Against
MacKenzie	Against

Marrocco	Against
Millar	Against
Mulligan	Against
O'Brien	Against
Ortved	Against
Porter	Against
Potter	Against
Ross	Against
Simpson	Against
Swaye	For
White	For
Wilson	Against
Wright	Against

Vote: 6-For, 28-Against

It was moved by Mr. Krishna, seconded by Mr. Crowe that the Law Society adopt the fee of \$1,340 net of the \$50 discount for early payment for the year 2000.

Carried

November 26th, 1999 motion

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that the Law Society establish a Bar Admission Course Bursary Fund to assist students who suffer financial hardship in paying the increased tuition.

Withdrawn

REPORT OF THE FINANCE & AUDIT COMMITTEE

November 26th, 1999 Report to Convocation

Re: Relief and Assistance Fund

It was moved by Mr. Krishna, seconded by Mr. Crowe that the Relief and Assistance Fund be abolished and the balance of \$234,000 be transferred to a Working Capital Reserve.

Not Put

This matter was put over to the January 2000 Convocation.

MOTION - LAWYERS FEED THE HUNGRY PROGRAM

It was moved by Ms. Backhouse, seconded by Mr. Banack that the Annual Membership Fees Invoice contain an option whereby members can make a voluntary tax deductible contribution to the Lawyers Feed the Hungry program on a no cost basis to the Law Society.

Carried

MANDATE FOR THE ADMISSIONS COMMITTEE AND THE EQUITY AND ABORIGINAL ISSUES COMMITTEE (English Version)

It was moved by Ms. Ross, seconded by Ms. Backhouse that the By-Laws made under the Law Society Act, currently in force, be amended as follows:

1. Paragraph 1 of Section 2 of By-law 9 is amended by deleting "and Equity."
2. Section 2 of By-law 9 is amended by adding the following paragraph:
 9. Equity and Aboriginal Issues Committee/Comite sur l'equite et les affaires autochtones
3. Section 11 of By-law 9 is revoked and the following substituted:

ADMISSIONS COMMITTEE

Mandate

11. The mandate of the Admissions Committee is to develop, for Convocation's approval,
 - (a) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;
 - (b) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;
 - (c) policies to govern the transfer to the Society of persons qualified to practise law in any province or territory of Canada; and
 - (d) policies respecting the Bar Admission Course.
4. By-law 9 is amended by adding the following section:

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITE SUR L'EQUITE ET LES AFFAIRES AUTOCHTONES

Mandate

- 16.1 The mandate of the Equity and Aboriginal Issues Committee is,
 - (a) to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal peoples and French-speaking peoples; and
 - (b) to consult with the Treasurer's Equity Advisory Group, Roti io' ta' -kier, AJEFO, women and equity-seeking groups in the development of such policy options.
5. Section 17 of By-law 6 is amended by deleting "and Equity" in the fourth line.
6. By-law 12 is amended by deleting "and Equity",

- (a) in the second line of subsection 1(3);
 - (b) in the first line of subsection 2(2);
 - (c) in the third line of subsection 2(3);
 - (d) in the fourth line of subsection 6(1); and
 - (e) in the second line of subsection 6(2).
7. Subsection 2(3) of By-law 13 is amended by deleting "and Equity" in the last line.
8. By-law 22 is amended by deleting "and Equity",
- (a) in the last line of subsection 2(4);
 - (b) in the first line of subsection 2(5);
 - (c) in the first line of subsection 2(6);
 - (d) in the first line of subsection 2(7); and
 - (e) in the second line of subsection 2(8).

Carried

It was moved by Ms. Ross, seconded by Ms. Potter that the French version of the amendments to the By-laws regarding the mandate for the Admissions Committee and the Equity and Aboriginal Issues Committee be adopted.

Carried

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER THE *LAW SOCIETY ACT*

That the by-laws made under the *Law Society Act*, currently in force, be amended as follows:

1. Paragraph 1 of Section 2 of By-law 9 is amended by deleting "et d'équité"
2. Section 2 of By-law 9 is amended by adding the following paragraph:
 9. Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones
3. Section 11 of By-law 9 is revoked and the following substituted:

COMITÉ D'ADMISSION

Mandat

11. Le Comité d'admission élabore et soumet à l'approbation du Conseil :

- a) les conditions d'admission au Cours de formation professionnelle applicables aux personnes qui n'ont pas été reçues au barreau ni admises comme procureurs ailleurs;
- b) les listes de cours et d'universités reconnus par le Barreau et satisfaisant aux conditions d'admission au Cours de formation professionnelle;
- c) les politiques régissant l'admission au Barreau, par voie de transfert, des personnes habiles à pratiquer le droit dans une province ou un territoire canadiens;

d) les politiques concernant le Cours de formation professionnelle.

4. By-law 9 is amended by adding the following section:

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

Mandat

16.1 Le mandat du Comité sur l'équité et les affaires autochtones est :

- a) d'élaborer et de soumettre à l'approbation du Conseil un choix de politiques destinées à promouvoir l'équité et la diversité dans la pratique du droit et à aborder toutes les questions touchant les peuples autochtones et les personnes d'expression française; et
- b) de consulter le Groupe-conseil du trésorier sur l'équité, Roti io' ta'-kier, l'AJEFO, les groupements féminins et les groupes luttant pour l'équité lors de l'élaboration de ces politiques.

5. Section 17 of By-law 6 is amended by deleting "et d'équité" in the fourth line.

6. By-law 12 is amended by deleting "et d'équité",

- a) in the first line of subsection 1(3);
- b) in the first line of subsection 2(2);
- c) in the third and fourth lines of subsection 2(3);
- d) in the first line of subsection 6(1); and
- e) in the second line of subsection 6(2).

7. Subsection 2(3) of By-law 13 is amended by deleting "et d'équité" in the last line.

8. By-law 22 is amended by deleting "et d'équité",

- a) in the last line of subsection 2(4);
- b) in the second line of subsection 2(5);
- c) in the first line of subsection 2(6);
- d) in the first line of subsection 2(7); and
- e) in the first line of subsection 2(8).

REPORT OF THE PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE
November 26th, 1999 Report to Convocation

Ms.Cronk presented the proposed amendments to By-law 28 on Requalification for Convocation's approval.

Report to Convocation

Purpose of Report: Decision Making
 Information

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

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee (“the Committee”) met on November 11, 1999. Committee members in attendance were Eleanore Cronk (Chair), Earl Cherniak (Vice-Chair), Kim Carpenter-Gunn, Dino DiGiuseppe, Greg Mulligan, Marilyn Pilkington, Judith Potter, Margaret Ross, and Bill Simpson. Susan Elliott attended the meeting. Staff in attendance were Janet Brooks, Scott Kerr, Janine Miller, Sophia Spurdakos, Ursula Stojanowich, and Paul Truster.

2. The Committee is reporting on the following matters:

Policy - For Decision

- proposed amendments to By-law 28 (Requalification)

Information

- Discussion of approach for developing the competence model
- Information Report from Working Group on County Libraries.
- Report on Specialist Certification Matters approved by the Certification Working Group on October 13, 1999 and approved by the Committee on November 11, 1999

POLICY - FOR DECISION

REQUALIFICATION PROGRAM BY-LAW

Background

1. October 29, 1999 Convocation considered and approved By-Law 28 on requalification, attached at Appendix 1. Convocation made a number of amendments to the By-law, including:
 - a) amending the definition of "government" in section 1,
 - b) amending subsection 5(2) relating to legal secretaries law clerks and paralegals, and
 - c) removing "conciliators, arbitrators, and mediators" from Schedule 2 of the By-law so that the Committee could re-assess the appropriateness of their inclusion in a "deemed" category.
2. The Committee's attention has been drawn to possibly unintended results arising from some of the amendments made at Convocation. It has considered a proposal that further amendments be made to the By-law to address difficulties that have arisen in administering the requalification program as a result of Convocation's amendments. Set out at Appendix 2 is a memorandum detailing the issues the Committee has considered, including a proposal for how best to address the concerns that prompted Convocation to make the amendments it did in October.

Section 1 and Subsection 5(2)

3. The Committee has considered the issues raised in the memorandum concerning the amendments to section 1 of By-law 28(the definition of "government") and agrees with the proposal set out at page 3 of the memorandum to deal with Convocation's concerns as follows:
 - a) The original definition of "government"¹ be put back into the by-law.
 - b) Paragraph 5 of subsection 5(1) be amended to read as follows:

"Service as a member of the parliament of Canada or of the legislature of any province or territory of Canada."

¹1. In this By-Law, "government" means the Government of Canada, the government of any province in Canada, the government of any territory in Canada and the government of any city, municipality, town or other similar body in any province or territory of Canada.

4. The Committee has also considered the issues raised in the memorandum concerning the “notwithstanding” clause in subsection 5(2) of By-law 28 and agrees with the proposal set out at page 5 of the memorandum to deal with Convocation’s concerns as follows:
 - a) Paragraph 8 of subsection 5 (1) be amended by adding “subject to subsection (2)” at the beginning.
 - b) Subsection 5 (2) be amended by deleting “notwithstanding subsection (1)” at the beginning.

Arbitrator, Conciliator, Mediator

5. In October Convocation voted to remove “arbitrator, conciliator, mediator” from Schedule 2 of the Requalification By-law, which includes a list of activities included under the heading “work for government or a government agency”. Convocation requested that the Committee re-consider the issue of the inclusion of these activities from two perspectives, namely:
 - a) whether those engaging in those activities should be “deemed” to be making substantial use of their legal skills or should be required to complete the “other” category on the form and explain how they make substantial use of their legal skills on a regular basis; and
 - b) if they should be included in a deemed category, should it be expanded to include anyone working in the capacity of conciliator, arbitrator, or mediator, whether they are employed by government or a government agency or not.
6. In the original 1994 policy Convocation stated that members participating in a number of specified activities would automatically be deemed to be making substantial use of legal skills on a regular basis. This included arbitrators, conciliators, and mediators. These members have been included in a deemed category ever since. It is for this reason that they were included in the deemed category in the requalification by-law. The inclusion of this category of members in the original 1994 policy has meant that for the last 5 years such members have been automatically deemed to be making substantial use of their legal skills on a regular basis without further explanation.
7. The Committee will be examining the issues concerning arbitrators, conciliators, and mediators as directed by Convocation, but is proposing that any amendments made by Convocation at October Convocation that result in a change to the deemed categories from those in the 1994 policy should be done on a *going forward* basis, not retroactively. This will avoid unfairness to members who have been led to believe that by coming within a deemed category they do not have to be concerned that they may have to requalify.

Request to Convocation

8. Convocation is requested to consider whether to approve a motion amending By-law 28 on requalification as follows:
 - a) The original definition of “government” be put back into the by-law.
 - b) Paragraph 5 of subsection 5(1) be amended to read as follows:

“Service as a member of the parliament of Canada or of the legislature of any province or territory of Canada.”

- c) Paragraph 8 of subsection 5 (1) be amended by adding “subject to subsection (2)” at the beginning.
 - d) Subsection 5 (2) be amended by deleting “notwithstanding subsection (1)” at the beginning.
9. Convocation is further requested to consider whether it agrees that any amendments to the by-law made by Convocation at October Convocation that result in a change to the deemed categories from those in the 1994 policy should be done on a going forward basis, not retroactively.

FOR INFORMATION

DISCUSSION OF APPROACH TO DEVELOPING THE COMPETENCE MODEL

- 1. The committee has begun discussing the appropriate approach to follow in researching and presenting options for a competence model and for consulting with the profession on the issue, including discussing the funds it anticipates will be required in the coming year for work expected to be undertaken. The budget-related issues will be raised in the context of the discussions at Convocation on the 2000 fiscal year budget. In the coming months an options paper will be prepared for Convocation’s consideration.
- 2. The Committee will be reporting to Convocation on its work early in the New Year

INFORMATION REPORT FROM THE WORKING GROUP ON COUNTY LAW LIBRARIES

- 1. The working group on county law libraries has established two committees, as directed by Convocation. The first, known as the Business Plan Group, is to focus on issues related to the implementation of the new library system and the business plan that must be developed. The second, known as the Administrative Structure Group, is to focus on the administrative structure of the new library system and address the legal issues raised by Convocation when it established the two committees in May 1999.
- 2. The committees have begun meeting. An information report outlining the work of the two committees, to date, is set out at Appendix 3.

REPORT ON SPECIALIST CERTIFICATION MATTERS APPROVED BY THE CERTIFICATION WORKING GROUP ON OCTOBER 13, 1999 AND APPROVED IN COMMITTEE ON NOVEMBER 11, 1999

- 1. The Certification Working Group of the Professional Development and Competence Committee and the Committee are pleased to report final approval of the following lawyers for certification:

Criminal Law: Gregory D. Goulin (of Windsor)

Family Law: Nancy J. Iadelucca (of Toronto)
Richard Shields (of Hamilton)

Labour Law: Kees W. Kort (of Belleville)

Intellectual Property Law: Mark B. Eisen (of Toronto)

- 2. The Certification Working Group of the Professional Development and Competence Committee and the Committee are pleased to report final approval of the following lawyers for recertification for an additional five years:

- Civil Litigation: C. Kirk Boggs (of Toronto)
Kathryn I. Chalmers (of Toronto)
Charles B. Cohen (of Toronto)
Terrence J. Collier (of Toronto)
Edward W. Graves (of St. Catharines)
Thomas R. Hawkins (of Toronto)
George B. Kilpatrick (of Toronto)
Leo Klug (of Markham)
Keith M. Landy (of Toronto)
Donald H. J. Lapowich (of Toronto)
Gavin MacKenzie (of Toronto)
Francis J. C. Newbould (of Toronto)
Roger Oatley (of Barrie)
Lee A. Pinelli (of Hamilton)
Stan Raphael (of Toronto)
Timothy D. Ray (of Ottawa)
James Regan (of Toronto)
Martin Sclisizzi (of Toronto)
William G. Sheppard (of Hamilton)
Donald E. Short (of Toronto)
Michael A. Spears (of Toronto)
Richard Steinecke (of Toronto)
Harvey T. Strosberg (of Toronto)
John I. Tavel (of Ottawa)
John D. Thoman (of Hamilton)
- Criminal Law: Peter M. Barr (of St. Catharines)
Joseph L. Bloomfeld (of Toronto)
Bernard Cugelman (of Barrie)
D. Fletcher Dawson (of London)
Ronald G. Guertin (of Ottawa)
Miles M. Halbertstadt (of Toronto)
Martin Kerbel (of Toronto)
Ross B. Lundy (of Orangeville)
Patrick F. D. McCann (of Ottawa)
David R. McCaskill (of Toronto)
- Family Law: Ronald Burnett (of Windsor)
Michael E. McGarry (of London)
Gordon E. Shiner (of Ottawa)
- Intellectual Property Law: Sheldon Burshtein (of Toronto)
Gordon J. Zimmerman (of Toronto)

APPENDIX 1- BY-LAW 28

Made: October 29, 1999

REQUALIFICATION

Definitions

1. In this By-Law, "government" means the Parliament of Canada, the legislature of any province in Canada and the legislature of any territory in Canada.

Delegation of powers and duties of Secretary

2. An employee of the Society who holds the office of Counsel, Competence Program may, subject to any terms and conditions that may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under section 49.1 of the Act and under this By-Law.

Length of continuous period of time

3. The length of the continuous period of time referred to in subsection 49.1 (1) of the Act is five years.

Requirement to report on use of legal skills

4. (1) A member shall file with the Society for every year a report on whether the member has made substantial use of legal skills on a regular basis during the year and on the manner in which the member has made such substantial use of legal skills.

Member's Annual Report

(2) The report required under subsection (1) shall be included in Form 17A [Member's Annual Report].

Substantial use of legal skills on regular basis

5. (1) In a year, a member makes substantial use of legal skills on a regular basis if, for a total of the lesser of 600 hours and 4 full months, the member engages in one or more of the following activities:

1. The private practice of law.
2. Work for an entity, including a clinic providing legal services, a government or a government agency, in the capacity of a barrister and solicitor.
3. Work for a clinic providing legal services in a capacity set out in Schedule 1.
4. Work for a government or government agency in a capacity set out in Schedule 2.
5. Service as an elected member of a government.
6. Work in an educational capacity set out in Schedule 3.
7. Postgraduate studies in law.
8. Work for an entity set out in Schedule 4 in a capacity set out in Schedule 4.
9. Subject to subsection (2), any other activity that, in the opinion of the Secretary, requires the member to make substantial use of legal skills on a regular basis.

Legal secretaries, law clerks and paralegals

(2) Notwithstanding subsection (1), a member does not make substantial use of legal skills on a regular basis when the member works as a legal secretary, law clerk or paralegal.

Other activity: factors to be considered

(3) In determining whether an activity requires a member to make substantial use of legal skills on a regular basis for the purpose of paragraph 9 of subsection (1), the Secretary shall take into account the following factors:

1. The similarity between the activity and the activities identified in paragraphs 1 to 8 of subsection (1).
2. The extent to which the activity requires the member ordinarily,
 - i. to engage in legal research, legal analysis and legal problem solving,
 - ii. to use oral and written communication,
 - iii. to organize and manage legal work,
 - iv. to recognize and resolve ethical dilemmas, and
 - v. to remain current in the area or areas of law that are relevant to the activity.
3. The extent to which the activity requires the member to have and apply the skills, attributes and values set out in the definition of the competent lawyer contained in the Society's Rules of Professional Conduct.
4. Any other factor relevant to the determination of whether the activity requires the member to make substantial use of legal skills on a regular basis.

Time

(4) Despite subsection (1), in a year, a member makes substantial use of legal skills on a regular basis if, for a period of time that is less than that specified in subsection (1) but is sufficient in the opinion of the Secretary, the member engages in one or more of the activities mentioned in subsection (1).

Secretary's consideration of report

6. (1) The Secretary shall consider every report filed with the Society under section 4.

Notice to member

(2) If a member's report under section 4 requires the Secretary to determine whether for the purpose of paragraph 9 of subsection 5 (1) an activity engaged in by the member is an activity that requires the member to make substantial use of legal skills on a regular basis or whether for the purpose of subsection 5 (4) the member engaged in one or more of the activities mentioned in subsection 5 (1) for a sufficient period of time, and if the Secretary determines that the member did not make substantial use of legal skills on a regular basis during the year in accordance with subsection 5 (1) or (4), the Secretary shall so notify the member in writing.

Method of giving notice

- (3) Notice under subsection (2) is sufficiently given if,
 - (a) it is delivered personally;
 - (b) it is sent by regular lettermail addressed to the member at the latest address for the member appearing on the records of the Society; or
 - (c) it is faxed to the member at the latest fax number for the member appearing on the records of the Society.

Same

- (4) Notice under subsection (2) shall be deemed to have been received by the member,
 - (a) if it was sent by regular lettermail, on the fifth day after it was mailed; and
 - (b) if it was faxed, on the first day after it was faxed.

Application to panel of 3 benchers

(5) Subject to subsection (12), if a member receives notice under subsection (2), the member may apply to a panel of 3 benchers appointed for the purpose by Convocation for a determination of whether the member made substantial use of legal skills on a regular basis during the year.

Time for application

(6) Subject to subsection (13), an application under subsection (5) shall be commenced by the member notifying the Secretary in writing of the application within thirty days after the day the member receives notice under subsection (2).

Parties

- (7) The parties to an application under subsection (5) are the applicant and the Secretary.

Procedure

(8) The rules of practice and procedure apply, with necessary modifications, to the consideration by the panel of 3 benchers of an application made under subsection (5) as if the consideration of the application were the hearing of an application under subsection 49.1 (4) of the Act.

Same

(9) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the panel of 3 benchers of an application made under subsection (5).

Decision on application

- (10) After considering an application made under subsection (5), the panel of 3 benchers shall,
 - (a) determine that the member did make substantial use of legal skills on a regular basis during the year; or
 - (b) determine that the member did not make substantial use of legal skills on a regular basis during the year.

Decision final

- (11) The decision of the panel of 3 benchers on an application made under subsection (5) is final.

Right to make application suspended

(12) If an order against a member under clause 47 (1) (a) of the Act is in effect when the member receives notice under subsection (2), the member's right under subsection (5) to apply to a panel of 3 benchers for a determination of whether the member made substantial use of legal skills on a regular basis during the year is suspended until the order is no longer in effect.

Time for application where right to make application suspended

(13) Where a member's right to make an application under subsection (5) is suspended under subsection (12), an application under subsection (5) shall be commenced by the member notifying the Secretary in writing of the application within thirty days after the day on which the member's rights and privileges are reinstated.

Application of s. 6

(14) This section applies to a member's report under section 4 in respect of the year 1999 and every year thereafter.

Determination of use of legal skills: 1995 to 1998

7. (1) For the years 1995, 1996, 1997 and 1998, the Secretary shall consider all information relating to the use of legal skills which each member provides to the Society in respect of each year.

Application of s. 5

(2) Section 5 applies, with necessary modifications, to the Secretary's consideration of information under subsection (1).

Notice to member: failure to make use of legal skills in 1995, 1996, 1997 and 1998

(3) If the information provided by a member in respect of the years 1995, 1996, 1997 and 1998 requires the Secretary to determine whether for the purpose of paragraph 9 of subsection 5 (1) an activity engaged in by the member is an activity that requires the member to make substantial use of legal skills on a regular basis or whether for the purpose of subsection 5 (4) the member engaged in one or more of the activities mentioned in subsection 5 (1), and if the Secretary determines that the member did not make substantial use of legal skills on a regular basis in accordance with subsection 5 (1) or (4) in the years 1995, 1996, 1997 and 1998, subject to subsections (5), (5.1) and (6), the Secretary shall so notify the member in writing before January 1, 2000.

Notice to member: failure to make use of legal skills in other years

(4) If the information provided by a member in respect of the years 1995, 1996, 1997 and 1998 requires the Secretary to determine whether for the purpose of paragraph 9 of subsection 5 (1) an activity engaged in by the member is an activity that requires the member to make substantial use of legal skills on a regular basis or whether for the purpose of subsection 5 (4) the member engaged in one or more of the activities mentioned in subsection 5 (1) for a sufficient period of time, and if the Secretary determines that the member did not make substantial use of legal skills on a regular basis in accordance with subsection 5 (1) or (4) only in the years 1996, 1997 and 1998, only in the years 1997 and 1998 or only in the year 1998, subject to subsections (5), (5.1) and (6), the Secretary shall so notify the member in writing before January 31, 2000.

Notice deferred

(5) If a member has not provided to the Society before December 22, 1999 information relating to his or her use of legal skills in the year 1995, 1996, 1997 or 1998, the Secretary need not give notice to the member under subsection (3) or (4) by the time specified therein, but, subject to subsection (6), shall give notice to the member under subsection (3) or (4) within a reasonable period of time, but not later than 60 days, after the day on which the member provides such information.

Notice not required

(6) If the member made substantial use of legal skills on a regular basis in the year 1999, the Secretary need not give notice to the member under subsection (3) or (4).

Application of subss. 6 (3) and (4)

(7) Subsections 6 (3) and (4) apply, with necessary modifications, to the notices under subsections (3) and (4).

Application to panel of 3 benchers

(8) If a member receives notice under subsection (3) or (4), the member may apply to a panel of 3 benchers appointed for the purpose by Convocation for a determination of whether the member made substantial use of legal skills on a regular basis during one or more of the years in respect of which the member received notice under subsection (3) or (4).

Time for application

(9) An application under subsection (8) shall be commenced by the member notifying the Secretary in writing of the application,

- (a) if the member receives notice under subsection (3) or (4) by the time specified therein,
 - (i) within thirty days after the day on which the member receives notice under subsection (3) or (4), or
 - (ii) within thirty days after the day on which the member receives notice under subsection 6 (2) that the member did not make substantial use of legal skills on a regular basis in the year 1999.
- (b) if the member receives notice under subsection (3) or (4) by the time specified in subsection (5), within thirty days after the day on which the member receives notice.

Same

(10) If a member wishes to make an application under subsection (8) and clause (9) (a) applies to the member, the member shall notify the Secretary in writing of whether the member will be proceeding under subclause (i) or (ii) within thirty days after the day on which the member receives notice under subsection (3) or (4).

Application of certain ss.

(11) Subsections 6 (7), (8), (9), (10) and (11) apply, with necessary modifications, to an application under subsection (8).

Requalification requirements

8. (1) The requalification requirements that must be met for the purpose of section 49.1 of the Act are,
- (a) work for a corporation, government or government agency in the capacity of a barrister and solicitor for a continuous period of one year; or
 - (b) (i) completion of a self-study course prepared by the Society that covers each of the following areas,

- (A) regulatory issues in the practice of law,
 - (B) management of a law practice, including file management,
 - (C) accounting,
- (ii) successful completion of an accounting examination and successful completion of one or more examinations in the areas mentioned in sub-subclauses (A) and (B) of subclause (i),
 - (iii) completion of 10 hours of continuing legal education, including at least 5 hours of live programs or video replays of live programs, in the area or areas of substantive law to which the member expects to devote at least 25 percent of his or her practice,
 - (iv) completion of reading materials prepared by the Society on two areas of substantive law, and
 - (v) if the member falls within any category of member mentioned in subsection (2),
 - (A) attendance at a workshop conducted by the Society on starting a law practice or completion of reading materials prepared by the Society on starting a law practice and successful completion of an examination based on the reading materials, and
 - (B) completion of 10 hours of continuing legal education, including at least 5 hours of live programs or video replays of live programs, in the area of management of a law practice, including file management.

Categories of members

- (2) For the purpose of subclause 8 (1) (b) (v), the categories of members are as follows:
 - 1. A member who, immediately before the continuous period of time during which the member did not make substantial use of legal skills on a regular basis, engaged in the private practice of law for not more than three years.
 - 2. A member who, immediately before the continuous period of time during which the member did not make substantial use of legal skills on a regular basis, engaged in the private practice of law for more than three years but not more than ten years and during 3/4 or more of those years engaged in the private practice of law as an employee.
 - 3. A member who did not make substantial use of legal skills for a continuous period of ten years or more.
 - 4. A member whose practice during the five year period immediately before the continuous period of time during which the member did not make substantial use of legal skills on a regular basis was the subject of a review conducted by the Society under the Society's Practice Review Programme or under section 42 of the Act.

Time for meeting requalification requirements

- (3) The requalification requirements set out in subsection (1) must be completed within the one year period immediately before the member resumes the private practice of law.

Interpretation: "successful completion"

- (4) In subsection (1), "successful completion" means,
 - (a) in the case of the accounting examination, answering correctly 50 percent of the questions on the examination; and
 - (b) in all other cases, in the opinion of the Secretary, demonstrating sufficient knowledge of the subject matter of the examination.

Request for certification of completion of requalification requirements

9. (1) A member shall make a request in writing to the Secretary for certification of completion of requalification requirements and, in support of the request, shall file with the Society,

- (a) in the case of a request for certification of completion of the requalification requirement set out in clause 8 (1) (a), written proof of work for a corporation, government or government agency in the capacity of a barrister and solicitor for a continuous period of one year as required under clause 8 (1) (a); and
- (b) in the case of a request for certification of completion of the requalification requirements set out in clause 8 (1) (b),
 - (i) written proof of completion of the 10 hours of continuing legal education required under subclause 8 (1) (b) (iii),
 - (ii) a certificate of completion of the reading materials required to be completed under subclause 8 (1) (b) (iv),
 - (iii) written proof of attendance at the workshop on starting a practice, if the member is required to complete the requalification requirement set out in sub-subclause (A) of subclause 8 (1) (b) (v) and elects to attend the workshop, and
 - (iv) written proof of completion of the 10 hours of continuing legal education required under sub-subclause (B) of subclause 8 (1) (b) (v), if the member is required to complete the requalification requirement set out in sub-subclause (B) of subclause 8 (1) (b) (v).

Requalification requirements set out in clause 8 (1) (a)

(2) When the Secretary receives a request under subsection (1) for certification of completion of the requalification requirement set out in clause 8 (1) (a), the Secretary shall confirm independently the member's work for a corporation, government or government agency in the capacity of a barrister and solicitor for a continuous period of one year as required under clause 8 (1) (a).

Requalification requirements set out in clause 8 (1) (b)

(3) When the Secretary receives a request under subsection (1) for certification of completion of the requalification requirements set out in clause 8 (1) (b), the Secretary shall review the examinations completed by the member under subclause 8 (1) (b) (ii) and, if applicable, the examination completed by the member under sub-subclause (A) of subclause 8 (1) (b) (v) and may confirm independently the member's completion of the continuing legal education required under subclause 8 (1) (b) (iii) and, if applicable, the member's completion of the continuing legal education required under sub-subclause (B) of subclause 8 (1) (b) (v).

Determination of whether requalification requirements have been met

(4) When the Secretary receives a request under subsection (1) for certification of completion of the requalification requirement set out in clause 8 (1) (a), after complying with subsection (2), the Secretary shall,

- (a) if he or she is satisfied that the member has completed the requalification requirement set out in clause 8 (1) (a) and has met the time requirement set out in subsection 8 (3) for completing the requalification requirement, certify that the member has met the requalification requirement; or
- (b) if he or she is not satisfied that the member has completed the requalification requirement set out in clause 8 (1) (a) or has not met the time requirement set out in subsection 8 (3) for completing the requalification requirement, refuse to certify that the member has met the requalification requirement.

Same

(5) When the Secretary receives a request under subsection (1) for certification of completion of the requalification requirements set out in clause 8 (1) (b), after complying with subsection (3), the Secretary shall,

- (a) if he or she determines that the member has completed the applicable requalification requirements set out in clause 8 (1) (b) and has met the time requirement set out in subsection 8 (3) for completing the requalification requirements, certify that the member has met the requalification requirements; or
- (b) if he or she determines that the member has not completed the applicable requalification requirements set out in clause 8 (1) (b) or has not met the time requirement set out in subsection 8 (3) for completing the requalification requirements, refuse to certify that the member has met the requalification requirements.

Same

(6) Despite clauses (4) (b) and (5) (b), the Secretary may certify that the member has met requalification requirements if the Secretary determines that the member has met the requalification requirement set out in clause 8 (1) (a) or the applicable requalification requirements set out in clause 8 (1) (b) but has not met the time requirement set out in subsection 8 (3) for completing the requalification requirements.

Determination by Hearing Panel of whether requalification requirements have been met

10. When an application has been made to the Hearing Panel under subsection 49.1 (4) of the Act for a determination of whether the requalification requirements have been met, in making its decision the Hearing Panel shall consider the following factors:

1. If the member applies for a determination of whether the requalification requirements set out in clause 8 (1) (a) have been met, the amount and type of work that the member has done for a corporation, government or government agency and the requirement set out in clause 8 (1) (a).
2. If the member applies for a determination of whether the requalification requirements set out in clause 8 (1) (b) have been met,
 - i. the member's knowledge of each of the areas mentioned in sub-subclauses (A) to (C) of subclause 8 (1) (b) (i), and
 - ii. the amount and type of continuing legal education that the member has completed and the requalification requirement set out in subclause 8 (1) (b) (iii) and in sub-subclause (B) of subclause 8 (1) (b) (v), if applicable.

Terms and conditions

11. The following terms and conditions may be imposed by the Secretary under subsection 49.1 (3) of the Act and by the Hearing Panel under clause 49.1 (6) (a) of the Act:

1. A term and condition that, within a specified period of time, but not later than one year after the day on which the order made under subsection 49.1 (1) ceases to have effect, the member participate in specified programs of legal education or professional training.
2. A term and condition that, for a specified period of time, but for not longer than one year after the day on which the order made under subsection 49.1 (1) ceases to have effect, the member restrict his or her practice to specified areas of law.
3. A term and condition that, for a specified period of time, but for not longer than one year after the day on which the order made under subsection 49.1 (1) ceases to have effect, the member practise only,
 - i. as an employee of a member or other person approved by the Secretary,
 - ii. in partnership with and under the supervision of a member approved by the Secretary, or
 - iii. under the supervision of a member approved by the Secretary.

SCHEDULE 1

WORK FOR A CLINIC PROVIDING LEGAL SERVICES

[PARAGRAPH 3 OF SUBSECTION 5 (1)]

1. Work in one of the following capacities is included in paragraph 3 of subsection 5 (1):
 1. Director.

SCHEDULE 2

WORK FOR A GOVERNMENT OR GOVERNMENT AGENCY

[PARAGRAPH 4 OF SUBSECTION 5 (1)]

1. Work in one of the following capacities is included in paragraph 4 of subsection 5 (1):
 1. Justice of the Peace.
 2. Member of a tribunal that has a judicial or quasi-judicial function.
 3. Judge's law clerk.
 4. Policy analyst or advisor.
 5. Legislative draftsman.
 6. Judge of any federal, provincial or territorial court.

SCHEDULE 3

WORK IN AN EDUCATIONAL CAPACITY

[PARAGRAPH 6 OF SUBSECTION 5 (1)]

1. Work in one of the following capacities is included in paragraph 6 of subsection 5 (1):
 1. Dean of a law school in Ontario that is approved by Convocation.
 2. Member of the faculty of a law school in Ontario that is approved by Convocation.
 3. Instructor of law,
 - i. at a law school in Ontario that is approved by Convocation, or
 - ii. at The Law Society of Upper Canada.
 4. Legal writer.
 5. Legal editor.
 6. Law librarian.
 7. Legal researcher.

SCHEDULE 4

WORK FOR AN ENTITY IN A SPECIFIED CAPACITY

[PARAGRAPH 8 OF SUBSECTION 5 (1)]

1. Work in a capacity other than barrister and solicitor for one of the following entities is included in paragraph 8 of subsection 5 (1):
 1. Ontario Legal Aid Plan or Legal Aid Ontario.
 2. Lawyers' Professional Indemnity Company.
 3. The Law Society of Upper Canada.
 4. Children's Aid Society.

APPENDIX 2- PROPOSED AMENDMENTS TO BY-LAW 28

MEMORANDUM

TO: Professional Development and Competence Committee
FROM: Elliot Spears
DATE: April 12, 2001
RE: By-Law 28: Changes Made by Convocation on October 29

As you know, on October 29, Convocation was asked to make By-Law 28 dealing with requalification. A draft version of the By-Law was before Convocation. Several amendments were made to the draft version of the By-Law, and the By-Law was made as amended.

The following two amendments made to the draft version of By-Law 28 are problematic:

1. The amendment of the definition of "government".
2. The amendment of subsection 5 (2) to include a "notwithstanding clause".

DEFINITION OF "GOVERNMENT"

In the draft version of By-Law 28, "government" was defined (in section 1) as follows:

"government" means the Government of Canada, the government of any province in Canada, the government of any territory in Canada and the government of any city, municipality, town or other similar body in any province or territory of Canada.

Convocation amended the definition of "government" to read as follows:

"government" means the Parliament of Canada, the legislature of any province in Canada and the legislature of any territory in Canada.

The amended definition of "government" is different from the original definition of "government" in two respects: (1) First, the reference (included in the original definition of "government") to "the government of any city, municipality, town or other similar body in any province or territory of Canada" has been deleted. (2) Second, the reference (included in the original definition of "government") to the Government of Canada has been changed to a reference to the Parliament of Canada, and the reference (included in the original definition of "government") to the government of any province or territory of Canada has been changed to a reference to the legislature of any province or territory of Canada.

I understand that the reason for both amendments was a concern about the scope of paragraph 5 of subsection 5 (1) of the By-Law. That provision provides that a member makes substantial use of legal skills on a regular basis when the member serves "as an elected member of a government". Using the original definition of "government", this provision means that a member would be making substantial use of legal skills on a regular basis when serving as an elected member of a local government (e.g., as a city councillor). It also means that a member who is an elected member of the Parliament of Canada, or the legislature of any province or territory of Canada, but who does not belong to the political party forming the Government of Canada, or the government of any province or territory of Canada, would not be making substantial use of legal skills on a regular basis. Convocation was of the view that a member should not be considered to be making substantial use of legal skills on a regular basis when serving as an elected

member of a local government. It was also of the view that a member who is an elected member of the Parliament of Canada, or the legislature of any province or territory of Canada, but who does not belong to the political party forming the Government of Canada, or the government of any province or territory of Canada, should be considered to be making substantial use of legal skills on a regular basis. Convocation chose to amend the definition of "government" as the means of reflecting these views.

The amendment of the definition of "government" has results that are more far reaching than may have been intended by Convocation.

The word "government" is used, not only in paragraph 5 of subsection 5 (1) of the By-Law, but also in paragraphs 2 and 4 of subsection 5 (1) and in clause 8 (1) (a).

Paragraphs 2 and 4 of subsection 5 (1) of the By-Law set out activities which if engaged in by a member result in the member making substantial use of legal skills on a regular basis. The amendment of the definition of "government" has narrowed the scope of these paragraphs. Thus, while under the original definition of "government", a member who works for a local government in the capacity of a barrister and solicitor would automatically be considered to be making substantial use of legal skills on a regular basis, under the amended definition of "government", this is not the case.

Similarly, while under the original definition of "government", a member who works for the (Ontario) Ministry of the Attorney General as a policy advisor would automatically be considered to be making substantial use of legal skills on a regular basis, under the amended definition of "government", this is not the case. The amendment of the definition of "government" has also rendered Schedule 2 of the By-Law (which is referred to in paragraph 4 of subsection 5 (1)) partially inaccurate. For example, Schedule 2 lists Justices of the Peace as "working" for the government. Under the original definition of "government", this is correct. However, under the amended definition of "government", this is not correct; Justices of the Peace do not "work" for the legislature.

Clause 8 (1) (a) of the By-Law sets out one way in which a member may "requalify", namely, by "work[ing] for a corporation, government or government agency in the capacity of a barrister and solicitor for a continuous period of one year". One of the effects of amending the definition of "government" has been to eliminate requalifying by working for a government. To the best of my knowledge, the Parliament of Canada does not employ lawyers to work as such; similarly, in Ontario, the legislature does not employ lawyers to work as such.

To deal with Convocation's concern with the scope of paragraph 5 of subsection 5 (1) of the By-Law, and to reverse what appear to be unintended results arising from the amendment of the definition of "government", it is suggested that By-Law 28 be amended as follows:

1. The original definition of "government" be put back in.
2. Paragraph 5 of subsection 5 (1) be amended to read as follows:

"Service as a member of the Parliament of Canada or of the legislature of any province or territory of Canada".

SUBSECTION 5 (2): "NOTWITHSTANDING CLAUSE"

Subsection 5 (1) of By-Law 28 sets out when a member is making substantial use of legal skills on a regular basis. Paragraphs 1 to 8 of subsection 5 (1) specify activities which if engaged in by a member result in the member making substantial use of legal skills on a regular basis. Paragraph 9 of subsection 5 (1) provides that if a member engages in other activities, that is, activities not specified in paragraphs 1 to 8, the member may also be considered to be making substantial use of legal skills on a regular basis if the Secretary finds that the activities require the member to make substantial use of legal skills on a regular basis.

In June 1999, Convocation determined that a member who works as a paralegal, legal secretary or law clerk should not be considered to be making substantial use of legal skills on a regular basis. In order to give effect to Convocation's determination, in the draft version of the By-Law, paragraphs 1 to 7 of subsection 5 (1) of the By-Law included no references to work as a paralegal, legal secretary or law clerk and paragraph 9 of subsection 5 (1) was made subject to subsection 5 (2). Subsection 5 (2) read as follows:

A member does not make substantial use of legal skills on a regular basis when the member works as a legal secretary, law clerk or paralegal.

The effect of making paragraph 9 of subsection 5 (1) subject to subsection 5 (2) was to prevent the Secretary from finding that a member who works as a paralegal, legal secretary or law clerk is making substantial use of legal skills on a regular basis.

In drafting subsections 5 (1) and (2) of the By-Law (to give effect to Convocation's determination that work as a paralegal, legal secretary or law clerk should not amount to making substantial use of legal skills on a regular basis), the scope of paragraph 8 of subsection 5 (1) was inadvertently overlooked. Paragraph 8 of subsection 5 (1) provides that a member makes substantial use of legal skills on a regular basis when the member "work[s] for an entity set out in Schedule 4 in a capacity set out in Schedule 4". Schedule 4 reads:

Work in a capacity other than barrister and solicitor for one of the following entities is included in paragraph 8 of subsection 5 (1):

1. Ontario Legal Aid Plan or Legal Aid Ontario.
2. Lawyers' Professional Indemnity Company.
3. The Law Society of Upper Canada.
4. Children's Aid Society.

In the draft version of the By-Law, paragraph 8 of subsection 5 (1) was not made subject to subsection 5 (2). Given the broad language of Schedule 4, and given the fact that, in the draft version of the By-Law, paragraph 8 of subsection 5 (1) was not made subject to subsection 5 (2), in the draft version of the By-Law, paragraph 8 of subsection 5 (1) could have included work as a paralegal, legal secretary or law clerk and, contrary to Convocation's determination in June 1999, such work would have amounted to making substantial use of legal skills on a regular basis.

Likely to correct for this oversight, on October 29, Convocation amended subsection 5 (2) to read as follows:

Notwithstanding subsection (1), a member does not make substantial use of legal skills on a regular basis when the member works as a legal secretary, law clerk or paralegal.

The inclusion of a "notwithstanding clause" in subsection 5 (2) of the By-Law has results that may not have been intended by Convocation.

With respect to paragraphs 1 to 3 and paragraphs 5 to 7 of subsection 5 (1), as currently worded, the "notwithstanding clause" has no effect. None of these paragraphs includes a reference to work as a paralegal, legal secretary or law clerk. Arguably, the "notwithstanding clause" might eliminate an activity contained in paragraph 4 of subsection 5 (1), namely, work as judge's law clerk, which Convocation had previously decided should automatically result in a member making substantial use of legal skills on a regular basis. As well, the "notwithstanding clause" would prevent Convocation from, in the future, listing in paragraphs 1 to 7 of subsection 5 (1) any new activities that arguably might amount to work as a paralegal, legal secretary or law clerk because the "notwithstanding clause" would automatically eliminate them. Finally, the "notwithstanding clause" causes confusion as to how paragraph 9 of subsection 5 (1), which is subject to subsection 5 (2), should be interpreted.

Paragraph 9 of subsection 5 (1) and the original version of subsection 5 (2) were drafted in accordance with the legislative drafting conventions relied on by the Office of Legislative Counsel in Ontario. In respect of derogations and restrictions, the drafting conventions provide as follows:

27. (1) Derogations and restrictions (“despite” and “subject to”) should be used sparingly and only if there is an inconsistency, to make it clear which provision is meant to prevail.

(2) If one provision is meant to prevail over another, it is sufficient to say that the first applies despite the second, or that the second is subject to the first. The two devices should not be used simultaneously.

(3) “Notwithstanding” should not be used. Instead, use “despite” (or, in some contexts, “although” or “even though”).

In the draft version of the By-Law, paragraph 8 (as well as paragraph 9) of subsection 5 (1) should have been made subject to the subsection 5 (2). To deal with this oversight, and to reverse what appear to be unintended results arising from the inclusion of a “notwithstanding clause” in subsection 5 (2), it is suggested that By-Law 28 be amended as follows:

1. Paragraph 8 of subsection 5 (1) be amended by add “subject to subsection (2)” at the beginning.
2. Subsection 5 (2) be amended by deleting “notwithstanding subsection (1)” at the beginning.

Alternatively, if there is a strong wish to keep the “notwithstanding clause” in subsection 5 (2), then it is suggested that By-Law 28 be amended as follows:

1. Paragraph 9 of subsection 5 (1) be amended by deleting “subject to subsection (2)” at the beginning.
2. Subsection 5 (2) be amended by deleting “notwithstanding subsection (1)” at the beginning and substituting “despite paragraphs 8 and 9 of subsection (1)”.

A.E.S.

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

- (1) Interim Information Report by the Working Group on County Law Libraries prepared by Susan Elliott, Chair. (Appendix 3 - pages 28 - 36)

It was moved by Ms. Cronk, seconded by Mr. Cherniak that the following amendments be approved:

Page 5, paragraph 8. of the Report

“(a) the original definition of “government” be put back into the by-law.

(b) that paragraph 5 of subsection 5(1) be amended to read as follows:

“Service as a member of the parliament of Canada or of the legislature of any province or territory of Canada”; and

(c) paragraph 8 of subsection 5(1) be amended by adding "subject to subsection (2)" at the beginning."

Carried

It was moved by Ms. Cronk, seconded by Mr. Cherniak that the following amendment be approved:

Page 5, paragraph 8. of the Report

"(d) that subsection 5(2) be amended by deleting "notwithstanding subsection (1)" at the beginning."

Carried

It was moved by Ms. Cronk, seconded by Mr. Marrocco that any amendments to By-law 28 made by Convocation at the October 1999 Convocation that result in a change to the deemed categories from those in the 1994 policy be done on a going forward basis, not retroactively.

Carried

The Treasurer thanked Mr. Krishna, the Finance & Audit Committee members and staff for the work they did on the Budget.

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

CONVOCATION RECONVENED AT 1:45 P.M.

PRESENT:

The Treasurer, Aaron, Banack, Bindman, Bobesich, Boyd, Carey, Chahbar, Cherniak, Coffey, Crowe, Curtis, Diamond, E. Ducharme, Feinstein, Furlong, Gottlieb, Hunter, Krishna, Laskin, Lawrence, MacKenzie, Marrocco, Millar, Mulligan, Porter, Potter, Ross, Simpson, Swaye, White, Wilson and Wright.

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The Treasurer on behalf of Convocation extended sympathy to the Secretary, Richard Tinsley and his family on the loss of his father.

The Treasurer noted that Mr. Tinsley has been with the Law Society for 20 years and has given a great deal to the legal profession.

STATUS REPORT OF THE MULTI-DISCIPLINARY PRACTICE TASK FORCE
November 26th, 1999 Report to Convocation

Mr. Cherniak presented a status report of the Multi-Disciplinary Practice Task Force on the work that had been done to date.

Report to Convocation
November 26, 1999¹

Status Report of the
Multi-Disciplinary Practice Task Force

Purpose of Report: Information and Response

Prepared by the
Multi-Disciplinary Practice Task Force

INTRODUCTION

1. The Multi-Disciplinary Practice Task Force, in keeping with the mandate assigned to it by Convocation in June 1999², has commenced its study of the provision of legal services to clients through law practices affiliated with professional services or accounting firms. The affiliated firm structure is one form of multi-discipline practice ("MDP"), broadly defined as a business arrangement in which individuals with different professional or service qualifications combine their skills, sometimes to the extent of practising together, to provide advice and counsel to the consumers of these services.
2. The Task Force, in examining issues that the affiliated law firm structure may create for the practice of law, is aiming in particular to isolate the key regulatory issues and, if necessary, design an appropriate regulatory scheme within which the affiliated firm may operate.

¹Originally prepared for October 29, 1999 Convocation

²Convocation authorized "the striking of a committee to deal with the issue of [an affiliated] law firm model, to study, amongst other things, the questions of control, trading style, management, conflicts of interest and related matters as recommended".

3. This report provides Convocation with information on the status of the Task Force's work and includes an invitation to members of Convocation to suggest additional initiatives in the information-gathering phase of the Task Force's study.

SUMMARY OF THE WORK OF THE TASK FORCE

4. The members of the Task Force³ have met on five occasions to date, and in the course of those meetings have undertaken the following:

- a briefing on the previous MDP study completed by the Law Society, which resulted in the by-law on multi-discipline practices adopted by Convocation in April 1999 (By-Law 25);
- review of extensive background information on MDPs, with a particular focus on studies undertaken in various jurisdictions and by various legal organizations, and information in those studies relevant to the issue of the affiliated law firm;
- ongoing review of current literature, reports (including press reports) and academic treatments of the subject;
- monitoring of current initiatives or studies undertaken by other organizations relating to the subject of MDPs and in particular the affiliated law firm;
- review of developments related to affiliated law firms in Ontario, Canada and other jurisdictions;
- publication of a call for input to the profession in the *Ontario Reports* and on the Society's website, together with notice of the availability of a background paper on the affiliated law firm structure; a number of copies of the paper have been sent to members in response to their requests; to date, one response has been received to the call for input; the notice appears at Appendix 1;
- arranging seven consultation sessions with members of the profession to obtain input on issues relating to the affiliated law firm structure for the practice of law; these sessions in small group formats were held on October 25 (London), October 27 (Ottawa) and November 2 (Toronto); material for use at the sessions, adapted from the above-noted background paper, is attached at Appendix 2;
- contact with the "Big 5" chartered accounting/professional services firms in Toronto, with a view to meeting with representatives of the firms to discuss the issue of the affiliated law firm structure; meetings are currently being arranged with these representatives for dates in December or January, 2000;
- among the "Big 5", arranging a more focussed meeting with representatives of Ernst & Young and its affiliated law practice, Donahue & Partners, given that this firm is the only current example of an affiliated law practice in Ontario;
- a decision to arrange meetings with consumers of legal services that may be offered through affiliated firms, including corporate or in-house counsel and representatives from small business organizations, to obtain input from their perspectives;
- arranging a meeting with Thomas Heintzman and Simon Potter of the Canadian Bar Association committee examining MDPs, to exchange information and inform them on behalf of their committee on the Society's initiative in the area of affiliated law firms;
- arranging a meeting with the chair of the Ontario Securities Commission, David A. Brown Q.C., to obtain a perspective from the securities regulator on affiliated law firm developments;
- arranging a meeting with businessman Derek Watchorn, working in London, England with a large real estate development company, who has had experience in dealing with lawyers in Europe and has indicated a willingness to share his perspective on MDP developments there.

³Earl Cherniak (chair), Larry Banack, Kim Carpenter-Gunn, George Hunter, Niels Ortvad and David Ward.

5. The Task Force will continue to identify additional sources of input to the study, but at this stage also wishes to engage in discussion with members of Convocation for the purpose of obtaining their ideas for the information-gathering phase of the study.
6. To this end, as a means of assisting the Task Force in its efforts to obtain all relevant information prior to moving to a more focussed evaluation stage, the Task Force invites members of Convocation to suggest ways, including suggestions on process, to obtain information. Such suggestions may include identification of individuals or groups that may be in a position to contribute knowledge or experience relevant to the mandate of the Task Force, or a particular viewpoint on the subject. The Task Force believes that such input will contribute to the scope of the study and permit a broad range of opinion to be considered.
7. Accordingly, the Task Force encourages benchers to contact the chair, Earl Cherniak, with any suggestions, for review by the Task Force.

APPENDIX 1

Multi-Disciplinary Practice Task Force

Notice to the Profession

Call for Input

In June 1999, Convocation struck a Task Force to examine issues relating to the affiliation of a law firm with a professional services or accounting firm, an arrangement sometimes referred to as a "captive" law firm. This study follows the implementation of a model for the partnering or association of lawyers and non-lawyers in a multi-discipline practice.

The Task Force is focussing on the regulatory issues relevant to this practice arrangement, including questions of control, trading style, management of conflicts of interest and confidentiality.

The Task Force believes that a key element of its study is to hear what lawyers have to say about the affiliated structure as a means for delivering legal services. To that end, the Task Force is inviting comment from the profession on the pros and cons of this structure and ethical and professional issues that may arise.

A background paper is available from the Law Society, either through the website at www.lsuc.on.ca/services/services_mdppage_en.shtml or by calling either 947-3300 in Toronto or toll-free 1-800-668-7380, and asking for extension 4042 to leave a message with your request.

The date for delivery of written submissions to the Law Society has been extended from October 15, 1999 to Friday, November 19, 1999. Submissions may be faxed to the Law Society at (416) 947-7623, e-mailed to jvarro@lsuc.on.ca or sent to the following address:

Multi-Disciplinary Practice Task Force
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Attention: Jim Varro

For more information about the study, please contact Jim Varro, Secretary to the Task Force, at the Law Society at (416)947-3434.

APPENDIX 2

Multi-Disciplinary Practice Task Force

CONSULTATION SESSION INFORMATION ON THE AFFILIATED OR "CAPTIVE" LAW FIRM

Introduction

The Multi-Disciplinary Practice Task Force is studying the provision of legal services to the public through law practices affiliated with professional service or accounting firms. These law practices have sometimes been called "captive" law firms because of the close relationship to the professional services entity with which they are affiliated. Although the term "captive" law firm has gained some measure of common usage, for the purposes of this paper, the term "affiliated firm" will be used. The affiliated firm structure is one form of multi-discipline practice ("MDP"), broadly defined as a business arrangement in which individuals with different professional or service qualifications combine their skills, sometimes to the extent of practising together, to provide advice and counsel to the consumers of these services.

The Task Force, in examining issues that the affiliated law firm structure may create for the practice of law, is aiming in particular to isolate the key regulatory issues and, if necessary, design an appropriate regulatory scheme within which the affiliated firm may operate. This mandate arose from Convocation's consideration of an earlier report on MDPs adopted in September 1998. In that report, the affiliated firm structure was noted but not explored in detail. In Convocation's view, the structure raised issues discrete from the study of an integrated partnership model, and it authorized "the striking of a committee to deal with the issue of [an affiliated] law firm model, to study, amongst other things, the questions of control, trading style, management, conflicts of interest and related matters as recommended".⁴

The Society has noted other studies which have touched on affiliated law firms. In August 1999, the American Bar Association ("ABA") at its annual meeting in Atlanta considered a report from its Commission on Multidisciplinary Practice. The Commission proposed a model, which would permit an integrated partnership, in a series of recommendations which began with a statement that the core values of the legal profession should be maintained but that the governing rules "should not permit existing rules to unnecessarily inhibit the development of new structures for the more effective delivery of services and better public access to the legal system"⁵. The Commission's Reporter's Notes make it clear that the affiliated law firm model would be included within the definition of multidisciplinary practice proposed by the Commission as "being either an association that includes lawyers and nonlawyers and holds itself out to the public as providing legal services or an arrangement by which a law firm joins with one or more other professional firms to provide services, and there is a direct or indirect sharing of profits as part of the arrangement."⁶ The ABA after debating the Commission's proposals decided that no change should be made the rules to permit

⁴Transcript of Convocation, September 25, 1998, page 218.

⁵From Recommendation 1, "American Bar Association Commission on Multidisciplinary Practice Report to the House of Delegates", June 1999.

⁶Reporter's Notes, Commission on Multidisciplinary Practice, page 3.

multidisciplinary practice unless further study shows that such changes are in the public interest, without compromising lawyers' independence and loyalty to clients.

A report presented to the Canadian Bar Association ("CBA") at its annual meeting in August 1999 recommended, *inter alia*, that "there be no distinction drawn between MDPs involving "practices", such as Captive Law Firms (CLFs) and fully integrated partnerships". It also recommended that "there be no restrictions on the kinds of services provided by MDPs" and "there be no requirement of control of MDPs by lawyers".⁷ These recommendations are scheduled for policy debate at the CBA's mid-winter meeting next February.

The Federation of Law Societies has also completed a study on MDPs, and reported its findings to its annual meeting in August 1999. While the Federation's study touched on the issue of the affiliated law firm, the broad recommendations did not specifically address the issues arising from this form of multi-discipline practice.

The Affiliated Law Firm

The affiliated law firm in the context of MDPs is generally understood to be a law firm closely affiliated with another professional services entity, such as an accounting firm. The firms may, to a certain extent, share physical office space and information systems and equipment, and the associated costs. It is understood that the practices of the law firm and the accounting firm, however, are not integrated, and there is said to be no fee sharing.

The only example to date in Canada is Donahue & Partners, affiliated with Ernst & Young. Established in 1996, the Toronto firm has grown to almost 40 lawyers and plans to continue its expansion. It also has an office in Calgary, and plans to open offices in Vancouver and Montreal soon. Other large professional services firms in Canada have been studying similar affiliated law practice arrangements.

There has been significant development in Europe, England and New South Wales with this structure, with some variation in the level of integration of the firms. As Kent Roach and Edward Iacobucci noted in a paper prepared for the Law Society's previous MDP study,

By far the greatest growth in captive firms has been in London, England. Arthur Andersen affiliated itself with a start-up law firm, Garret & Co. The law firm, which is a separate entity from Andersen, but is associated with them, went from nothing in 1993 to a firm of 145 solicitors in five offices across England in only 3 years. Price Waterhouse is affiliated with the law firm Arnheim & Co. and Coopers and Lybrand helped establish Tite and Lewis in 1997. As an example of the importance of the relationships between the law and accounting firms, Arnheim & Co. earns 30% of its fees from referrals from Price Waterhouse and believes that this figure will increase. Ernst and Young has signalled its intention also to establish an association with a law firm. Significant integration between lawyers and accountants has occurred in the United Kingdom even without the adoption of a regulatory regime specifically designed for and permitting MDP's.

...

⁷ From "Striking a Balance - The Report of the International Practice of Law Committee on Multi-Disciplinary Practices and the Legal Profession", Conclusions and recommendations, p. 37

The largest law firm in France, Fidal, is part of KPMG. In Spain, a top law firm, J&A Garrigues, merged with Arthur Andersen's pre-existing law firm to form the largest firm in Spain, J&A Garrigues, Andersen Y Cia.⁸

Issues that the Affiliated Firm Structure Raises for the Profession

In the same paper noted above, Roach and Iacobucci discussed the affiliated firm as one option in the range of multi-discipline practice structures. Their view was that the affiliated firm may address some of the key regulatory concerns that are created, for example, by a fully integrated multi-disciplinary partnership of lawyers and other service providers, but would not solve all the issues arising from multi-discipline practice:

A case can be made that captive firms minimize the problems associated with confidentiality and loss of solicitor client privilege. Robert Brown of Price Waterhouse, for example, has observed that despite a good deal of managerial and administrative integration that captive law firms "usually devote special efforts to preserving client confidentiality - even from the affiliated accounting organization - and in meeting other professional requirements." A lawyer in a captive firm may be more sensitive to the danger that solicitor client privilege will be lost by the exchange of information with affiliated professionals in a separate firm than a lawyer who works in an integrated team under the same management with those other professionals. ... Similarly, the fact that under present rules captive firms cannot generally bear the name of their affiliated accounting firm may also help prevent client confusion about when they enjoy the attributes of a solicitor client relationship in their dealings with various arms of the larger entity. The actual effects of the separate firm structure is ultimately an empirical question. It is possible that clients do not perceive any real differences between dealing with lawyers in a captive firm and others in the affiliated organization, but is also possible that the separate law firm helps demarcate the boundaries of the solicitor client relationship.

Captive law firms might also help contain conflict of interest problems and minimize the situations where lawyers and other professionals will have competing duties by, for example, keeping audit and other reliance services provided by accountants separate from the advocacy and confidentiality duties of lawyers representing clients being audited. ...

Captive law firms, however, do not solve all conflict of interest problems. The White Paper suggests that law firms and affiliated organizations should be treated as one organization for the purpose of determining conflicts and that the law firm because of its experience with conflicts and access to confidential information should determine when both it and the affiliated organization should decline work because of a conflict. This approach may reflect the fact that the authors of the White Paper generally had experience with multidisciplinary alliances that were dominated by law firms. It is not clear that smaller captive law firms affiliated with larger accounting or actuarial firms would be able to determine conflicts of interest for the larger organization. At a minimum, a captive firm must be required to inform clients of its affiliations. The independence of legal advice may also be adversely affected by the captive firm's relation with its affiliated organization. Again, disclosure of the captive firm's interest in the largest organization would allow clients to evaluate the captive firm's legal advice and attempts at steering.

...

⁸Kent Roach and Edward Iacobucci, "Multi-Disciplinary Practices and Partnerships: Policy Options", prepared for the Futures Task Force Working Group on Multi-Discipline Partnerships, September, 1998, p. 10.

A White Paper prepared by American lawyers with experience with affiliations between law firms and organizations of non-lawyers while generally supportive of greater integration in multi-disciplinary practice, nevertheless acknowledged the value of keeping law firms separate and distinct. Its authors suggested several functions that could be served by separate organizational structures. "A separate entity may clarify and enhance the attorney-client relationship by helping the

client to distinguish between the role of the consultant and the role of the attorney." Clients would also know that lawyers' insurance, compensation and trust funds obligations apply to the work done by the captive firm, but not the affiliated organization. Captive firms pose some disadvantages. The present rules preclude direct sharing of profits and impose transaction costs by not allowing closer or seamless integration between professional service providers. More importantly from a regulatory perspective, is the concern that captive firms are an expensive and indirect means to circumvent the rules. ...⁹

In its discussions to date, the Task Force identified the following to be among those issues which would require consideration:

- marketing and advertising issues, including name association
- independence of lawyers in the affiliated firm
- ownership/control issues, including financial arrangements between the practices
- conflicts of interest, including the manner in which they would be identified by both firms
- confidentiality of client information
- advice to clients on the nature of the affiliation and related disclosure questions
- choice of counsel issues
- consideration of the public interest in allowing clients to purchase legal services where they wish at a particular cost, in contrast to the historical monopoly on the provision of legal services exercised by the legal profession.

In a broader sense, the affiliated law firm structure may raise additional issues for the profession, including:

- whether there is a danger that legal and professional expertise will be concentrated too narrowly, for example, in larger firms for sophisticated clients, at the expense of decreased access for the "person on the street";
- insurance issues;
- whether such arrangements will impact on how lawyers prepare themselves for practice, and the pre-and post-call education that is undertaken as a matter of qualifying and updating knowledge for legal practice;
- the impact on lawyers, depending on the level of affiliation between a professional services firm providing audit services and the law practice, of situations where the independence of the auditor, because of the affiliation, may be compromised;
- the impact on the administration of justice and the importance of a self-regulating independent bar.

⁹*Ibid* pp 49-52.

Questions for Discussion

As indicated in the invitation to this session from the Task Force's chair, the Law Society believes that a key element of its study is to hear what lawyers have to say about the affiliated firm as a structure for the delivery of legal services. The following questions are intended to assist you in focussing on the issues to be discussed at the session, and you are invited to discuss your responses to these questions, or others that may flow from them, with members of the Task Force when you attend the session. While the questions are broadly stated, you are encouraged to address them from your own practice or professional perspective, and how the issues may impact on you personally as a lawyer and member of the business community.

1. Is the affiliated law firm structure filling a gap in the range of structures that exist for the delivery of legal services? In other words, is there a need identified within the profession or by users of legal services for delivery of legal services through this type of structure?
2. In the context of MDPs, significance is given to the global presence and massive resources of the large professional services firms (formerly known as chartered accounting firms). What would be the attraction for lawyers in joining law firms affiliated with large professional services firms?
3. Some observers have said that organizing affiliated law firms is another way for professional services firms to expand their range of services and continue their diversification. They have also said that this could be part of a larger effort by the chartered accounting profession and its related practices to make incursions into the field(s) of expertise traditionally occupied by lawyers. Against these observations,
 - a) is the affiliated structure a threat to the independence of the lawyers in the affiliated law firm?
 - b) Does the answer depend on:
 - i) the degree of control exercised by the professional services firm,
 - ii) the level of physical integration, or
 - iii) the extent of financial relationships between the firms,or does the mere fact of affiliation create an issue for independence?
 - c) Would your answer be different if the Law Society's rules on firms names permitted a law firm, for example, to call itself "Ernst & Young Law", as permitted in New South Wales, Australia?
4.
 - a) Does the affiliated structure raise particular concerns with respect to, for example, confidentiality, conflicts of interest or other matters?
 - b) Are these concerns affected by the level of integration between the two firms?
5. Do you think that the affiliated law firm structure will enhance the availability and quality of legal services for the public? How?
6.
 - a) Is this structure largely geared to a big firm, corporate/commercial law practice?
 - b) Are there situations where smaller firms and other practice areas could organize to mutual benefit in the same way? How?
7. From your understanding of the affiliated law firm structure,
 - a) what do you see as the primary benefit to the practice of law?
 - i) what do you see as the primary drawback?

- 8. What other issues may impact on you as a lawyer and businessperson as a result of the development of the affiliated law firm?

October 1999

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE
November 26th, 1999 Report to Convocation

Mr. MacKenzie presented proposed amendments to By-law 14, By-law 17 and By-law 25 for approval by Convocation.

Professional Regulation Committee
November 11, 1999

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on November 11, 1999. In attendance were:

Gavin MacKenzie (Chair)

Larry Banack (Vice-Chairs)
Niels Ortved

Gary Gottlieb
Julian Porter
Robert Topp

Staff: Janet Brooks, Lesley Cameron, Margot Devlin, Vivian Kanargelidis, Richard Tinsley, Jim Varro, and Jim Yakimovich.

2. This report contains the Committee’s

policy reports on:

- professional liability insurance issues respecting non-lawyers under By-Law 25 (Multi-Discipline Practices);
- amendments to By-Laws 14 and 17; and

information reports on:

- the *pro bono* duty counsel program at hearings;
- audit cost recoveries.

I. POLICY

PROFESSIONAL LIABILITY INSURANCE ISSUES RESPECTING NON-LAWYERS UNDER BY-LAW 25 ON MULTI-DISCIPLINE PRACTICES ¹

A. BACKGROUND AND NATURE OF THE ISSUE

3. On May 28, 1999, Convocation approved certain implementation proposals with respect to matters under By-Law 25 on Multi-Discipline Practices (copy attached at Appendix 1), including the amount of insurance required to be carried for non-lawyer partners pursuant to s. 19 of the by-law.² At that time, Convocation agreed that the insurance should be equal to that which lawyer partners in the multi-discipline partnership ("MDP") carry, including any excess insurance. Convocation also directed that consideration should be given to the question of who provides the insurance coverage for non-lawyers, and in particular whether the Lawyers Professional Indemnity Company ("LPIC") should be the sole provider of that coverage. In these respects, Convocation directed that LPIC be consulted.
4. In meetings between the Law Society staff and LPIC after May Convocation, these and other issues relevant to non-lawyer insurance coverage under By-Law 25 were discussed. The results of these meetings were reported to the September and October 1999 Committee meetings, which included at the October 1999 meeting the participation of Malcolm Heins, president of LPIC.
5. This report provides the Committee's proposals on the issues of:
 - LPIC as the sole insurer of non-lawyers in MDPs, and
 - the provision of excess insurance coverage beyond coverage provided through LPIC's standard policy coverage for lawyers.

B. LPIC AS THE SOLE INSURER OF NON-LAWYER MDP PARTNERS

6. In the Law Society's discussions with LPIC which were later report to and discussed at Committee, a number of reasons were provided to support LPIC assuming the role as the sole insurer for non-lawyer partners in an MDP, at least insofar as the primary level of coverage is concerned. Each of these reasons is set out below, with explanatory comments.

Potential for Conflict Between Insurance Providers

7. If LPIC were not mandated as the sole insurer of non-lawyers, a significant conflict could develop in respect of which policy - that of the lawyer or that of the non-lawyer - governs in the event that the liability of a non-lawyer partner is in issue.

¹This report was originally contained in the Committee's report from its October 13 meeting to October 29, 1999 Convocation.

²Under section 19 of the by-law, lawyers in partnership with non-lawyers are required to ensure that insurance is in place for the non-lawyer partner(s). It is an obligation on the lawyer, not the non-lawyer, as the Law Society has no jurisdiction over non-lawyers.

8. For example, if a policy were purchased in the marketplace by the MDP lawyers for the non-lawyers, it is possible that that policy may consider the work done by the non-lawyer to be "legal services", and exempt under the non-lawyer's policy. Because the MDP under the by-law is a member's practice of law with non-lawyer services supporting the practice, this may not be a completely unexpected interpretation of the services in the context of the non-lawyer policy. If this occurred, LPIC could find itself responsible for the coverage through the lawyers in the firm, even though no premium had been paid to LPIC for that particular individual's potential liability in connection with the law practice. If the lawyers are not assessed for sufficient risk, the issue becomes a question of adequately funding the insurer for prospective coverage.
9. With LPIC as the sole insurer, the potential for disputes between insurers, as well as policing the adequacy of non-lawyer coverage and attempting to ensure uniformity in coverage, would be avoided, or at least minimized.

Vicarious Liability of Lawyers

10. To the extent that MDPs are formed under the by-law, lawyers are effectively insuring non-lawyers. Because the MDP under the by-law is the member's practice of law with non-lawyer services also provided, lawyers may be vicariously liable for all actions of a non-lawyer partner who, in the language of the by-law, provides a service "that supports or supplements the practice of law."
11. Accordingly, there may be little utility in assessing the risks of non-lawyer partners for the purpose of their insurance coverage as anything other than lawyers, an exercise that LPIC is prepared to undertake and with which it has considerable experience.

LPIC's Ability to Insure Non-Lawyers

12. LPIC is satisfied that it has the ability, as a matter of jurisdiction, to insure non-lawyer partners in an MDP.
13. The Committee relied on Malcolm Heins' explanation of LPIC's jurisdiction, based on LPIC's corporate charter, its license to sell insurance products, the *Corporations Act* and the *Law Society Act*. In particular, the Committee discussed the Law Society's authority, in light of subsection 5(4)³, to hold shares in a company providing professional liability insurance to not only members of the Society but non-members.

³Subsection 5(4) reads: "The Society may own shares of or hold a membership interest in an insurance corporation incorporated for the purpose of providing professional liability insurance to members and to persons qualified to practise law outside Ontario in Canada."

14. The *Law Society Act* incorporates the provisions of sections 23 and 274 of the *Corporations Act*⁴. The effect of these statutory provisions is to permit the Law Society to hold shares in a company with objects similar or a purpose ancillary to the Law Society's objects or purposes.
15. LPIC is of the view that providing insurance to non-members in MDPs, given the scheme in By-Law 25, would meet this ancillary purpose test. The purpose of the by-law is to permit lawyers and non-lawyers to provide services in a law practice. LPIC is engaged in the business of insurance, and from the Law Society's perspective, because the insurance to non-members would be provided in the context of a law practice, the Law Society in having LPIC provide the coverage would not be stepping outside the boundaries of the ancillary purpose test.
16. Non-lawyer partners would be assessed in the same manner that lawyer partners are assessed for risk, and would be provided with the same coverage as lawyers. Currently, this is \$1,000,000 per occurrence, \$2,000,000 in the aggregate. This would be the extent of LPIC's exposure on any claims brought as a result of the error or omission of a non-lawyer partner in an MDP.
17. In summary, the Committee agreed that for the above reasons, LPIC should be designated as the sole insurer for non-lawyer partners in MDPs, insofar as the primary level of coverage is concerned.
18. In articulating the member's obligation under section 19 of By-Law 25 to maintain insurance for non-lawyers through LPIC, as proposed, reference was made to By-Law 16 on Professional Liability Insurance Levies (attached at Appendix 2). The proposal to make LPIC the sole insurer of non-lawyers in an MDP in paragraph 24 is being framed so as to incorporate the obligation of lawyers under By-Law 16, which requires the payment of insurance premium levies by members for coverage under the Society's insurance plan. The levy is paid for coverage only by LPIC as the insurer of the Law Society's insurance plan. In the same way, the payment of a premium through a member under the scheme in By-Law 16 for non-lawyer coverage would have only LPIC providing coverage for non-lawyer partners.

⁴The relevant part of section 23(1) reads as follows:

s. 23(1) A company possesses, as incidental and ancillary to the objects set out in the letters patent or supplementary letters patent, power,

...

(i) to take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as to benefit the company;

...

(v) to do all such other things as are incidental or conducive to the attainment of the above objects and of the objects set out in the letters patent and supplementary letters patent.

Section 274 reads:

A corporation, unless otherwise expressly provided in the Act or instrument creating it, has and shall be deemed to have had from its creation the capacity of a natural person and may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights.

C. EXCESS COVERAGE

19. As noted above, the amount of insurance set by Convocation on May 28, 1999 was the LPIC level and any excess the lawyer/law firm carried.
20. In the discussions with LPIC after May 28 Convocation, it was noted that on many excess policies, which LPIC and other insurers provide, it is the firm that is named, although some list the partners covered.
21. The primary issue for LPIC with respect to excess insurance is that although LPIC may provide such coverage, as a matter policy, LPIC has limited its focus on excess insurance to small firms (10 lawyers or less). Further, the excess coverage is always the subject of a reinsurance contract with other carriers.
22. While the question of LPIC's exposure in the primary coverage for non-lawyers is no greater than that for lawyers, its exposure for excess insurance may be significant.
23. The Committee was of the view that if LPIC is to be the sole insurer for primary coverage, it should not be the sole insurer for excess coverage, and that lawyers should be free to purchase excess coverage for non-lawyers from the carrier of their choice. This would avoid any inferences that LPIC as the sole insurer is also providing the excess, because there will be situations where it will not.

D. DECISION FOR CONVOCATION

24. The Committee requests that Convocation approve the proposal that LPIC be the sole insurer of the primary level of coverage that members are required to maintain for non-lawyer partners in an MDP by directing that the lawyer partner or partners in an MDP partnership be required to purchase insurance for a non-lawyer partner or partners in accordance with By-Law 16.
25. If Convocation agrees with the proposed amendment, the following motion is provided to effect the amendment:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 25

[MULTI-DISCIPLINE PRACTICES]

made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON NOVEMBER 26, 1999

I MOVE that By-Law 25 [multi-discipline practices], made by Convocation on April 30, 1999 and amended by Convocation on May 28 and June 25, 1999, be amended as follows:

1. Section 19 of the By-Law is amended by adding "through the insurer of the Society's insurance plan" after "maintain".

AMENDMENTS TO BY-LAW 14 ON RESIGNATION ⁵

A. INTRODUCTION

26. The Committee considered a number of matters related to the process for resignations set out in By-Law 14, emanating from regulatory staff's review of current procedures and the existing requirements of By-Law 14 (attached at Appendix 3).
27. Certain amendments are being proposed by the Committee, dealing with the limitations on the Secretary's consideration of resignation applications, the issue of publication of the notice of intention to resign and certain procedural requirements.

B. NATURE OF THE PROPOSED AMENDMENTS

Subsection 1(2) - Statutory declaration or affidavit; Subsection 4(1) - Secretary to consider application; subsection 4(3) - Documents and explanations

28. Currently, the by-law in subsection 1(2) sets out six details which a member must address in an application for resignation, to be included in the applicant member's statutory declaration or affidavit or exhibits thereto.
29. The Committee, based on regulatory staff's consideration of the scope of the requirements, discussed whether it would be appropriate to add an additional documentary requirement for an authorization to permit the Lawyers Professional Indemnity Company (LPIC) to release information to the Society regarding the member's payments and filings.
30. The Committee was informed by regulatory staff that LPIC would not release any of the information indicated without the member's authorization as these are matters related to the contractual relationship between LPIC as insurer and the member as insured. With regard to payments and filings, as the issues of non-payment and failure to file can become Law Society regulatory issues that may result in suspension of the member, there is a need for the Society to be informed of these circumstances. The Society also has a financial interest in ensuring that the premiums owed by the member are paid, as LPIC collects the premium for the Law Society to be paid to fund the insurance program. The member's filing with LPIC will also determine whether or not certain volume surcharge levies are payable by the member, which will determine the total amount owed as an insurance levy by the member.
31. The Committee agreed that such an authorization should be required and accordingly, is proposing that subsection 4(3) of the by-law be amended to add the requirement for a member's authorization to obtain information from LPIC on payments and filings. Related amendments are proposed to subsection 4(1) with respect to the Secretary's acceptance of the member's application to resign as it relates to this information.

Subsection 2(1) - Publication of notice of intention to resign

32. Currently, the by-law in subsection 2(1) requires members intending to resign to publish notice thereof, in a prescribed form, in the Ontario Reports 30 days before the date the member applies to the Law Society to resign, and to provide proof of publication with the resignation application.
33. At the September 9, 1999 meeting, the Committee reviewed proposed amendments to this subsection to give the Secretary the authority to exempt a member from the requirement to publish a notice of intention to resign.

⁵This part of the report contains matters considered with respect to By-Law 14 at both the September 9 and November 11 Committee meetings.

The practice of exempting members from the requirement to publish a notice of intention to resign was part of the "voluntary" resignation process in place prior to February 1, 1999. It was inadvertently left out of the new "voluntary" resignation process.

34. The theory behind the publication was that other lawyers reading the notice would bring to the Society's attention issues relating to the member intending to resign that may require handling by the Society before the member resigned, as the Society has no jurisdiction over individuals once they have resigned their membership.
35. The Committee discussed whether the requirement was necessary. The Secretary's information to the Committee was that information, if received at all, was limited and had never affected a resignation application, and that for members who had been out of private practice for some time before applying to resign, the requirement was routinely waived.
36. At the November 11 meeting, however, regulatory staff, after considering the issue further, suggested that there were at least three reasons why the publication requirement should be maintained:
 - a. Unfulfilled obligations to other members
Publication of the notice would give other members the opportunity to consider whether they have any outstanding issues with a member, such as unfulfilled undertakings, and to take steps to ensure compliance while the Society has jurisdiction over the member. The Committee was advised that increasingly, the Lawyers Fund for Client Compensation is receiving claims relating to unregistered discharges of mortgages respecting former members;
 - b. Complaints and claims to the Lawyers Fund for Client Compensation
Publication of the notice would alert counsel for clients with potential claims of the availability of the Lawyers Fund for Client Compensation so that the Fund could be notified. If the claim is brought to the attention of the Society prior to resignation, the Society may choose to retain jurisdiction to investigate, and if appropriate, discipline the member. If the Society is notified of a claim after a resignation, the Society retains jurisdiction to pay the client, but the ability to investigate and the former member's incentive to co-operate in that investigation are significantly reduced.
 - c. Claims in negligence
Upon termination of membership in the Society, former members have insurance coverage of \$250,000.00 for a lifetime without purchasing excess insurance on an annual basis, as compared with members who have coverage of \$1 million per claim, and \$2 million in the aggregate per year. With the shift in insurance coverage to a "claims made" basis, the timing of the reporting of claims is crucial to clients. Publication of the notice would alert counsel for former clients who are contemplating a claim to take appropriate steps to ensure that the claim is reported. Additionally, if these claims are brought to the attention of the member prior to resignation, the member has an obligation to report.
37. The Committee acknowledged that the Society may still not receive meaningful information about a member who intends to resign because of the publication requirement, but felt that the importance of the issues discussed above outweighed any inconvenience to members occasioned by the publication requirement.
38. Accordingly, the Committee agreed that the subsection should be maintained but amended to include a discretion in the Secretary to exempt members from the publication requirement in appropriate circumstances. The addition of the authority to exempt requires consequential amendments to subsections 2 (1) and (3) and to subclause 4 (1) (a) (iv) of the by-law.

Subsection 4(2) - Secretary not to consider applications

39. Currently, the by-law in this subsection prohibits the Secretary from considering an application if the member is the subject of a proceeding under Part II of the *Law Society Act*. That part of the *Act* governs conduct, capacity and competence proceedings against a member, and includes the summary order provisions.
40. The by-law does not refer to audits, investigations, searches or seizures under the *Act*, nor does it refer to proceedings under section 33 of the *Law Society Act* as it existed prior to February 1, 1999, which includes discipline proceedings against a member.
41. The Committee at the request of the Discipline Department, was asked to consider amendments to the by-law to prohibit the Secretary from considering an application to resign from members who fall within these two additional categories, namely, members who are the subject of an audit, investigation, search or seizure under the *Act* or a party to a proceeding under section 33 of the *Act*, as that section before the *Law Society Amendment Act, 1998* came into force.
42. To ensure that the Society maintains its entire disciplinary jurisdiction over members who are seeking a resignation, the Committee agreed that the by-law should be amended to add the two additional circumstances described above to subsection 4(2) so that the scope of the Society's investigative, enforcement and prosecutorial activities is not compromised.⁶

Summary

43. The Committee proposes the above amendments to ensure that all relevant information that affects the Society's governance obligations with respect to a member may be sought and necessary issues addressed prior to the member's resignation.
44. The Committee at a future meeting will be considering whether a concise form of application should be prescribed under the by-law which would incorporate the requirements under the by-law, to assist members planning to resign.

C. DECISION FOR CONVOCATION

45. Convocation is asked to consider and approve the following amendments to By-Law 14 proposed by the Committee:
 - a. Amendments to add a requirement that the member provide an authorization to LPIC to release to the Law Society information respecting his or her payments and filings to LPIC (subsection 4(3)) and related amendments to the Secretary's acceptance of the application to resign in relation to this information (subsection 4(1));
 - b. An amendment to subsection 2(1), with necessary modifications to subsections 2 (1) and (3) and to subclause 4 (1) (a) (iv) of the by-law, to include a discretion on the part of the Secretary to exempt members from the publication requirement;
 - c. An amendment to subsection 4(2) to add the circumstances of audits, investigations, searches or seizures, and proceedings under s. 33 of the *Law Society Act* prior to February 1, 1999.

⁶The Professional Development & Competence Committee will be considering whether a similar amendment should be made to subsection 4(2) to prohibit the Secretary from considering a resignation application from a member who is the subject of a review under the *Act*.

46. The following is a form of motion detailing the above amendments for Convocation's consideration:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 14
[RESIGNATION]

made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON NOVEMBER 26, 1999

MOVED BY

SECONDED BY

THAT By-Law 14 [Resignation], made by Convocation on January 28, 1999 and amended by Convocation on May 28, 1999, be further amended as follows:

1. Clause 1 (2) (b) of the English version of the By-Law is amended by deleting "have" in the second line and substituting "has".
2. Subsection 2 (1) of the By-Law is amended by adding "Subject to subsection (1.1)" at the beginning.
3. Section 2 of the By-Law is amended by adding the following subsection:

Exemption from requirement to publish notice

(1.1) Upon the written application of the member, the Secretary may exempt the member from the requirement to publish a notice of intention to resign.

4. Subsection 2 (3) of the By-Law is amended by adding "Unless a member is exempted from the requirement to publish a notice of intention to resign" at the beginning.
5. Subclause 4 (1) (a) (iii) of the English version of the By-Law is amended by deleting "and" at the end.
6. Subclause 4 (1) (a) (iv) of the By-Law is deleted and the following substituted:
 - (iv) that the applicant has paid all insurance premium levies which he or she is required to pay and has filed all certificates, reports and other documents which he or she is required to file under any policy for indemnity for professional liability, and
 - (v) that the applicant if not exempted from the requirement to publish notice of intention to resign has complied with subsection 2 (1); or
7. Clause 4 (1) (b) of the By-Law is amended by adding "subject to subsection (1.1)" at the beginning.
8. Section 4 of the By-Law is amended by adding the following subsection:

Acceptance of application

(1.1) The Secretary may accept an application if he or she is not satisfied of the matter mentioned in subclause (1) (a) (iv) but is satisfied of the matters mentioned in subclauses (1) (a) (i), (ii), (iii) and (v).

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

Secretary not to consider application

- (2) The Secretary shall not consider an application made under subsection 1 (1) of this By-Law if the applicant is,
- (a) the subject of an audit, investigation, search or seizure by the Society;
 - (b) a party to a proceeding under Part II of the Act; or
 - (c) a party to a proceeding under section 33 of the Act as that section read before the day that the *Law Society Amendment Act, 1998* came into force.

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

Documents, explanations, releases, etc.

- (3) For the purposes of assisting the Secretary to consider the application, the applicant shall,
- (a) provide to the Secretary such documents and explanations as the Secretary may require; and
 - (b) provide to the insurer of the Society's insurance plan such releases, directions and consent as may be required to permit the insurer to make available to the Secretary information relating to the payment by the applicant of insurance premium levies and the filing by the applicant of any certificate, report or other document required under any policy for indemnity for professional liability.

AMENDMENTS TO BY-LAW 17 ON FILING REQUIREMENTS

A. NATURE OF THE ISSUE

47. The Committee is proposing an amendment to By-Law 17 to exempt members who retire and wind up their practices and do not continue to act as estate trustees or hold powers of attorney from the filing requirements in the by-law.

B. BACKGROUND AND THE EFFECT OF THE PROPOSED AMENDMENT

48. Currently, By-Law 17 (attached at Appendix 4) requires all members of the Society to make an annual filing "in respect of the member's practice of law and other related activities"⁷. This includes those members who are unable to practice law by reason of permanent disability or who have reached age 65 and are retired. These members may apply for exemption of payment of the annual fee under By-Law 15⁸.

⁷By-Law 17, subsection 2(1).

⁸Subsection 4(1) of By-Law 15 states:

- A member may apply to the Society for an exemption from payment of an annual fee if he or she,
- (a) is over sixty-five years of age and is permanently retired from the practice of law in Ontario; or
 - (b) is permanently disabled and, as a result, is unable to practise law.

49. Staff in the Forms Services department of the Society advised the Committee that these members question why they are subject to the filing requirement, given that they are no longer in active practice, hold no trust funds and do not otherwise carry on any activities that would necessarily attract the interest of the Society as a matter of annual reporting.
50. The proposal is that these members be exempt from the filing requirement, which as of October 1999 consists of one form, the Member's Annual Report, provided that these members do not continue to act as estate trustees or hold powers of attorney over client accounts. These circumstances, under the Law Society's current trust account reporting scheme, would require the member to report notwithstanding that no active practice of law is conducted.
51. The Committee agreed that the exemption is appropriate. The Committee also endorsed the suggestion of staff that each member who is exempt from the filing requirement in the by-law or who winds up a law practice and becomes exempt from filing as a retired member undertake to the Society to notify the Society if he or she returns to the active practice of law.

C. DECISION FOR CONVOCATION

52. Convocation is requested to consider and approve the amendment to By-Law 17 to exempt retired members as described in this report from the filing requirement in the by-law.
53. If Convocation agrees with the proposed amendment, a form of motion for the amendment will be prepared for Convocation's review at the January 28, 2000 meeting, together with a copy of the amended by-law.

II. INFORMATION

EXPANSION OF *PRO BONO* DUTY COUNSEL PROGRAM

54. As reported for information to Convocation in September, 1999, the Committee continues to review a possible expansion of the current *pro bono* duty counsel program run by the Advocates Society at conduct hearings. The Advocates Society agreed to consider whether it would operate an expanded program, which would essentially provide full counsel to members subject to Law Society conduct hearings and who, not having counsel for the matter, wished to have representation.
55. The Committee recently learned that the Advocates Society was prepared to operate the "full counsel" program, although details have not yet been finalized. The chair of the Committee will be communicating with Advocate Society representatives about the proposal, and plans to include in those discussions a member of the Society, William Trudell, who offered his own suggestions for an expanded duty counsel program.
56. The Committee will report on this matter to Convocation after the above discussions have taken place.

AUDIT COST RECOVERIES

57. In October 1999, Convocation adopted the Committee's report which, *inter alia*, included proposals for continuation of the spot and focussed audit programs and the consolidation of the annual reporting forms into one form, the Member's Annual Report. Part of the Committee's report on the audit program included provision for the recovery of audit costs in some circumstances, approved in principle by Convocation. Authority for such a recovery is found in the *Law Society Act*, in the by-law making powers in subsection 62(0.1).

58. At the Committee's November meeting, details of a scheme for the recovery of audit costs were discussed. The Committee plans to continue with its discussion with a view to preparing a draft by-law for Convocation's consideration in the early part of 2000.

APPENDIX 1

BY-LAW 25

Made: April 30, 1999

Amended: May 28, 1999 and June 25, 1999

MULTI-DISCIPLINE PRACTICES

Interpretation: "member"

1. (1) In this By-Law, "member" includes a partnership of members.

Interpretation: practice of law

- (2) For the purposes of this By-Law, the practice of law means the giving of any legal advice respecting the laws of Canada or of any province or territory of Canada or the provision of any legal services.

Prohibition against providing services of non-member

2. A member shall not, in connection with the member's practice of law, provide to a client the services of a person who is not a member except in accordance with this By-Law.

Permitted provision of services of non-member

3. A member may, in connection with the member's practice of law, provide to a client only the services of an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law.

Partnership, etc. with non-member

4. (1) Subject to subsection (2) and subsection 6 (1), a member may enter into a partnership or association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice law for the purpose of permitting the member to provide to clients the services of the individual.

Same

- (2) A member shall not enter into a partnership or an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law unless the following conditions are satisfied:

1. The individual is qualified to practise a profession, trade or occupation that supports or supplements the practice of law.
2. In the case of entering into a partnership with the individual, the individual is of good character.
3. The individual agrees with the member in writing that the member shall have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the partnership or association.
4. The individual agrees with the member in writing that, in partnership or association with the member, the individual will not practise his or her profession, trade or occupation except to provide services to clients of the partnership or association.

5. The individual agrees with the member in writing that, outside of his or her partnership or association with the member, the individual will practise his or her profession, trade or occupation independently of the partnership or association and from premises that are not used by the partnership or association for its business purposes.
6. The individual agrees with the member in writing that, in respect of the practice of his or her profession, trade or occupation in partnership or association with the member, the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.
7. In the case of entering into a partnership with the individual, the individual agrees with the member in writing to comply with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the partnership.

Interpretation: "effective control"

(3) For the purposes of subsection (2), the member has "effective control" over the individual's practise of his or her profession, trade or occupation if the member may, without the agreement of the individual, take any action necessary to ensure that the member complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Interpretation: "good character"

(4) For the purposes of subsection (2), the individual is of "good character" if there is a reasonable expectation, based on the individual's record of integrity and professionalism in the practice of his or her profession, trade or occupation and on the individual's reputation in the community, that the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Responsibility for actions of non-member

5. Despite any agreement between a member and an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall be responsible for ensuring that, in respect of the individual's practice of his or her profession, trade or occupation in partnership or association with the member,

- (a) the individual practises his or her profession, trade or occupation with the appropriate level of skill, judgement and competence; and
- (b) the individual complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Application by member forming partnership with non-member

6. (1) Before a member enters into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall apply to the Society for approval to enter into the partnership.

Application fee

(2) An application under subsection (1) shall be in Form 25A and shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Partnership agreement

7. At the time that a member makes an application under section 6, the member shall file with the Society a copy of so much of the agreement or agreements that will govern the member's partnership with the individual as may be required by the Society.

Consideration of application by Secretary

8. (1) The Secretary shall consider every application made under section 6, and the Secretary shall approve the member's entering into a partnership with the individual if the Secretary is satisfied that,

- (a) the conditions set out in subsection 4 (2) have been satisfied; and
- (b) the member has made arrangements that will enable the member to comply with sections 5, 14, 15, 16 and 19.

Requirements not met

(2) If the Secretary is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Secretary shall notify the member who may meet the requirement or appeal to the committee of benchers appointed under section 10 if the member believes that the requirement has been met.

Time for appeal

9. An appeal under subsection 8 (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that a requirement has not been met.

Committee of benchers

10. (1) Convocation shall appoint a committee of at least three benchers to consider appeals made under subsections 8 (2) and 17 (2).

Term of office

- (2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of appeal: quorum

11. Three benchers who are members of the committee appointed under section 10 constitute a quorum for the purposes of considering an appeal made under subsection 8 (2) or subsection 17 (2).

Procedure: application of rules of practice and procedure

12. (1) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2) as if the consideration of the appeal were the hearing of an application under section 27 of the Act.

Procedure: *SPPA*

(2) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2).

Decision of committee of benchers

13. (1) After considering an appeal made under subsection 8 (2), the committee appointed under section 10 shall,

- (a) if it determines that the requirement has been met, approve the member's entering into a partnership with the individual; or

- (b) if it determines that the requirement has not been met, notify the member that the requirement has not been met and that the member may not enter into a partnership with the individual.

Decisions final

- (2) The decision of the committee appointed under section 10 on an appeal made under subsection 8 (2) is final.

Filing requirements: partnerships

- 14. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form 25B

- (2) The report required under subsection (1) shall be in Form 25B.

Due dates

- (3) The report required under subsection (1) shall be submitted to the Society by January 31 of the year immediately following the full or part year in respect of which the member is submitting a report.

Changes in partnership

- 15. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall immediately notify the Secretary when,

- (a) the individual is expelled from the partnership;
- (b) the individual ceases or for any reason is unable to practise his or her profession, trade or occupation;
- (c) the term of the partnership has expired, if the partnership was entered into for a fixed term;
- (d) the partnership is dissolved under the *Partnerships Act*; or
- (e) any agreement that governs the partnership has been amended.

Dissolution of partnership

- (2) If an event mentioned in clause (1) (b), (c) or (e) occurs, the Secretary may require the member to dissolve the partnership.

Amendment of partnership agreement

- (3) At the time that the member notifies the Secretary under subsection (1) that an agreement that governs the partnership has been amended, the member shall file with the Secretary a copy of the amended agreement.

Dissolution of partnership: breach of By-Law

- 16. If a member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law breaches section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, the Secretary may require the member to dissolve the partnership.

Notice to member of requirement to dissolve partnership

- 17. (1) If the Secretary requires a member to dissolve a partnership under subsection 15 (2) or section 16, the Secretary shall so notify the member and, subject to subsection (2), the member shall dissolve the partnership.

Appeal

(2) If the Secretary requires a member to dissolve a partnership under section 16, the member may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 10 if the member believes that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19.

Time for appeal

(3) An appeal under subsection (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that the partnership is to be dissolved.

Procedure

(4) The rules of practice and procedure apply, with necessary modifications to the consideration by the committee appointed under section 10 of an appeal made under subsection (2) as if the consideration of the appeal were the hearing of an application under subsection 34 (1) of the Act.

Decision of committee of benchers

(5) After considering an appeal made under subsection (2), the committee appointed under section 10 shall,

- (a) if it determines that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, cancel the requirement to dissolve the partnership; or
- (b) if it determines that there has been a breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, take any of the following actions:
 - (i) Confirm the requirement to dissolve the partnership.
 - (ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.
 - (iii) Any other action that the committee considers appropriate.

Decisions final

(6) The decision of the committee appointed under section 10 on an appeal under made subsection (2) is final.

Stay

(7) The receipt by the Secretary of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

Association with non-member: multi-discipline practice.

18. (1) A member who, under subsection 4 (1), has entered into an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the association as a multi-discipline practice.

Partnership with non-member: multi-discipline practice or partnership

(2) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the partnership as a multi-discipline practice or multi-discipline partnership.

Insurance requirements: members

19. A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall maintain professional liability insurance coverage for the individual in an amount determined by Convocation from time to time.

Form 25A

Application to Enter into a Multi-Discipline Partnership

APPLICATION TO ENTER INTO A
MULTI-DISCIPLINE PARTNERSHIP

TO THE SOCIETY

The applicant named below applies (*or* The applicants named below apply) for approval to enter into a partnership with the individual (*or* individuals) named below.

1. INFORMATION ON APPLICANT(S)

Name: (*If the applicant is a partnership of members, specify the firm name and the name of each partner. If there are two or more applicants, specify the name of each applicant.*)

Address: (*Specify the address at which the applicant, or if there are two or more applicants, at which each applicant, practises law at the time of the application. If an applicant practises law at more than one place, specify the address of each place*)

Telephone number: (*If an applicant practises law at more than one place, specify the telephone number of each place.*)

Fax number(s): (*If an applicant practises law at more than one place, specify the fax number of each place.*)

Contact information: (*If the applicant is a partnership of members, or if there are two or more applicants, specify the name, address, telephone number and fax number of the partner, or applicant, with whom the Society should be speaking and corresponding in respect of the application.*)

Nature of practice of law: (*Specify the areas of law practised by the applicant or applicants and include the proportion of time devoted to each area of law.*)

2. INFORMATION ON INDIVIDUAL(S)

Name(s): (*If there are two or more individuals, specify the name of each individual.*)

Profession, trade or occupation to be practised by individual(s) in partnership with the applicant(s): (*Specify the profession, trade or occupation to be practised by each individual named.*)

Qualifications:

Academic background or learning experience which qualifies the individual to practise the profession, trade or occupation: (*Specify the academic background or learning experience separately for each individual named.*)

Number of years the individual has practised the profession, trade or occupation:

Membership of the individual in professional associations and details of membership:

(Provide the following information for each individual named.)

Current:

Name of each professional association to which the individual belongs at the time of the application:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which individual belongs at the time of the application:

Year in which the individual joined each professional association to which he or she belongs at the time of the application:

Is "good character" a requirement of membership in any professional association to which the individual belongs at the time of the application: *(Specify the professional associations to which the individual belongs at the time of the application where "good character" is a requirement of membership.)*

The individual's "standing" as a member of each professional association to which he or she belongs at the time of the application:

Disciplinary action taken against the individual by each association and the reasons for the disciplinary action:

Past:

Name of each professional association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which individual belonged in the past but to which the individual no longer belongs at the time of the application:

Period of time during which the individual was a member of each professional association to which he or she belonged in the past but to which he or she no longer belongs at the time of the application:

Reasons why the individual ceased to be a member of a professional association to which he or she belonged in the past but to which he or she no longer belongs at the time of the application:

Was "good character" a requirement of membership in any professional association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application: *(Specify the professional associations to which the individual belonged where "good character" is a requirement of membership.)*

Disciplinary action taken against the individual by each association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application, and the reasons for the disciplinary action:

Information on current practice of profession, trade or occupation:

Place of practice: *(For each individual, specify where the individual currently practises the profession, trade or occupation. Include the address, telephone number and fax number of the place.)*

Information on future practice of profession, trade or occupation:

Continuation of practice: *(For each individual, specify whether the individual will continue to practise the profession, trade or occupation outside of the proposed multi-discipline partnership.)*

Place of practice: *(For each individual, specify where the individual will practise the profession, trade or occupation outside the proposed multi-discipline partnership.)*

3. CERTIFICATE OF APPLICANT(S) AS TO GOOD CHARACTER OF INDIVIDUAL(S)

I (or WE) CERTIFY that, for the following reasons, *(name of individual(s))* is (or are) of good character:

1. ...

2. ...

Date:

(Signature of applicant(s))

4. INFORMATION ON PROPOSED MULTI-DISCIPLINE PARTNERSHIP

Name: *(Specify the firm name under which the proposed multi-discipline partnership will carry on business.)*

Address: *(Specify the address of the premises from which the proposed multi-discipline partnership will carry on business.)*

Telephone number: *(Specify the telephone number of the premises from which the proposed multi-discipline partnership will carry on business.)*

Fax number: *(Specify the fax number of the premises from which the proposed multi-discipline partnership will carry on business.)*

Type of services to be provided by individual(s): *(Provide a detailed description of the type of services to be provided by each individual in the proposed multi-discipline partnership.)*

Information on required agreements between applicant(s) and individual(s): *(Complete this section if the required agreements are not included in the partnership agreement(s).)*

Agreement that applicant(s) to have effective control over individual's practice of profession, trade or occupation: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that the applicant(s) will have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Agreement that individual will not practise profession, trade or occupation except to provide services to clients of proposed multi-discipline partnership: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, in partnership with the applicant(s), the individual will not practise his or her profession, trade or occupation except to provide services to clients of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Agreement that, outside proposed multi-discipline partnership, individual will practise profession, trade or occupation independently of proposed multi-discipline partnership: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, outside the proposed multi-discipline partnership, the individual will practise his or her profession, trade or occupation independently of the proposed multi-discipline partnership and from premises that are not used by the proposed multi-discipline partnership for its business purposes. Attach a copy of the written agreement.)*

Agreement to conform with Act, etc.: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, in respect of the practice of his or her profession, trade or occupation in partnership with the applicant(s), the individual will conform with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines. Attach a copy of the written agreement.)*

Agreement to be governed by Society's rules, policies and guidelines on conflicts of interest: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that the individual will be governed by the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the proposed multi-discipline partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Arrangements made by applicant(s) to comply with section 5: *(Specify the arrangements made by the applicant(s) to comply with section 5. If the applicant is a partnership of members, specify the names of the member partners who will be responsible for the partnership's compliance with section 5. If there are two or more applicants, specify the names of the applicants who will be responsible for the applicants' compliance with section 5.)*

Arrangements made by applicant(s) to comply with section 14: *(Specify the arrangements made by the applicant(s) to comply with section 14.)*

Arrangements made by applicant(s) to comply with section 15: *(Specify the arrangements made by the applicant(s) to comply with section 15.)*

Arrangements made by applicant(s) to comply with section 16: *(Specify the arrangements made by the applicant(s) to comply with section 16.)*

Arrangements made by applicant(s) to comply with section 19: *(Specify the arrangements made by the applicant(s) to comply with section 19.)*

I (or WE) CERTIFY that the information contained in this application is correct to the best of my (or our) knowledge.

Date:

(Signature of applicant(s))

Form 25B

Report on Multi-Discipline Partnership

REPORT ON MULTI-DISCIPLINE PARTNERSHIP

REPORT FOR THE YEAR (SPECIFY CALENDAR YEAR)
(OR REPORT FOR THE PERIOD (SPECIFY THE PERIOD TO BE COVERED
BY THE REPORT IF LESS THAN A FULL CALENDAR YEAR))

1. INFORMATION ON FIRM

Name: *(Specify the firm name under which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Address: *(Specify the address of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Telephone number: *(Specify the telephone number of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Fax number: *(Specify the fax number of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

In any written or verbal communications to persons outside the partnership, does the multi-discipline partnership refer to itself as:

A multi-discipline practice? *(Specify yes or no.)*

A multi-discipline partnership? *(Specify yes or no.)*

List of communications in which the multi-discipline partnership refers to itself as a multi-discipline practice:

List of communications in which the multi-discipline partnership refers to itself as a multi-discipline partnership:

2. INFORMATION ON PARTNERS WHO ARE MEMBERS

Number of partners who are members:

Names of partners who are members:

3. INFORMATION ON PARTNERS WHO ARE NOT MEMBERS

Number of partners who are not members:

Names of partners who are not members:

Profession, trade or occupation practised by partners who are not members:

Types of services provided by partners who are not members:

Qualifications of partners who are not members:

Participation in educational programs, professional training or other programs to improve professional competence: *(For each partner who is not a member, specify any educational programs, professional training or other programs to improve professional competence in which the partner participated during the year (or other period) in respect of which this report is being submitted.)*

Membership in professional associations and details of membership:

(Provide the following information for each partner who is not a member.)

Name of each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted:

Year in which the partner joined each professional association to which he or she belonged during the year (or other period) in respect of which this report is being submitted:

Is "good character" a requirement of membership in any professional association to which the individual belonged during the year (or other period) in respect of which this report is being submitted: *(Specify the professional associations to which the partner belonged during the year (or other period) in respect of which this report is being submitted where "good character" is a requirement of membership.)*

The partner's "standing" as a member of each professional association to which he or she belonged during the year (or other period) in respect of which this report is being submitted as at the end of the year (or other period):

Disciplinary action taken against the individual by each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted during the year (or other period), and the reasons for the disciplinary action:

Information on practice of profession, trade or occupation outside the multi-discipline partnership:

Names of partners who are not members who practise their profession, trade or occupation outside the multi-discipline partnership: *(Identify the partners who are not members who, during the year (or other period) in respect of which this report is being submitted, practised their profession, trade or occupation outside the multi-discipline partnership.)*

Types of services provided outside the multi-discipline partnership by partners who are not members: *(Specify separately for each partner who is not a member who practises his or her profession, trade or occupation outside the multi-discipline partnership the types of services the partner provides outside the multi-discipline partnership during the year (or other period) in respect of which this report is being submitted.)*

Place of practice: *(Specify separately for each partner who is not a member who practises his or her profession, trade or occupation outside the multi-discipline partnership, the place where the partner practised his or her profession, trade or occupation outside the multi-discipline partnership during the year (or other period) in respect of which this report is being submitted. Include the address, telephone number and fax number of the place.)*

4. INFORMATION ON COMPLIANCE WITH BY-LAW 25

Arrangements made to permit partners who are members to comply with section 5: *(Specify the arrangements in place during the year (or other period) in respect of which this report is being submitted. Specify the names of the member partners who were responsible for the member partners' compliance with section 5 during the year (or other period) in respect of which this report is being submitted.)*

Professional liability insurance coverage for partners who are not members:

(If the partners who are not members are not insured as one group, provide the following information separately for each partner who is not a member.)

Name of insurance company providing professional liability insurance coverage for partners who are not members:

Policy number:

(The following certification is to be completed by the partners who are members.)

I (or WE) CERTIFY that the information contained in this report is correct to the best of my (or our) knowledge.

Date:

(Signature of partner(s))

APPENDIX 2

BY-LAW 16

Made: January 28, 1999

Amended:

February 19, 1999

April 30, 1999

May 28, 1999

September 24, 1999

PROFESSIONAL LIABILITY INSURANCE LEVIES

Interpretation: "Society's insurance plan"

1. (1) In this By-Law, "Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its members.

Interpretation: engaging in practice of law

(2) In this By-Law, a person engages in the practice of law if he or she performs professional services for others in the capacity of a barrister or solicitor or if he or she gives legal advice to others.

Requirement to pay insurance premium levies

2. (1) Unless otherwise exempted, every member of the Society who is eligible for coverage under the Society's insurance plan and who engages in the practice of law during the course of any year shall pay insurance premium levies for that year in accordance with this By-Law.

Same

(2) A member who is required to pay any insurance premium levy shall pay the amount of the levy and any taxes that the Society is required to collect from a member in respect of the payment of the insurance premium levy.

Insurance premium levies

3. The insurance premium levies mentioned in section 2 shall consist of a base levy, an innocent party surcharge levy, a claims history surcharge levy and such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan.

Time for payment of insurance premium levies

4. (1) The base levy, the innocent party surcharge levy and the claims history surcharge levy are due and payable on January 1 of the year in which the coverage applies.

Same

(2) Such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan are due and payable on the dates specified by Convocation or the insurer of the Society's insurance plan.

Period of default

5. (1) For the purpose of subsection 46 (1) of the Act, the period of default for failure to pay an insurance premium levy is 120 days after the day on which payment of the levy is due.

Payment plan: deemed date of failure to pay

(2) Where the Society or the insurer of the Society's insurance plan arranges or permits a schedule for the payment of an insurance premium levy by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay the levy will be deemed to have occurred on January 1 of the year in which the coverage applies.

Reinstatement of rights and privileges

(3) If a member's rights and privileges have been suspended under subsection 46 (1) of the Act for failure to pay an insurance premium levy in a given year, for the purpose of subsection 46 (2) of the Act, the member shall pay an amount equal to the amount of the insurance premium levy which the member is required to pay in respect of that year and a reinstatement fee in an amount determined by Convocation from time to time.

Refund of unearned portion of insurance premium levy

6. Where a member, who has paid one or more of the base levy, innocent party surcharge levy and claims history surcharge levy, subsequently, during the course of the year for which the levy or levies were payable, dies, retires, ceases to be eligible for coverage or is exempted by the Society from the requirement to pay one or more of the levies, the unearned portion of the levy or levies shall be refunded on a pro rata basis, subject to a two month minimum.

Society's insurance fund

7. (1) The insurance premium levies paid by members shall be used for the Society's insurance fund, or to pay the required insurance premiums to the insurer of the Society's insurance plan, claims, group deductibles, adjusting costs, counsel and legal fees, administration costs and such other expenses reasonably incurred in connection with the Society's insurance plan.

Society's Insurance fund not used up at year-end

(2) If at the end of any year the insurance fund is not entirely used up, the surplus remaining shall be carried forward into the next year.

Eligibility for coverage

8. (1) Every member of the Society other than an honorary member or a student member is eligible for coverage under the Society's insurance plan provided that his or her rights and privileges as a member are not suspended.

Application for coverage

(2) A member who is eligible for coverage under the Society's insurance plan but who is not required under this By-Law to pay insurance premium levies may apply to the Society or to the insurer of the Society's insurance plan for coverage and, if granted coverage, shall pay the required levies in accordance with this By-Law.

Exemption from payment of insurance premium levies

9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:
1. Any member who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario.
 2. Any member who, during the course of the year for which a levy is payable,
 - i. will be resident in a Canadian jurisdiction other than Ontario,
 - ii. will engage in the practice of law in Ontario on an occasional basis only, and
 - iii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be at least equivalent to that required under the Society's insurance plan.
 3. Any member who, during the course of the year for which a levy is payable,
 - i. will be employed by a single employer,
 - ii. will provide legal service only for and on behalf of the employer as,
 - A. counsel or solicitor to the Government of Canada or the Government of Ontario,
 - B. a Crown Attorney,
 - C. counsel to a corporation other than a law corporation, or
 - D. a city solicitor, and
 - iii. will not engage in the practice of law in Ontario so as to provide legal services to persons other than the employer.
 4. Any member employed as a law teacher who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario so as to provide legal services other than teaching.

Same

(1.1) A member who is exempt from payment of insurance premium levies under paragraph 1, 2, 3 or 4 of subsection (1) continues to be exempt from payment of insurance premium levies even though he or she engages in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies if the following conditions are met:

1. The member's practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies is restricted to providing legal advice or services only on a *pro bono* basis and only to or on behalf of non-profit organizations.
2. Prior to engaging in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies, the member applies to the insurer of the Society's insurance plan, in accordance with procedures established by the insurer, to continue to be exempt from payment of insurance premium levies and the insurer approves the member's application.

Interpretation: occasional practice of law

(2) For the purposes of paragraph 2 of subsection (1), in any year, a member engages in the practice of law on an occasional basis if, during that year, the member,

- (a) completes not more than ten real estate transactions;
- (b) performs not more than eighty hours of work, where such work is usually billed on an hourly basis;
or
- (c) completes such number of real estate transactions or performs such number of hours of work as may be permitted by the Society.

Interpretation: "employer"

(3) In paragraph 3 of subsection (1), "employer" includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the member.

Interpretation: "affiliated", "controlled" and "subsidiary"

(4) In subsection (3), "affiliated", "controlled" and "subsidiary" have the same meanings given them in the *Securities Act*.

Exemption from payment of insurance premium levies: honorary members

10. Honorary members are exempt from payment of insurance premium levies.

Commencement

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

APPENDIX 3

BY-LAW 14

Made: January 28, 1999

Amended:

May 28, 1999

RESIGNATION

Procedure for resigning

1. (1) Subject to section 3, a member who wishes to resign his or her membership in the Society shall apply in writing to the Secretary.

Statutory declaration or affidavit

(2) An application under subsection (1) shall be accompanied by a statutory declaration or, if the applicant is not a resident of Canada, an affidavit, setting forth,

- (a) the applicant's age, the date of the applicant's call to the bar and admission and enrolment as a solicitor, the applicant's place of residence, the applicant's business address, if any, the number of years that the applicant has engaged in the practice of law, if any, and the reasons why the applicant wishes to resign his or her membership in the Society;
- (b) that all money or property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the applicant has not been responsible for any money or property held in trust;
- (c) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other member, or, alternatively, that the applicant has not engaged in the practice of law;
- (d) that the applicant is not aware of any claim against him or her in his or her professional capacity or in respect of his or her practice; and
- (e) such additional information or explanation as may be relevant by way of amplification of the foregoing.

Same

(3) An accountant's certificate to the effect that all money and property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto shall be attached, and marked as an exhibit, to the statutory declaration or affidavit required under subsection (2).

Publication of notice of intention to resign

2. (1) A member who wishes to resign his or her membership in the Society shall, at least thirty days before the day on which he or she applies to the Secretary under subsection 1 (1), publish in the Ontario Reports a notice of intention to resign.

Notice of Intention to Resign

(2) The notice of intention to resign which a member is required to publish under subsection (1) shall be in Form 14A [Notice of Intention to Resign].

Proof of publication of notice of intention to resign

(3) An application under subsection 1 (1) shall be accompanied by proof of publication, in accordance with subsection (1), of a notice of intention to resign.

Application by member's representative

3. (1) The Secretary may permit any person on behalf of a member to make an application under subsection 1(1) if the Secretary is satisfied that the member for any reason is unable to make the application himself or herself.

Application of subss. 1 (2) and (3) and ss. 2, 4 and 5

(2) Subsections 1 (2) and (3) and sections 2, 4 and 5 apply, with necessary modifications, to an application made under subsection 1 (1) by a person on behalf of a member.

Secretary to consider application

4. (1) Subject to subsection (2), the Secretary shall consider every application made under subsection 1 (1) in respect of which the requirements set out in subsections 1 (2), 1 (3) and 2 (3) have been complied with, and the Secretary may consider an application made under subsection 1 (1) in respect of which the requirements set out in subsection 1 (2), 1 (3) and 2 (3) have not been complied with, and,

- (a) the Secretary shall accept an application if he or she is satisfied,
 - (i) that all money or property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the applicant has not been responsible for any money or property in trust,
 - (ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other member, or, alternatively, that the applicant has not engaged in the practice of law,
 - (iii) that there are no claims against the applicant in his or her professional capacity or in respect of his or her practice, and
 - (iv) that the applicant has complied with subsection 2 (1); or
- (b) the Secretary shall reject an application if he or she is not satisfied of a matter mentioned in clause (a).

Secretary not to consider application

(2) The Secretary shall not consider an application made under subsection 1 (1) if the applicant is a party to a proceeding under Part II of the Act.

Documents and explanations

(3) For the purposes of assisting the Secretary to consider application, the applicant shall provide to the Secretary such documents and explanations as the Secretary may require.

Rejection of application

5. If the Secretary rejects an application under clause 4 (1) (b), the Secretary may specify terms and conditions to be complied with by the applicant as a condition of his or her application being accepted, and if the applicant complies with the terms and conditions to the satisfaction of the Secretary, the Secretary shall accept the application.

Commencement

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

Form 14A

Notice of Intention to Resign

(Name of member applying to resign, in capital letters)

Pursuant to section 30 of the *Law Society Act* and By-Law 14 made under subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of *(his/her)* intention to resign *(his/her)* membership in the Society.

The above named has carried on the practice of law at *(identify where the above named has carried on the practice of law)* *(or has not carried on the practice of law since (date))* *(or has never carried on the practice of law in Ontario)*.

Dated at *(place)*.

(Date)

(Full name of member applying to resign)

APPENDIX 4

BY-LAW 17

Made: January 28, 1999

Amended:

February 19, 1999

May 28, 1999

October 29, 1999

FILING REQUIREMENTS

Notice of fiscal year

1. Every member who engages in the private practice of law in Ontario shall inform the Secretary in writing of the termination date of his or her fiscal year, and shall file with the Secretary written notice of any change in the fiscal year within one month after the change is made.

Requirement to submit annual report

2. (1) Every member shall submit a report to the Society, by March 30 of each year, in respect of the member's practice of law and other related activities during the preceding year.

Member's Annual Report

(2) The report required under subsection (1) shall be in Form 17A [Member's Annual Report].

Period of default

3. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file a report required under section 2 of this By-Law is four months after the day the report is required to be submitted.

Reinstatement of rights and privileges

(2) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 2 of this By-Law, as amended on October 29, 1999, for the purpose of subsection 47 (2) of the Act, the member shall complete and file the report in Form 17A in force at the time the member is filing the report.

Same

(3) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 2 of this By-Law, as that section read before October 29, 1999, for the purpose of subsection 47 (2) of the Act, the member shall complete and file the report required under section 2 of this By-Law, as amended on October 29, 1999, in Form 17A in force at the time the member is filing the report.

Requirement to submit public accountant's report

4. (1) The Secretary may require any member who is required to submit a report under subsection 2 (2) to submit to the Society, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the member is required to submit a report to the Society under subsection 2 (2).

Contents of report and time for filing

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

Member's obligation to provide access to files, etc.

- (3) For the purpose of permitting the public accountant to complete the report, the member shall,
- (a) grant to the public accountant full access, without restriction, to all files maintained by the member;
 - (b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and
 - (c) provide to the public accountant such explanations as the public accountant may require.

Authority to confirm independently particulars of transactions

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

Cost

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

Public accountant's duty of confidentiality

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

Period of default

5. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 4 of this By-Law is two months after the day the report is required to be submitted.

Reinstatement of rights and privileges

(2) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to file a report of a public accountant in accordance with section 4 of this By-Law, for the purpose of subsection 47 (2) of the Act, the member shall file the report.

Failure to submit public accountant's report: investigation

6. (1) If a member fails to submit the report of a public accountant in accordance with section 4, the Secretary may require an investigation of the member's financial records to be made by a person designated by him or her, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

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

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

Confidentiality

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

Cost

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

Commencement

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

Form 17A

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

Copy of the Member's Annual Report

By-Law 25 - Multi-Discipline Practices

It was moved by Mr. MacKenzie, seconded by Ms. Ross that LPIC be the sole insurer of the primary level of coverage that members are required to maintain for non-lawyer partners in an MDP by directing that the lawyer partner or partners in an MDP partnership be required to purchase insurance for a non-lawyer partner or partners in accordance with By-law 16.

Carried

It was moved by Mr. MacKenzie, seconded by Ms. Ross that By-law 25 [Multi-Discipline Practices], made by Convocation on April 30, 1999 and amended by Convocation on May 28, 1999 and June 25, 1999, be further amended as follows:

"1. Section 19 of the By-law is amended by adding "through the insurer of the Society's insurance plan" after "maintain" in the third line."

Carried

The By-law 25 motion was distributed to Convocation under separate cover.

By-law 14 - Resignation

It was moved by Mr. MacKenzie, seconded by Ms. Ross that By-law 14 be amended to maintain the publication requirement but give the Secretary the power to exempt publication of members in certain circumstances.

Carried

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the amendments to By-law 14 in the French and English versions be approved.

Carried

The By-law 14 motion was distributed to Convocation under separate cover.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 14

[RESIGNATION]

made under the
LAW SOCIETY ACT

THAT By-Law 14 [Resignation], made by Convocation on January 28, 1999 and amended by Convocation on May 28, 1999, be further amended as follows:

1. Clause 1 (2) (b) of the English version of the By-Law is amended by deleting "have" in the second line and substituting "has".
2. Subsection 2 (1) of the By-Law is amended by adding "Subject to subsection (1.1)/ Sous réserve du paragraphe (1.1)" at the beginning.
3. Section 2 of the By-Law is amended by adding the following subsection:

Exemption from requirement to publish notice

(1.1) Upon the written application of the member, the Secretary may exempt the member from the requirement to publish a notice of intention to resign.

Exonération de publication de l'avis d'intention de démissionner

(1.1) Sur présentation de la demande écrite du membre, le ou la secrétaire peut exonérer le membre de l'obligation de publier un avis d'intention de démissionner.

4. Subsection 2 (3) of the By-Law is amended by adding "Unless a member is exempted from the requirement to publish a notice of intention to resign/ À moins qu'un membre ne soit exonéré de l'obligation de publier un avis d'intention de démissionner" at the beginning.
5. Subclause 4 (1) (a) (iii) of the English version of the By-Law is amended by deleting "and" at the end.
6. Subclause 4 (1) (a) (iv) of the By-Law is deleted and the following substituted:
 - (iv) that the applicant has paid all insurance premium levies which he or she is required to pay and has filed all certificates, reports and other documents which he or she is required to file under any policy for indemnity for professional liability, and
 - (v) that the applicant if not exempted from the requirement to publish notice of intention to resign has complied with subsection 2 (1); or

- (iv) que le membre qui fait la demande a versé toute cotisation d'assurance qu'il ou qu'elle était tenu de verser et que le membre a déposé les certificats, rapports et autres documents qu'il ou qu'elle était tenu de déposer aux termes de la police d'assurance responsabilité civile professionnelle;
- (v) que le membre qui fait la demande s'il n'est pas exonéré de l'obligation de publier un avis d'intention de démissionner s'est conformé au paragraphe 2 (1);

7. Clause 4 (1) (b) of the By-Law is amended by adding "subject to subsection (1.1)/sous réserve du paragraphe (1.1)" at the beginning.

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

Acceptance of application

(1.1) The Secretary may accept an application if he or she is not satisfied of the matter mentioned in subclause (1) (a) (iv) but is satisfied of the matters mentioned in subclauses (1) (a) (i), (ii), (iii) and (v).

Acceptation de la demande

(1.1) Le ou la secrétaire peut accepter une demande s'il ou si elle est d'avis que le membre ne répond pas aux exigences de l'alinéa (1) (a) (iv) mais qu'il ou elle est d'avis que le membre répond aux exigences des alinéas (1) (a) (i), (ii), (iii) et (v).

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

Secretary not to consider application

(2) The Secretary shall not consider an application made under subsection 1 (1) of this By-Law if the applicant is,

- (a) the subject of an audit, investigation, search or seizure by the Society;
- (b) a party to a proceeding under Part II of the Act; or
- (c) a party to a proceeding under section 33 of the Act as that section read before the day that the *Law Society Amendment Act, 1998* came into force.

Refus du secrétaire d'examiner une demande

(2) Le ou la secrétaire n'examine pas une demande déposée conformément au paragraphe 1 (1) du présent règlement administratif si le membre qui dépose la demande :

- (a) fait l'objet d'une vérification, d'une enquête, d'une recherche ou d'une saisie effectuée ou menée par le Barreau;
- (b) est partie à une procédure engagée selon la Partie II de la Loi;
- (c) ou est partie à une procédure engagée selon l'article 33 de la Loi, tel qu'il se lisait le jour précédant l'entrée en vigueur de la *Loi de 1998 modifiant la Loi sur le Barreau*.

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

Documents, explanations, releases, etc.

- (3) For the purposes of assisting the Secretary to consider the application, the applicant shall,

- (a) provide to the Secretary such documents and explanations as the Secretary may require; and
- (b) provide to the insurer of the Society's insurance plan such releases, directions and consent as may be required to permit the insurer to make available to the Secretary information relating to the payment by the applicant of insurance premium levies and the filing by the applicant of any certificate, report or other document required under any policy for indemnity for professional liability.

Documents, explications, décharges, etc.

- (3) Afin de faciliter l'examen de la demande, le membre qui dépose la demande
 - (a) fournit au ou à la secrétaire tous les documents et les explications nécessaires à l'examen; et
 - (b) fournit à l'assureur du régime d'assurance du Barreau les décharges, directives et lettres de consentement requises afin de permettre à l'assureur de mettre à la disposition du ou de la secrétaire tous renseignements relatifs au versement des cotisations d'assurance par le membre ainsi qu'au dépôt des certificats, rapports et autres documents requis conformément à la police d'assurance responsabilité civile professionnelle.

By-law 17 - Filing Requirements

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the amendments to By-law 17 to exempt retired members as set out in the Report be approved in principle and that a motion for the amendment be brought back to Convocation in January 2000.

Carried

By-law 25

The French version of the amendments to By-law 25 was voted on and approved.

TASK FORCE ON COURTHOUSE FACILITIES - PROPOSED TERMS OF REFERENCE

Task Force on Courthouse Facilities
Proposed Terms of Reference

Background

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

Scope of Inquiry

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

- the current location of courthouse facilities throughout the province and the extent to which the *distribution* of courthouse facilities meets the communities' needs. This would include an analysis of any "gaps" in distribution and proposals for addressing those gaps.
- the extent to which current courthouse facilities have adequate space for the functions that must be carried out in those facilities including, but not limited to,
 - ◆ courtrooms
 - ◆ judges' chambers
 - ◆ Crown attorney offices (where applicable)
 - ◆ lawyers' gowning facilities
 - ◆ lawyers' client meeting rooms
 - ◆ library facilities
 - ◆ other administrative office space (e.g. filing offices, clerks' offices, victims' advisor offices, etc.)
 - ◆ holding facilities
- the extent to which courthouses have proper security to protect persons having business in or working in courthouses as well as property within the courthouses.
- the ownership and rental arrangements for each facility including the issues that arise as a result of these arrangements.

Appointments to the Task Force

The following people are appointed to the Task Force:

George Hunter (chair)
Judith Potter
Anthony William J. Sullivan of the Family Lawyers' Association
Robert Nightingale of the Advocates' Society
Sarah Welch of the Crown Attorneys' Association
Irwin Koziobrocki of the Criminal Lawyers' Association
Richard Gates of the County and District Law Presidents Association
A representative of the Canadian Bar Association - Ontario to be named.

It was moved by Mr. Feinstein, seconded by Ms. Ross that the proposed terms of reference for the Task Force on Courthouse Facilities set out at Tab 5 be approved and that Messrs. Bindman and Harnick be added as members to the Task Force.

Carried

REPORTS DEFERRED

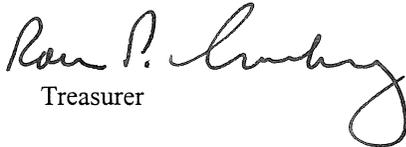
The Reports of the Technology Task Force and Lawyers Fund for Client Compensation Committee were put over to January 2000.

DRAFT MINUTES

The Draft Minutes for October 28th, 29th and November 10th, 1999 were deferred.

CONVOCATION ROSE AT 3:10 P.M.

Confirmed in Convocation this 27th day of January, 2000


Treasurer