

MINUTES OF CONVOCATION

Thursday, 25th September, 2008
9:00 a.m.

PRESENT:

The Treasurer (W. A. Derry Millar), Aaron, Aitken (by telephone), Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Campion, Caskey, Chahbar (by telephone), Conway, Copeland, Crowe, Daud (by telephone), Dickson, Dray, Elliott, Epstein, Furlong, Go, Gold, Gottlieb, Ground, Hainey, Hare, Hartman, Heintzman, Henderson, Krishna, Lawrie, Lewis, McGrath, Marmur, Minor, Murphy, Murray, Pawlitzka, Porter, Potter, Pustina, Rabinovitch, Robins, Ross (by telephone), Rothstein, St. Lewis, Sandler, Schabas, Sikand, Silverstein, Simpson, C. Strosberg, H. Strosberg, Swaye, Tough and Wright.

.....

Secretary: Katherine Corrick

The Reporter was sworn.

.....

IN PUBLIC

.....

MOTION – ELECTION OF BENCHER

It was moved by Mr. Banack, seconded by Mr. Caskey, that, -

WHEREAS Bonnie Warkentin, who was elected from the Province of Ontario “B” Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors, has been appointed a judge of the Superior Court of Justice; and

WHEREAS upon being appointed a judge of the Superior Court of Justice, Bonnie Warkentin became unable to continue in office as a bencher, thereby creating a vacancy in the office of bencher elected from the Province of Ontario “B” Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes by all electors;

THAT under the authority contained in By-Law 3, William J. Simpson, having satisfied the requirements contained in subsections 43 (1) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation to fill the vacancy in the office of benchers elected from the Province of Ontario “B” Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors.

Carried

The Treasurer and Benchers welcomed Mr. Simpson to Convocation.

TREASURER'S REMARKS

The Treasurer congratulated Bonnie Warkentin who was appointed to the Superior Court of Justice on July 31, 2008.

The Treasurer extended condolences to the families of life bencher, Ronald W. Cass, Q.C., LSM, who passed away on July 18, 2008 and ex officio bencher, the Honourable Allan F. Lawrence, P.C., Q.C., LSM who passed away on September 6, 2008.

Congratulations were extended to Professor Constance Backhouse who was awarded the Order of Canada for her outstanding achievements as an educator, author and human rights activist. Professor Backhouse was also awarded the Killam Prize.

The Treasurer announced that John Champion was elected First Vice President of the Federation of Law Societies of Canada effective November 15, 2008.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of June 12, 13, 16, 19, 20 (Special Calls in Ottawa, London and Toronto) and the Draft Minutes of June 26, 2008 Convocation were confirmed.

MOTION – APPOINTMENTS

It was moved by Mr. Banack, seconded by Ms. Pawlitz, that, -

Bob Aaron be reappointed as the Law Society's representative on the Canadian National Exhibition Association.

That Thomas Conway be appointed Co-Chair of the Retention of Women Working Group (Equity) and appointed to the Licensing & Accreditation Task Force to replace Bonnie Warkentin.

That Susan Elliott be appointed to the Access to Justice Committee.

That Robert Topp be removed from the Equity and Aboriginal Issues Committee at his request.

That Joanne St. Lewis be removed from the Professional Development and Competence Committee and the Retention of Women Working Group (Equity) at her request.

That William Simpson be appointed to the Hearing Panel and the Tribunals, Priority Planning, Access to Justice and Government & Public Affairs Committees.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, September 25, 2008.

ALL OF WHICH is respectfully submitted

DATED this 25th day of September, 2008

CANDIDATES FOR CALL TO THE BAR
September 25th, 2008

David Michael Roy Bruni
Sarah Jean Curtis
Erin Elizabeth Dann
Louis-Philippe Joseph Denis
Ronald Joseph Eprem Dumonceaux
Andrew Donald Godfrey
Nicole Marie Hayduk
Eric James Wilfred Hovius
Alison Caroline Kearns
Cynthia Meredith Kirkby
Sacha Frances Julie Liben
Alexandre Joseph Guy Martel
Sarah Anne Percival
Grégoire Poulin
Pierre Alexandre Jacques Yvon Viau
Robin Lee Winterstein

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

Carried

.....
IN CAMERA
.....

IN CAMERA Content Has Been Removed

.....
IN PUBLIC
.....

TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Re: Proposed New Rules of Practice and Procedure – Extension of Consultation Process

Report to Convocation
September 25, 2008

Tribunals Committee

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

Purposes of Report: Decision
Information

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

TABLE OF CONTENTS

For Decision

Proposed New Rules of Practice and Procedure – Extension of Consultation Process.....	TAB A
Publication Policy when Hearing Panels Issue Invitations to Attend.....	TAB B
For Information.....	TAB C

Updating Tribunal Orders and Dispositions Webpage to Reflect Outcome of Appeals to Courts

Tribunal Quarterly Statistics for Second Quarter 2008

COMMITTEE PROCESS

1. The Committee met on September 11, 2008. Committee members Mark Sandler (Chair), Alan Gold (Vice-Chair), Thomas Conway and Paul Schabas attended. Staff members A.K. Dionne, Grace Knakowski and Sophia Sperdakos also attended. Staff member Lesley Cameron attended part of the meeting.

FOR DECISION PROPOSED NEW RULES OF PRACTICE AND PROCEDURE – EXTENSION OF CONSULTATION PROCESS

MOTION

2. That Convocation approve the extension of the consultation process on the proposed new Rules of Practice and Procedure to October 31, 2008, after which time the Committee will provide revised rules to Convocation for its consideration.

Introduction and Background

3. In May 2008 Convocation authorized the Tribunals Committee to consult with the profession in stages on proposed new Rules of Practice and Procedure as follows:
 - a. *To first seek input from a number of lawyers who appear regularly as counsel before Law Society Hearing Panels and incorporate any additional changes the Committee considers appropriate.*

- b. *To then seek input from legal organizations and the profession at large.*
 - c. *That input and written comments be accepted until September 2, 2008 after which time the Committee will provide revised rules to Convocation for its consideration.*
4. Because of scheduling difficulties the Committee has just completed the first stage of the consultation with lawyers who appear regularly as counsel before Hearing and Appeal Panels and is now ready to undertake the second part of the consultation.

PUBLICATION POLICY WHEN HEARING PANELS ISSUE INVITATIONS TO ATTEND

MOTION

5. Where Hearing Panels issue an Invitation to Attend (ITA) to a lawyer or paralegal and dismiss the application once the lawyer or paralegal has attended and received the Panel's advice, the Hearing Panel shall refer in its endorsement, order and any reasons for decision to the fact that the ITA has been issued and occurred, but not to its the content.
6. Past Hearing Panel endorsements or reasons for decision that disclose that the Hearing Panel issued an ITA shall be available to the public.

Background

7. Section 36 of the *Law Society Act* authorizes a Hearing Panel to issue an Invitation to Attend (ITA) as follows:
- a. If an application has been made under section 34, the Hearing Panel may invite the licensee in respect of whom the application was made to attend before the Panel for the purpose of receiving advice from the Panel concerning his or her conduct.
 - b. The Hearing Panel shall dismiss the application if the licensee attends before the Panel in accordance with the invitation.
8. Since Convocation approved ITAs in 1970, ITA meetings and the fact that a lawyer has been invited to attend have been treated as confidential on the basis that ITAs are an extension of the Society's confidential investigatory process, rather than being disciplinary in nature.
9. Convocation has periodically affirmed this policy. In June 1990, it adopted the Report of the Discipline Policy Committee, which recommended that selected ITAs be published on a "no-name basis" in hopes that members of the profession would be informed about situations in which misconduct can arise.¹

¹ The Tribunals Office cannot advise whether an ITA has ever been published on a no-name basis, however, it can confirm that none has been published since February 1999.

10. In June 1997 Convocation rejected a proposal that there might be circumstances when it would be appropriate to disclose information about a lawyer's prior ITAs during a hearing. Convocation precluded the use of information about a lawyer's prior ITAs,
 - i. in Hearing Panels' reasons for decision;
 - ii. by discipline counsel during hearings;
 - iii. in information the Law Society prepares for the Proceedings Authorization Committee; and
 - iv. in information the Society prepares for benchers attending an ITA.
11. In January 1998 Convocation again reaffirmed the confidentiality of ITAs.
12. The Proceedings Authorization Committee (PAC) may issue ITAs. The fact of a PAC-issued ITA is not disclosed. In June 2005, Convocation amended its ITA policy of strict confidentiality to permit, in limited circumstances, disclosure of a lawyer's prior ITAs to PAC.

Convocation's Policy of Transparency in the Tribunals Processes

13. In May 2005, Convocation adopted the Tribunals Task Force Report that emphasized the importance of transparent tribunal procedures to maintain public confidence in self-regulation.
14. Convocation continues to focus on transparent tribunal processes. In March 2008, it approved the publication of orders dismissing applications. Prior to this date, reasons for decision where the application was dismissed were published on the CanLII and QuickLaw websites, but the order was not posted on the Tribunal Orders and Dispositions webpage.

Tribunals Office Publication Practices

15. Generally, the Tribunals Office posts,
 - a. notification of hearings, including the lawyer or paralegal's name and the alleged particulars, on the Law Society's Current Hearings webpage;
 - b. Hearing and Appeal Panel orders on the Law Society's Tribunal Orders and Dispositions webpage.
16. Reasons for decision are published on the CanLII and QuickLaw websites.

Issue Arising from Hearing Panel Endorsements

17. If a Hearing Panel converts a conduct hearing into an ITA, it typically does so during a public proceeding. Although the ITA is conducted in private, the conversion of the hearing into the ITA is done publicly.
18. Usually in these circumstances, the Hearing Panel will endorse the Notice of Application, "Invitation to attend issued. Lawyer² attended in accordance with the invitation. Application dismissed."

² The reference to lawyers only reflects that until this year paralegals were not regulated.

19. The Notice of Application, including the endorsements, is a public document. Currently, where a Hearing Panel endorses that an ITA is issued and the application is dismissed, the Tribunals Office drafts the order to read, "Application dismissed" without any reference to the ITA. This permits the order itself to remain public, while fulfilling Convocation's policy of confidentiality surrounding ITAs. The order is posted on the Tribunal Orders and Dispositions webpage in accordance with Convocation's March 2008 direction.
20. However, since Notices of Application are public documents, they are produced to the public upon request. This includes Notices of Application in which the panel endorsement refers to an ITA. In these circumstances, the fact that the lawyer been invited to attend does not remain confidential.

Issue Arising from Hearing Panel's Reasons for Decision

21. Unless a Hearing Panel makes an order for non-publication, reasons for decision are published. Where a Hearing Panel gives public reasons for decision that refer to an ITA, however, a conflict arises between the confidentiality surrounding ITAs and Convocation's commitment to transparency in the tribunals process and procedure. Currently, the Tribunals Office does not publish public reasons in which a Panel refers to an ITA.

Committee Discussion

22. There is a distinction between the general Law Society policy that ITAs are considered to be an extension of the Society's confidential investigatory process and the situation in which a PAC authorized hearing is converted into an ITA.
23. In the latter situation, a Notice of Application has already been issued and has appeared on the Law Society's website for the public's benefit. Given the Law Society's commitment to open and transparent regulatory processes, it would be misleading to fail to disclose the Notice of Application that sets out the disposition of the matter. Moreover, given that section 36 of the Law Society Act specifically speaks to the Hearing Panel's authority to issue an ITA and to dismiss the application once the member has attended, the Committee is of the view that the legislation envisions the Hearing Panel referring to the ITA on the public record.
24. The Committee has concluded that where a request from the public is made to the Tribunals Office to produce a Notice of Application or reasons for decisions in a past proceeding it should do so, despite the fact that the Hearing Panel's endorsement or reasons refers to an ITA. The occurrence of an ITA can be disclosed, but the content, such as the advice the Panel gives, should not be disclosed.
25. In the course of its discussion, the Committee also considered whether on a "going forward basis" where Hearing Panels issue an Invitation to Attend (ITA) to a lawyer or paralegal and dismiss the application once the lawyer or paralegal has attended and received the Panel's advice, it should refer to the fact of the occurrence of the ITA, but not the content, in its endorsement and order and in any reasons for decision. In the interests of transparency this is the approach to follow. To do otherwise and simply state that the application is dismissed is to leave an erroneous impression of the outcome of

the process. While the fact that the ITA has been issued should be disclosed, no endorsement, order or reasons for decision should refer to the content of the ITA.

26. The Committee provided a memorandum to the Professional Regulation Committee in June 2008 setting out its ITA publication proposal. That Committee did not indicate concern with the proposal.

FOR INFORMATION
 UPDATING TRIBUNALS ORDERS AND DISPOSITION WEBPAGE TO
 REFLECT OUTCOME OF APPEALS TO COURTS

1. The Law Society's Tribunal orders and Dispositions webpage posts Hearing and Appeal Panel orders (<http://www.lsuc.on.ca/regulation/a/discipline/>). This section of the website is not intended to provide a full profile of the particular lawyer or paralegal. The public can locate this information by searching the Lawyer and Paralegal Directory elsewhere on the website.
2. Until recently, the Tribunal Orders and Dispositions webpage has not included information about the status of appeals to Divisional Court or elsewhere, in large part because this information is not in the Tribunal Office's direct control and has not always been provided to it.
3. Since July 2008, however, where an appeal to Divisional Court or elsewhere results in a lawyer or paralegal's status changing from that which the Law Society's Appeal Panel ordered or confirmed, the Tribunal Orders and Dispositions webpage reflects this information. The Office has made the change to ensure that the public is not inadvertently misled about the lawyer or paralegal's status. So, for example, where an Appeal Panel order confirms a suspension order, but on further appeal the Divisional Court stays that order pending the hearing in that court, the Law Society's Orders and Dispositions webpage will reflect this.
4. Information that does not alter the lawyer or paralegal's status from the Hearing or Appeal Panel's decision will not be updated in this location. The site already directs the public elsewhere to the Lawyer and Paralegal Directory for full information.

TRIBUNALS QUARTERLY STATISTICS FOR SECOND QUARTER 2008

27. The Tribunal Office's quarterly statistics for the second quarter of 2008 are set out at Appendix 1 for Convocation's information.

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

Copy of the Tribunal Office's quarterly statistics for the second quarter of 2008.

(Appendix 1, pages 11 – 28)

It was moved by Mr. Sandler, seconded by Mr. Gold, that Convocation approve the extension of the consultation process on the proposed new Rules of Practice and Procedure to

October 31, 2008, after which time the Committee will provide revised rules to Convocation for its consideration.

Carried

Items for Information

- Updating Tribunal Orders and Dispositions Webpage to Reflect Outcome of Appeals to Courts
- Tribunal Quarterly Statistics for Second Quarter 2008

LAWPRO Report

Mr. Caskey presented the Report.

LAWPRO

September 17, 2008

To: The Treasurer and Benchers of the Law Society of Upper Canada

RE: Transmittal of September 2008 LAWPRO Report to Convocation

This is the first LAWPRO Report to Convocation that we have had the pleasure of preparing and we take this opportunity to thank Convocation for the confidence placed in us.

LAWPRO is currently in its 14th year of managing the professional liability insurance program for the Law Society of Upper Canada. This Report sets out LAWPRO's proposal for the 2009 calendar year.

There is much for a new Chair and a new CEO to celebrate. The average base premium paid by lawyers for their insurance coverage over the past 14 years stands at just over \$3,400. In 2008, the base premium was at its lowest level ever at \$2,300 per insured lawyer. The program provides lawyers with many options in terms of coverage and deductibles. Surveys returned by lawyers once a claim is closed indicate consistently exceptional levels of satisfaction with LAWPRO claims handling and the work of our defence Counsel.

The financial position of LAWPRO is strong. For the past eight years, we have maintained an "A" rating from A.M. Best, a major American rating agency, and our Minimum Capital Test exceeds 200 per cent, over 50 per cent more than our primary regulator requires as the minimum. This strong position enabled the company to offer a reduced premium for 2008 – thus immediately sharing the good results of 2007 with lawyers.

Both practicePRO (LAWPRO's risk management program) and our optional Excess professional liability insurance program celebrate their 10th anniversaries in 2008. The TitlePLUS program marked its 10th anniversary in 2007. Just over a decade ago, all three of these programs were little more than an idea on a scratchpad. Today, they are vital, leading ventures that have embedded themselves in the life of the Bar, and enhance LAWPRO's reputation throughout Canada and the world. All of LAWPRO's optional programs are experiencing all-time high levels of lawyer participation.

LAWPRO continually strives to be a leader in best practices for professional liability insurance operations and in regulatory compliance, so that we always reflect well on our main stakeholders, the lawyers of Ontario. We strive every day to demonstrate that an organization owned by lawyers will “set the bar” higher for all.

But all LAWPRO’s successes depend on the good foundation that was laid in the 1994 Insurance Committee Task Force Report, and we adhere closely to our mandate as drawn from that Report. What does that mean? For example, because we are expected to follow principles of risk rating, we relate the cost of insurance under the program to the risk associated with various areas of law and types of practice -- in other words, we ensure that there is a substantial correlation between claims and revenues.

We follow commercial insurance practices, except that premium minimization has a higher priority at LAWPRO than profit maximization. The mandate to have regard to commercial underwriting practices can have significant implications when the Bar is facing risks that are not considered reasonable for underwriting, or where certain segments of the Bar would not be eligible for certain types of coverage. This is certainly the conundrum we are struggling with in respect of fraudulent certified cheques. But we will not give up easily.

From a governance perspective, it is significant that a majority of LAWPRO’s directors are neither Benchers nor employees of the Law Society. This allows for directors with independent perspectives, who draw on experiences in the for-profit insurance world, to have an appreciable voice at the boardroom table. As LAWPRO prepares to adopt Ontario’s new Prudent Portfolio investment rules for insurance companies, its Audit Committee will continue to have a majority of independent directors and a new Conduct Review Committee will scrutinize transactions with related parties, if any. Preserving the capital base built up by Ontario lawyers in LAWPRO, while maintaining as good investment returns as possible, is a worthy goal.

LAWPRO will continue to take the high road and stay true to the principles of its mandate. We hope the lawyers of Ontario will enjoy the peace of mind that comes with a solid, successful insurance program for many years to come.

Ian Croft
Chairman

Kathleen Waters
President & CEO

TABLE OF CONTENTS

SECTION	PAGE
Background.....	1
2009 Program Summary	2
Part 1 – The Errors & Omissions Insurance Fund	6

Part 2 – Changes to the Insurance Program for 2009	7
Counterfeit Certified Cheques, Bank Drafts and Other Instruments.....	7
Real Estate Practice Coverage	10
Protection Against Misappropriations During Mobility.....	12
Minimizing the Impact upon the Environment.....	15
Part 3 – The Professional Liability Insurance Program.....	17
Premiums – Costs, Revenues and Pricing	19
(a) <i>Levy surcharges</i>	21
(b) <i>Premium Stabilization Fund</i>	22
(c) <i>Base premiums</i>	23
Reinsurance.....	25
The 2009 Program	26
Risk Rating.....	28
(a) <i>Background</i>	28
(b) <i>Practice trends</i>	29
(c) <i>Risk management initiatives</i>	30
(d) <i>Revalidating risk rating</i>	33
Conclusion	38
Appendices	
<i>Appendix A</i>	
Standard Program Summary & Options	41
<i>Appendix B</i>	
Distribution of Claims by Geographic Region (graph).....	47
Distribution of Claims by Firm Size (graph)	48
Distribution of Claims by Years Since Date of Call (graph).....	49
Distribution of Litigation Claims by Type of Error (chart).....	50

The 80-20 Rule (graph).....	51
-----------------------------	----

Appendix C

Premium Rating Examples.....	55
------------------------------	----

Appendix D

Communications concerning recent forms of fraud	59
---	----

LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")
REPORT TO CONVOCATION – SEPTEMBER, 2008

BACKGROUND

1. The Law Society of Upper Canada (the "Law Society") governs the legal profession in the public interest. One of the ways it discharges its responsibilities is through the mandatory requirement it places on practising lawyers to obtain professional liability insurance coverage. This coverage is provided by LAWPRO, a provincially licensed insurer that is owned by the Law Society.

2. The coverage that the mandatory LAWPRO program provides is considered to be both in the best interests of the public and in the best interests of Ontario lawyers – in that the public has reasonable assurance that an insurance policy backstops errors committed by lawyers in practice, and lawyers have assurance that they have financial protection that is customized to their practice needs.

3. In recent years, about 2,900 insurance claims have been open at any one time. The gross value of these open claims was estimated at \$340 million as at December 31, 2007. Overall, the insurance program manages about 85 per cent of the assets of the Law Society.

4. Each September since 1995, LAWPRO's Board of Directors has reported changes to the Law Society's professional liability insurance program to Convocation for the following calendar year. The timing of this report is necessitated by the logistics of renewing in excess of 22,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.

5. This report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy direction where necessary. Financial information on LAWPRO and the program is provided to Convocation throughout the year.

6. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report (the "Task Force Report"). The mandate and principles of operation were to be as follows:

- that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
- that LAWPRO be operated in a commercially reasonable manner;

- that LAWPRO move to a system where the cost of insurance reflects the risk of claims; and
- that claims be resolved fairly and expeditiously; however, this was not to be a system of “no-fault” compensation and there would be certain circumstances where coverage was denied or coverage was limited.

For 2009, we have conducted our annual review of the program to re-validate the approach and rating structure in relation to these Task Force recommendations.

7. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO’s operations, and that the proposed program for 2009 continues to operate on these principles. This report deals solely with the mandatory professional liability program. Optional programs such as TitlePLUS® title insurance, and the Excess professional liability insurance program are operated on an expected break-even or better basis.

2009 PROGRAM SUMMARY

8. The following summarizes the 2009 professional liability insurance program, as provided for in this report.

Premium pricing for 2009

(i) The base premium is \$2,450 per lawyer for 2009, an increase of \$150 from the base premium charged in 2008 (paragraph 84(a)).

(ii) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at \$22.5 million for the purposes of establishing the base premium for 2009 and other budgetary purposes (paragraph 84(b)).

(iii) \$4.9 million (approximately \$220 per insured lawyer) is expected to be drawn from the Premium Stabilization Fund built up in previous years (a \$14.6 million balance is forecast as at December 31, 2008) and applied to the 2009 insurance premium (paragraph 84(c)).

(iv) To the extent that levies [noted in (ii) above] collected in 2009 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the Premium Stabilization Fund (paragraph 84(d)).

(v) 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2009, subject to reinsurance protecting the program from multiple losses arising out of a common event or nexus (paragraph 88).

CHANGES TO THE INSURANCE PROGRAM FOR 2009

Although no modifications in the structure of the program, or in the form and substance of the policy are contemplated for 2009, LAWPRO continues to actively consider possible program changes for some later date, and does anticipate some changes in process to minimize the environmental impact of the insurance renewal for 2009. In this regard, it is intended that:

Counterfeit Certified Cheques, Bank Drafts and Other Instruments:

(vi) LAWPRO will continue to work to ensure that lawyers and law firms are aware of new forms of fraud involving counterfeit financial instruments, and the types of steps that might be taken to improve related law office practices (paragraph 32).

Real Estate Practice Coverage:

(vii) LAWPRO will continue to offer the Real Estate Practice Coverage option without change for 2009, based on the same annual cost of \$500 per real estate lawyer, and subject to the same eligibility and other requirements (paragraph 38).

Protection Against Misappropriations During Mobility:

(viii) LAWPRO will continue to work with the Law Society to identify and provide the appropriate level of mobile uniform protection contemplated by the Federation of Law Societies for Ontario lawyers exercising their mobility rights within Canada (paragraph 50).

Minimizing the Impact upon the Environment:

(ix) As part of a broader environment-friendly initiative, steps will be taken to reduce the need for and use of paper during the insurance renewal process, by providing easier access to online materials and filing options, and reducing the number of documents included in hardcopy application and policy packages requested or provided (paragraph 55).

CLE Premium Credit:

(x) The Continuing Legal Education Premium Credit will be continued for the 2010 program, with a \$50 premium credit per program, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational courses taken and successfully completed by lawyers between September 16, 2008, and September 15, 2009, for which the lawyer has successfully completed the online CLE Declaration Form (paragraph 110).

(xi) Subject to the changes identified earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2008 will remain unchanged for the 2009 insurance program (paragraph 96).

Errors & Omissions Insurance Fund:

(xii) The investment income of the Errors & Omissions Insurance Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2009 (paragraph 11).

Conclusion:

(xiii) The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LAWPRO Board offers this program of insurance for 2009 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2009 insurance program can be implemented by January 1, 2009.

PART 1 – THE ERRORS & OMISSIONS INSURANCE FUND

9. LAWPRO manages the Errors & Omissions Insurance Fund (“Fund”) of the Law Society, which is currently in run-off mode. (The Fund was responsible for the insurance program prior to 1990, and for a group deductible of up to \$250,000 per claim prior to 1995).

10. As of June 30, 2008, the Fund had outstanding claims liabilities of \$2.4 million. The number of open files for 1994 and prior years stood at 16. Since there are sufficient assets in the Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the Fund is surplus to the needs of the Fund and can be used by the Law Society for its general purposes. It is expected that \$3.0 million of investment income will be transferred during the 2009 year.

11. Accordingly, investment income of the Errors & Omissions Insurance Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2009.

PART 2 – CHANGES TO THE INSURANCE PROGRAM FOR 2009

12. The current program structure, as well as policy limits, coverage and available options, appear to generally meet the needs and practice realities of the profession for 2009. In developing the 2009 program, LAWPRO has considered the changing environment in which lawyers practise and comments received from the profession during the previous year.

13. Accordingly, no modifications in the structure of the program, and in the form and substance of the policy, are contemplated for 2009, although LAWPRO continues to actively consider possible program changes for some later date, and does anticipate some changes in process to minimize the environmental impact of the insurance renewal for 2009. Some minor refinements in policy wording may also be made to clarify or better ensure underwriting intention for 2009.

Counterfeit Certified Cheques, Bank Drafts and Other Instruments

14. Since last year’s report, two new forms of fraud schemes have arisen in Ontario involving the use of counterfeit certified cheques and bank drafts to defraud lawyers and law firms out of trust funds.

15. The first type of scheme has involved sole practitioners and lawyers in small firms who have been duped into acting for a lender on a commercial loan to a small business. The loans have been for amounts of about \$250,000 and the proceeds of the loan ostensibly advanced by certified cheque.

16. In fact though, the cheques were counterfeit, with the result that trust funds for legitimate clients were paid out to the fraudsters before the true nature of these counterfeit cheques became known. In more than one instance, insufficient funds were in the trust account to cover the amount paid out to the fraudsters, placing the lawyer in an overdraft position with his or her bank.

17. Thus far, LAWPRO is aware of two situations involving this type of fraud scheme. Both involved fraudsters targeting more than one lawyer at a time. The first resulted in claims being reported between December 24, 2007, and January 2, 2008, by 10 lawyers in unrelated law firms. All were approached and retained in mid-December 2007 with a view to the transaction

closing before the end of the year. The counterfeit certified cheques appeared to have been issued by branches of two different Canadian banks.

18. A similar situation arose in May, when lawyers from four different law firms reported claims following the Victoria Day long weekend. In that instance, all were retained in early May with a view to the transaction closing before the long weekend. Each counterfeit certified cheque is dated May 15, 2008, and appears to have been issued by the same Toronto branch of a third Canadian bank.

19. The other type of fraud scheme involved a lawyer who was duped into acting for a foreign company in the negotiation and collection of a debt of about \$250,000 from a Toronto area company. Following quick negotiation, payment of the debt in the one instance reported was tendered by counterfeit bank draft. Ultimately, LAWPRO was successful in halting the transfer of funds before the money actually reached the fraudster client. Increasingly now, lawyers and others are being approached over the Internet in relation to this type of scheme.

20. With regard to insurance coverage for these new forms of fraud, coverage for claims involving counterfeit certified cheques or bank drafts are not specifically insured or excluded from coverage under the program.

21. When determining whether or not there is coverage for any claim under the program, LAWPRO looks to the circumstances of the claim reported to determine whether the necessary elements are there for coverage to apply under the policy form, and then ensures that there is nothing within the policy that may serve to restrict or exclude coverage.

22. To the extent that a shortfall is experienced by the lawyer's bona fide clients, coverage is generally available. Where there has been a shortfall in funds between the lawyer and his or her bank, however, no indemnity coverage has been available in respect of the lawyer's overdraft position.

23. As a practical matter, the shortfall is a matter of contract between the lawyer and his or her bank, and not the subject of a demand for damages from a client arising in the context of the provision of professional services, as that term is defined under the policy.

24. As for broader protection available, LAWPRO is advised that no meaningful first party policy coverage is available for this exposure to lawyers and law firms from commercial markets. With respect to lawyers' professional liability insurance, it is understood that the protection afforded under the LAWPRO program in these types of instances is in keeping with what is available from other professional liability insurers within Canada, including from commercial markets and other law society programs.

25. Although LAWPRO expects to further consider alternatives that might be made available to lawyers and law firms for this exposure to counterfeit financial instruments, this is an instance where commercial markets have been well positioned to provide comprehensive protection through other forms of insurance but have preferred not to do so, and where LAWPRO must be mindful of its mandate to operate in a commercially reasonable manner and ensure that the costs of insurance reflect the risk of claims, as discussed in the Task Force Report.

26. Although using insurance to spread this risk among lawyers or law firms may reduce the impact of any one loss against a lawyer or law firm, it would not address the existence of the underlying risk exposure. In LAWPRO's view, addressing the underlying exposure is very much

an awareness and practice issue.

27. In this regard, since January 2008, LAWPRO, the Law Society and others, including lawyers who have been confronted with these types of situations, have been working to ensure that all in the bar are aware of these new types of fraud schemes. Appendix "D" attached contains LAWPRO and Law Society communications and articles alerting the profession to these new types of fraud schemes.

28. From a practice perspective, the Law Society is candid in its advice to practitioners, warning lawyers to "Always ensure that you verify with your own bank that funds have actually been deposited and cleared in your account before forwarding them on".

29. In its latest issue of the LAWPRO Magazine (Summer 2008), LAWPRO reviews the various means of paper and electronic fund transfers available to lawyers, how these transfers are effected, as well as the advantages and disadvantages associated with each, while suggesting appropriate practices within the profession and reinforcing the Law Society's practice advice.

30. Aside from ensuring that funds have actually been deposited and cleared, active steps in knowing the client are also important in avoiding these and other types of fraud schemes, which is also a subject of consideration by the Law Society.

31. With active communication, these types of new fraud exposures should be top of mind to lawyers and law firm staff, as they provide their services to clients and look to consider what steps might be taken to improve their office practices.

32. Accordingly, although no program change is contemplated for 2009, LAWPRO will continue to work to ensure that lawyers and law firms are aware of new forms of fraud involving counterfeit financial instruments, and the types of steps that might be taken to improve related law office practices.

Real Estate Practice Coverage

33. In April, 2008, the Real Estate Practice Coverage became mandatory for all Ontario lawyers practising real estate law or wishing to make registrations in the Ontario electronic registration system for land titles. This is a somewhat novel form of coverage, as it provides indemnity where a loss is proven as the result of a lawyer using his/her electronic registration access fraudulently. The scope of those potentially protected from a lawyer's fraudulent act in registering an item on title goes beyond clients. Because this type of coverage was new for LAWPRO, and not generally available in lawyers' professional liability programs in Canada, three criteria were adopted in underwriting applications for coverage, consistent with LAWPRO's mandate to underwrite prudently. Where one or more of the following criteria apply, coverage is not available:

- (1) persons who are in bankruptcy;
- (2) persons who have been convicted or disciplined in connection with real estate fraud; and
- (3) those under investigation where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate, or undertaking not to practise real estate.

34. Some questions were raised shortly after the coverage came into effect about the

undischarged bankruptcy criteria. LAWPRO explained its practice of having regard to commercial underwriting practice, as enshrined in the Task Force Report, when designing its insurance programs. At its meeting in May, Convocation reaffirmed the eligibility criteria for the Real Estate Practice Coverage that precludes lawyers who are undischarged bankrupts from practising real estate law in Ontario until discharged from bankruptcy.

35. As a follow-up to this process, the Law Society recently provided LAWPRO with data by which LAWPRO may better evaluate the related insurance risk associated with lawyers filing for bankruptcy. Early analysis of this data indicates that lawyers who have been undischarged bankrupts during their professional career are almost twice as likely to report a claim as other lawyers. In addition, of lawyers who have reported claims, those who have been undischarged bankrupts during their professional career on average report almost twice the number of claims as other lawyers with claims.

36. This data supports, in general, LAWPRO's cautious approach when underwriting a new and potentially volatile risk. It is prudent underwriting to grant the broadest or highest coverage to insureds with the better risk profile, in general.

37. Therefore, no change in this eligibility criteria for the Real Estate Practice Coverage is contemplated for 2009. As well, no other changes in respect of eligibility criteria, coverage or premium are contemplated at this point, with the Real Estate Practice Coverage only recently introduced in April of this year.

38. Accordingly, LAWPRO will continue to offer the Real Estate Practice Coverage option without change for 2009, based on the same annual cost of \$500 per real estate lawyer, and subject to the same eligibility and other requirements.

Protection Against Misappropriations During Mobility

39. The Federation of Law Societies has been concerned about the need to ensure that the public is provided with uniform protection against misappropriations by lawyers exercising their mobility rights since the resolution adopting the National Mobility Agreement ("NMA") was first passed. In early 2004, the Federation appointed a task force to review the coverage in place for lawyer misappropriation across Canada, and to recommend how to achieve better uniformity of coverage for clients suffering damages in the event of misappropriation.

40. The Task Force on Compensation Funds ("Task Force") has considered various approaches to ensure general uniformity in protection, including:

- uniform protection for all Canadian lawyers,
- uniform protection for mobile lawyers only, or
- a "matching coverage" approach, whereby the home jurisdiction of the acting lawyer provides protection at least equal to that provided by the host jurisdiction, for defalcations associated with the host jurisdiction.

41. The Task Force opted to focus on developing uniform protection for mobile lawyers only. This approach addresses the immediate concern of lawyer mobility, and leaves it open in future to address the challenges associated with reconciling all programs offering this form of protection across the country or developing a single national program providing such protection. This approach would apply to lawyers governed by the NMA, as well as the Inter-Jurisdictional Practice Protocol or a restricted appearance certificate issued by a law society.

42. The Task Force is now focused on developing this mobile uniform protection, which involves:

- establishing a limit of liability that would cover the vast majority of claims based on historical information available;
- providing protection to all types of clients, including claims by banks and corporations (who generally are not protected under the present Compensation Fund Guidelines in Ontario); and
- identifying a consistent approach to claims handling and an expeditious approach to claims handling.

43. To help establish an appropriate limit of liability, the various jurisdictions have now obtained actuarial assessments of their respective compensation fund loss experience.

44. Following the establishment of an agreed limit, law societies in each jurisdiction will determine how best to provide the agreed-on mobile uniform protection. For Ontario lawyers, LAWPRO and the Law Society of Upper Canada may propose a restricted form of innocent party coverage that would be provided under the insurance program to the extent that lawyers exercise their mobility rights in other Canadian jurisdictions.

45. This protection would likely form part of the base insurance program and be funded through the base-rated premiums. The cost of this added exposure to the program would likely not be significant, appreciating the limited extent to which lawyers now exercise their mobility rights within Canada, the areas of practice that most lend themselves to mobility, and the precautions in place under the mobility initiative in respect of trust accounts.

46. For example, based on data for the period 2003-2007, the most prevalent areas of practice in Ontario involving lawyer misappropriations are real estate practices and wills and estates practices, which together account for 68 per cent of claim costs under the Lawyers' Fund for Client Compensation.

Proportion of Lawyer Misappropriation Claim Costs, 2003-2007
Source: Lawyers' Fund for Client Compensation

(see chart in Convocation Report)

47. These areas of practice do not seem to lend themselves to significant mobility practices. Under the NMA, a visiting lawyer may not open a trust account in the host jurisdiction; instead the lawyer must promptly remit trust funds received to the lawyer's home trust account, or deposit the funds into the trust account of a member/licensed lawyer in the host jurisdiction.

48. To better assess and monitor the exposure associated with any proposed mobile uniform protection, it is important to understand the degree to which Ontario lawyers are exercising their mobility rights and in respect of what areas of practice. This information was first gathered through amendment to the Member's Annual Report form in relation to 2005. The latest information available to LAWPRO is in respect of 2007, which lawyers filed in the first quarter of 2008. According to that filing, only 13.2 per cent of Ontario lawyers engaged in some form of practice outside Ontario. It is noteworthy that more than 98.8 per cent of claims under the Ontario lawyers' Compensation Fund for the 2000-2006 period arise from lawyers in firms of five

or fewer lawyers, while only 7 per cent of lawyers in such firms engaged in extra-provincial practice.

49. Further limitation of the exposure arises from the mobility restrictions, which limit the amount of time practising in another jurisdiction to a maximum of 100 days per year.

50. Accordingly, LAWPRO will continue to work with the Law Society to identify and provide the appropriate level of mobile uniform protection contemplated by the Federation of Law Societies for Ontario lawyers exercising their mobility rights within Canada.

Minimizing the Impact upon the Environment

51. Aside from consideration of changes in policy coverage, changes in the insurance renewal process are contemplated. As part of a broader environment-friendly initiative, new measures are planned to minimize the environmental footprint of the insurance renewal process, by reducing the need for and use of paper.

52. Since introducing the \$50 e-filing premium discount and electronic filing option for coverage in 1999, the percentage of lawyers electing to file their insurance renewal applications online has grown from 60 per cent to 92 per cent for 2008. With virtually all forms, instructions and informational materials now available to lawyers online, deciding what steps might first be taken to reduce that amount of duplication in paper has been relatively easy.

53. Accordingly, although lawyers preferring to file their renewal application and receive their policy package in paper form will continue to have that option, the materials included in these mailings will be scaled back and the lawyers invited to refer to related materials online. In keeping with this, starting this fall:

- Renewal application packages will be mailed out only to lawyers who have requested such or for whom LAWPRO has no valid email address, and will include only an instruction sheet with application and payment authorization forms;
- Policy packages will also be mailed out to lawyers who have requested such or for whom LAWPRO has no valid email address, and will include only a notice sheet with policy declarations page and premium invoice;
- Other documents, including the program guide (for reference in completing the renewal application form), as well as the detailed policy wording and transaction levy filing forms booklet, will be more easily available to lawyers on the LAWPRO website for reference and printing if required, and can be mailed if requested.

Other lawyers will be contacted by LAWPRO in electronic form for the purposes of the renewal application and policy issuance processes, much as it has in recent years past.

54. By removing these documents from the renewal mailings, LAWPRO expects to avoid printing about 650,000 pieces of paper and reduce the environmental impact of the renewal process. Aside from this, a cost savings of \$40,000 to \$50,000 in printing costs alone is expected for lawyers' benefit under the program.

55. Accordingly, as part of a broader environment-friendly initiative, steps will be taken to reduce the need for and use of paper during the insurance renewal process, by providing easier access to online materials and filing options, and reducing the number of documents

included in hardcopy application and policy packages requested or provided.

PART 3 — THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

56. The program appears to be on track for 2008, with LAWPRO's financial results slightly ahead of budget for the six months ended June 30, 2008. An important reflection of the current program's success is the consistent "A" (Excellent) rating that LAWPRO has received from A.M. Best Co. for each of the last eight years.

57. To date, investment returns and revenue from transaction levies have been substantially in line with projections although 2008 continues to show signs of economic uncertainty.

58. Loss experience of the last few years has trended up in terms of frequency in 2007 and 2008 with higher numbers of claims reported than in the recent prior years. It is too early to form a final view on the development of these fund year's claims. However, recent statistics which should not be ignored indicate an increase in the number of claims involving \$100,000 or more (as seen below) and a resulting overall increase in claims severity (cost per claim). As well, the number of real estate claims reported, and costs attributed to these claims, has increased noticeably.

Dollar Value of Claims Valued at Greater than \$100,000
by Age and Fund Year

(See graph in Convocation Report)

Count of Claims Valued at Greater than \$100,000
by Age and Fund Year

(See graph in Convocation Report)

59. To establish the recommended base levy for 2009, the LAWPRO Board considered several factors:

- the cumulative effect of the recent underwriting and investment results, and the economic environment, on the program;
- the uncertainties associated in predicting the results of the program each year;
and
- the expected revenues which supplement the base levies.

60. To ensure the program's long-term viability, LAWPRO and the Board take a conservative approach to projections of revenue, as well as claims frequency and severity, taking into account factors such as related economic trends, emerging claims trends, general economic conditions and inflationary pressures on the claims portfolio.

61. The LAWPRO Board therefore advises that the base insurance premium for the program for 2009 should be increased to \$2,450 per lawyer, to account for recent indications of change in claims experience and the likelihood of continuing economic uncertainty. As is illustrated in the graph following paragraph 65, LAWPRO forecasts on a three-year time horizon. This forecast is reviewed and revised annually based on new information as it emerges.

62. At this time, the Board is satisfied that this increase in base rate appropriately recognizes the uncertainties in emerging claims experience and economic conditions, and allows the program to continue to operate on a self-sustaining basis while protecting the company's sound financial position on the whole. The increase is consistent with information provided in the September 2007 Report to Convocation (p. 17, para. 48). It was noted at that time that the \$300 decrease in the 2008 base premium may not be sustained in future years, as higher claims costs had already been identified. In brief, the beneficial 2008 base premium level was a method of giving the benefit to the Bar during 2008 of some superior 2007 investment results and positive claim reserve development on earlier years. The former are not being produced by the market at this time and the latter are being over-shadowed by emerging claims experience in terms of frequency and severity.

63. It is worthy of note that LAWPRO has experienced a number of years' growth in its capital base and has a healthy ratio in its "Minimal Capital Test". (As of June, 2008, LAWPRO's MCT was 222 per cent, whereas the regulator requires a minimum of 150 per cent and the preferred target is set at 175 per cent.) LAWPRO's ratio is unlikely to improve in 2008 due in part to the \$300 reduction in premium implemented for the 2008 year. The capital of LAWPRO was \$135.8 million as of December 31, 2007, and \$135.3 as of June 30, 2008. This is not raised as a matter of concern, but instead to demonstrate the impact of the benefit that was brought to the insured lawyers through the 2008 pricing.

Premiums – Costs, revenues and pricing

64. LAWPRO's revenue requirements for the 2009 insurance program are based on the anticipated cost of claims for the year, and the cost of applicable taxes and program administration. LAWPRO estimates total program funds required for 2009 to be \$81.8 million. This is in-line with the current forecast for the 2008 program, which is approximately \$79.6 million. For 2009, LAWPRO expects claims costs (excluding the new real estate coverage) to be \$75 million [see chart on following page].

Claims Cost of Ontario Program, by Fund Year (\$000's)

(See graph in Convocation Report)

65. As in past years, premium revenues to meet fiscal requirements for 2009 will come from three principal sources: the base premiums, levy surcharges, and the Premium Stabilization Fund. The projected insurance revenues from these three sources are as follows.

Premium Revenues, by Source (\$000s)

(See graph in Convocation Report)

66. In 2009, the new Real Estate Practice Coverage is expected to generate \$3.5 million in premiums in addition to the amounts shown above.

a) Levy surcharges:

67. Based on recent forecasts (June 2008) published by Canada Mortgage and Housing Corporation (CMHC), residential sales are expected to moderate in 2008 and decline by

approximately 6 per cent in 2009. Ontario housing starts are expected to increase by 6 per cent in 2008 but decline by 10 per cent in 2009. In terms of resales, the Ontario market has declined in both the first and second quarters of 2008, compared to 2007, by approximately 10 per cent.

68. The levy surcharges include a \$50 transaction levy paid by lawyers for each prescribed real estate and civil litigation transaction in which they are involved, as well as a claims history levy surcharge (“CHS”)¹. Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

69. For 2009, LAWPRO estimates transaction and claims history levy surcharge revenues at \$22.5 million which tracks closely to the forecast for 2008, and to the original budget for that year. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the number of real estate transaction levies have declined 29 per cent since 1999, despite an increase in residential real estate activity of 30 per cent during the same period.

70. The increased use of title insurance is considered to be largely responsible for the reduction in real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers.

71. It is estimated that well over 90 per cent of residential real estate transactions now handled in Ontario are title-insured.² In recent years, the number of real estate transaction levies collected have moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

72. The number of transaction levies are not yet being affected by the on-going decline in Ontario real estate sales, due to a natural delay in filing and collection by LAWPRO subsequent to actual closings.

73. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges.

74. The use of transaction levies ensures an element of risk rating in the insurance program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995. (Risk rating is discussed in more detail in paragraphs 97 to 103 of this report.)

¹ The claims history levy surcharge ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice, to \$25,000 for a lawyer with five claims paid in the last five years in practice (an additional \$10,000 is levied for each additional claim paid in excess of five).

² LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy filings.

b) Premium Stabilization Fund:

75. Since the introduction of the 1999 program, any excess receipts from the transaction levies and claims history surcharges collected in the year have been held and managed on a revolving account basis and applied to the insurance program. These funds are used to guard against any future shortfall in levy receipts in a given year, appreciating the difficulties in forecasting transaction levy revenues in a changing economic climate, and to act as a buffer against the need for sudden increases in base premium revenues.

76. As well, through the use of a refund of premium provision in the policy, any surplus in funds resulting from claims costs being lower than budgeted are similarly transferred to the Premium Stabilization Fund (the Fund) for future insurance purposes. This refund of premium provision, which has been in place since the 2000 policy period and considers premiums and claims costs under the program since the 1995 policy year, has generated a total of \$32.5 million in refund premiums.

77. At June 30, 2008, the Premium Stabilization Fund balance was \$22.6 million. The current forecast would see \$14.5 million in the Fund as at December 31, 2008. LAWPRO advises that \$4.9 million (about \$220 per insured lawyer) would be drawn from that surplus and applied towards the 2009 program.

78. This represents approximately one-third of the anticipated balance of the Fund as at December 31, 2008. Similar draws are forecast for the 2010 and 2011 budget years. Although the balance in the fund is expected to continue to decline over time, as draws exceed declining contributions in the form of surplus transaction levies and refund of premiums in profitable years, the Fund is expected to continue to be a source of revenue in determining the base rate in the short term.

c) Base premiums

Base Premium, by Fund Year

(See graph in Convocation Report)

79. For 2009, the LAWPRO Board advises that the base premium should be set at \$2,450 per member. The proposed base premium is based on the following assumptions:

- 22,200 practising insured lawyers (full-time equivalents);
- \$78.5 million in anticipated total claims costs (\$75 million plus \$3.5 million for Real Estate Practice Coverage);
- \$22.5 million in budgeted transaction and claims history levy revenues;
- \$4.9 million drawn from the Premium Stabilization Fund; and
- 5 per cent return on investment.

80. Although the number of lawyers in practice year over year has grown steadily by two per cent per annum, there has not been a corresponding increase in the number of claims over the long term. Between 1995 and 2008, an additional 4,300 lawyers came into practice over this time, while the number of claims per thousand lawyers decreased to 100 from 129. However, since 2004 there has been a noticeable increase in claims severity (see chart paragraph 58).

81. Our forecast for 2009 reflects these trends, and takes a conservative approach to projecting

the frequency and cost of claims under the program. Uncertainties associated with predicting trends, as well as any uncertainties in anticipating claims associated with recommended or recent program changes, and general economic and inflationary pressures on the program, dictate this prudent approach.

82. In setting a base rate for 2009, LAWPRO looked at a three-year planning horizon. Various scenarios were modeled for the three-year period to test the proposed rate structure. Under a “status-quo” type scenario, with a similar level of subsidization from the Premium Stabilization Fund level of subsidy in each of the three years,³ the base premium remains constant over the period. Many factors influence this forecast, most significantly interest rates and claims experience. This forecast should be considered illustrative, rather than definitive in nature.

83. Although investment income in 2007 was positive and the first half of 2008 has been higher than budget, uncertainties in the economic climate coupled with increased claims frequency (and potentially severity) in 2007 and 2008 fund years has resulted in a recommendation of the higher base rate of \$2,450 in 2009.

84. Accordingly:

- a) The base premium is \$2,450 per lawyer for 2009, an increase of \$150 from the base premium charged in 2008.
- b) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at \$22.5 million for the purposes of establishing the base premium for 2009 and other budgetary purposes.
- c) \$4.9 million (approximately \$220 per insured lawyer) is expected to be drawn from the Premium Stabilization Fund built up in previous years (a \$14.6 million balance is forecast as at December 31, 2008) and applied to the 2009 insurance premium.
- d) To the extent that levies [noted in (b) above] collected in 2009 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the Premium Stabilization Fund.

Reinsurance

85. LAWPRO annually assesses its need for reinsurance based on its capital position, its claims results and volatility. Although claims results overall have been relatively stable, there are indications of an increase in the average number and size of claims going forward. LAWPRO’s capital position has improved beyond that seen five years ago, when it was first decided to assume 100 per cent of the risk of the program. In addition to LAWPRO’s own resources, additional reserves are being carried in the Errors & Omissions Insurance Fund.

86. Accordingly, the Board proposes that LAWPRO not pursue the expensive course of purchasing reinsurance on a program-wide basis. Instead, as has been done in each of the last six years, the retroactive premium endorsement would be used to backstop the capital held in

³ Assumptions:

- Investment returns during the period have been projected at 5 per cent per annum.
- The number of practising lawyers is expected to grow approximately 2 per cent per annum.

LAWPRO with the Premium Stabilization Fund/E&O Surplus, to a maximum of \$15 million in the event that claims experience is outside of the expected range of outcomes.

87. For 2009, LAWPRO will again consider purchasing reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005. This protection against aggregated losses extends across both the professional liability and TitlePLUS programs, and offers some measure of protection against a series of claims such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in title affecting an entire condominium project.

88. Accordingly, 100 per cent of the premiums and losses for the Ontario professional liability program again will be retained by the company in 2009, subject to reinsurance protecting the program from multiple losses arising out of a common event or nexus.

The 2009 program

89. With the exception of the proposed changes in renewal process detailed earlier, all aspects of the insurance program for 2009 will remain unchanged from that now in place.

90. As detailed in Appendix A, subject to the noted changes, the current insurance program for lawyers in private practice encompasses the following:

- standard practice coverage, including Mandatory Innocent Party Coverage;
- coverage options, including Innocent Party Buy-Up, Part-Time Practice, Restricted Area of Practice and Real Estate Practice.

91. The current program also provides for premium discounts and surcharges. Discounts and surcharges expressed as a percentage of premium include:

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a surcharge in the event that no application is filed.

92. Discounts and surcharges expressed as a stated dollar amount include:

- the Mandatory Innocent Party premium;
- optional Innocent Party Buy-Up premium;
- the Real Estate Practice Coverage premium;
- premium discount for early lump sum payment;
- e-filing discount; and
- Continuing Legal Education discount.

93. Lawyers renewing their insurance applications online this fall will benefit from a more streamlined interface so they can find what they want more quickly, as well as a redesigned "My LAWPRO" section of the LAWPRO website, with more personalized options and information to encourage lawyers to complete all of their LAWPRO business online.

94. Again this year, sole practitioners and lawyers in firms of up to ten lawyers who file insurance applications electronically generally will have instant access to their policy

documentation and invoices online.

95. All practising lawyers will be able to easily access their 2009 policy documentation and invoices online through “My LAWPRO”, a secure section of the LAWPRO website. As described earlier, lawyers will again be able to opt for hard copies of these materials, but will be encouraged to instead file and review materials online.

96. Subject to the changes identified earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2008 will remain unchanged for the 2009 insurance program.

Risk Rating

a) Background

97. As already discussed in this report, the Task Force Report concluded that the cost of insurance under the program should generally reflect the risks.

98. Specifically the Report indicated that “... as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk.”⁴

99. In keeping with this, LAWPRO regularly conducts detailed analyses of the risks associated with the program. The earlier results of these analyses are summarized in previous Reports to Convocation. These analyses concluded that the practice of real estate and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

100. The objective of risk rating was finally achieved in 1999 by applying various discounts and the real estate and civil litigation transaction levies and claims history levy revenues to the insurance program.

101. Risk rating, however, is not static. Because the relationship between the cost of claims and different areas of practice may change, LAWPRO must continue to monitor the program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are reevaluated each year, and the factors used to assess risk and determine premium under the program are re-evaluated for degree of relevance. The factors currently used to match risk to premium include: area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

102. As in the past, LAWPRO’s risk analysis also examined the degree of specialization, size of firm, and geographic location of practice as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a multi-variate basis to determine any correlation or dependencies.

103. This review reaffirmed the validity and magnitude of the rating structure currently in

⁴ 1994 Task Force Report, at page 17.

place. No changes to the type or amount of surcharges or discounts, as a percentage of the base rate, are contemplated for 2009. The results of the customary re-evaluation of the earlier risk analyses are addressed in this report at paragraphs 111 to 125.

b) Practice trends

104. LAWPRO's present risk analysis reaffirms the results of its last report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with civil litigation equalling or leading the practice of real estate as the area of practice with the greatest relative exposure for losses. In particular, the analysis indicates that:

- Overall, the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with these two areas of practice representing 62 per cent of the claims reported and 59 per cent of the claims costs under the program in 2007;

However:

- a) While the exposure relating to the practice of real estate law was considerably less than it had been at its peak,⁵ last year this practice area accounted for 31 per cent of the claims reported and 35 per cent of the claims costs under the program, which has been growing since 2003.
- b) In 2007, the exposure relating to the practice of civil litigation was again substantially more than that traditionally seen, with civil litigation accounting for 31 per cent of the claims reported and 24 per cent of the claims costs under the program (well above the traditional levels of 27 per cent and 18 per cent seen in the 1989-94 period);
- c) In 2007, the nature of claims against civil litigators was also reaffirmed, with claims involving the general conduct or handling of the matter at 72 per cent compared to purely missed limitation period claims at 28 per cent; and
- d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior ten years were 3.4 times more likely to report a claim during the past year than those with no claims in the prior ten years.

105. The results of this analysis are summarized in the graphs contained in Appendix B of this report.

c) Risk management initiatives

106. A principal mandate of LAWPRO is to help the legal profession manage the risk associated with practice. This is accomplished by providing lawyers with tools and resources that help them manage risk and practise in a more risk-averse fashion. Among LAWPRO's major risk management initiatives are:

⁵ 48 per cent of claims reported and 58 per cent of claims costs seen in the 1989-94 period.

• TitlePLUS®: Now in its eleventh year, LAWPRO's successful title insurance program has had a significant impact on both real estate practice and real estate claims. In 2008, LAWPRO continued with its consumer education program which involves a media campaign highlighting the role of lawyers in real estate transactions and TitlePLUS insurance. This initiative includes a consumer-oriented, online "Real Simple Real Estate Guide" which helps educate consumers about what to expect in real estate transactions and the role a lawyer plays in the transaction. Video content added in 2007 rounded out some of the other information tools and included:

- *What you need to know when you refinance your mortgage*
- *Using a lawyer and title insurance: The Benefits*
- *Why you need TitlePLUS insurance*

TitlePLUS insurance is a competitive product that has made a positive difference in the Ontario real estate market. It expands the choice offered to consumers and lawyers. It influences the behaviour of other title insurers. It educates consumers and has expanded policy coverages available to them. It also provides education on title insurance and real estate trends to lawyers. The importance of the TitlePLUS program has been particularly clear in recent years, with residential real estate activity up 30 per cent since the inception of the TitlePLUS program ten years ago, and real estate claims now also showing signs of increase (but at a level well below their peak seen prior to 1995).⁶

• practicePRO®: Now in its tenth year, LAWPRO's very successful risk management and claims prevention initiative celebrates a decade as a recognized source of high-quality risk management tools and resources, both inside and outside of Ontario. This year, practicePRO was active in helping lawyers avoid malpractice claims through articles in LAWPRO Magazine and other law-related publications, information on the practicePRO website, and live presentations and/or an exhibitor presence at CLE programs and other law-related events. practicePRO has a significant presence in the legal community by maintaining relationships and actively working with its various constituents, including the Law Society of Upper Canada, the Ontario and Canadian Bar Associations, local law associations, legal goods and service providers, the legal press and others.

• New practicePRO website: In 2008 practicePRO launched a new website which included a wealth of new content and improved the look and accessibility of the existing materials. A major planned addition to the site will be a section that gives a detailed breakdown of claims data for each area of law, so practitioners in each area will be able to refer to charts and analysis outlining where the claims dangers are for them.

• LAWPRO Magazine: With its strong risk management focus, LAWPRO's flagship publication continues to have an important role in helping lawyers avoid malpractice claims. The Winter 2008 issue focused on Personality and Practice and explored the interplay of personalities, generations and cultural backgrounds in a law firm. It also included articles on the common personality traits found in lawyers and how those traits affect the way they practise law. The Summer 2008 issue celebrated practicePRO's 10th anniversary. It included articles on the development of practicePRO, its effects on risk management among lawyers,

⁶ *Supra*, at paragraphs 69 and 104.

and the program's plans for the future, as well as a detailed examination of the top causes of claims over the past ten years and how lawyers can avoid them.

- **Fraud:** In terms of count and cost, fraud-related claims are an important concern for LAWPRO. LAWPRO continues to take steps to combat fraud through measures within its own operations, its relationship with the legal profession, and by working with law enforcement, registry, banking, insurance and other organizations and industries also affected by fraud. The Winter 2008 and Summer 2008 issues of LAWPRO Magazine contained articles that highlighted for lawyers the recent fraud schemes that have taken place outside the real estate sphere, including frauds related to employees, debt collection schemes and certified cheques. The articles also contained information intended to help lawyers recognize and avoid handling fraudulent matters.

- **Conflicts of Interest Toolkit:** practicePRO actively worked with CBA Conflicts of Interest Taskforce to create a collection of retainers and checklists that provide practical guidelines and direction on avoiding conflicts issues for lawyers facing conflicts or potential conflicts.

- **practicePRO Lending Library launched:** To help lawyers improve their practices, this library makes more than 100 of the best books on law practice and risk management topics available on loan for free to all Ontario lawyers.

107. The Continuing Legal Education ("CLE") Premium Credit offered under the program is another significant LAWPRO risk-management initiative. In 2001, a premium credit of \$50 was first offered to lawyers using the practicePRO Online Coaching Centre, an Internet-based, selfcoaching tool that helps lawyers enhance their business and people skills.

108. The premium credit was broadened in the following year to provide a \$50 credit (to a maximum of \$100 per lawyer in a year) for designated law-related CLE courses and programs completed by the lawyer. These courses are offered by the Law Society, Ontario Bar Association, The Advocates' Society and other non-for-profit CLE providers, and must include a substantial risk management component. In keeping with the most frequent causes of loss, rather than substantive law, the risk management content on these programs deals with the "soft" skills of lawyering, such as lawyer/client communication, documenting a file, and time management.

109. For a credit on premiums for 2009, lawyers must have participated in LAWPRO-approved CLE programs between September 16, 2007, and September 15, 2008. In addition to the Online Coaching Centre, and the Law Society's Skills Self-Assessment tool, 177 programs qualified for the credit during this period, with an estimated 15,500 lawyers eligible for a premium credit. Prior to the implementation of the CLE credit, most CLE programs focused solely on substantive law. Due to the CLE credit, the content of a significant number of Ontario CLE programs has been broadened to include risk management and claims prevention content.

110. Accordingly, the Continuing Legal Education Premium Credit will be continued for the 2010 program, with a \$50 premium credit per program, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and successfully completed by lawyers between September 16, 2008, and September 15, 2009, for which the lawyer has successfully completed the online CLE Declaration Form.

d) Revalidating risk rating

111. It is important to periodically re-evaluate the program by area of practice to ensure that it continues to be effective in its risk rating. The chart on the following page shows the distribution of claims costs by detailed area of practice since 1989.

112. Apparent from this chart are the significant and growing claims costs associated with real estate claims; the significant claims costs associated with litigation practice; and the variability associated with most other areas of practice. This variability is largely a reflection of the unpredictability associated with smaller group sizes.

Distribution of Claim Cost and Program Expenses, by Grouped
Area of Practice

(See graph in Convocation Report)

113. The fact that few lawyers practise exclusively in one area provides a compelling reason to group together common or related areas of practice. However, to ensure that risk rating is being achieved, the program's anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program in 2007 and the first six months of 2008), the following chart compares the anticipated losses distributed by area of law, to the proposed base levy premiums by area of practice. The following chart allocates the base levy premiums by lawyers' primary area of practice. The premiums in this chart include only the proposed base levy premiums (including estate practice coverage, innocent party and base levy adjustments), and no amounts applied as transaction levies and claims history surcharges.

114. The shortfall between the anticipated claims costs and expenses to base premiums, for both real estate and the litigation grouping, is clearly significant. As already noted, it is proposed that \$22.5 million be provided through the transaction levies and claims history levy surcharges. Although clearly benefiting those whose primary area of practice is real estate or who are in the litigation grouping, these additional revenues also benefit those whose secondary and other areas of practice include payment of these levies.

Comparison of Projected 2009 Premium by Lawyer's Primary Area of
Practice to Claims and Expenses by Claim's Area of Law

(See graph in Convocation Report)

115. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, base premium levies of about \$8,300 and \$3,900 would be required of members whose primary area of practice is real estate or civil litigation, respectively.

116. Past reports have discussed the importance of using the transaction and claims history surcharge levies as premium, to avoid any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.⁷

⁷ 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-37; and 1996 LAWPRO Report to Convocation, pp. 32-36.

117. By including the transaction and claims history surcharge levies as proposed, the shortfall between anticipated claims costs and expenses to total insurance levies is almost entirely overcome in these higher risk and other areas of practice.

118. To compare the actual claims experience of lawyers to revenues received from those lawyers, the following chart compares the anticipated premiums (with the transaction and claims history levies) sorted by the lawyer's primary area of practice, and compares this to the anticipated claims costs and expenses for this area of practice. Real estate transaction levies are entirely allocated to real estate and civil litigation transaction levies are allocated to the litigation category.

Comparison of Projected 2009 Premium + Levies by Lawyer's Primary
Area of Practice to Claims and Expenses by Claim's Area of Law

(See graph in Convocation Report)

119. This comparison indicates that with the benefit of the transaction and claims history surcharge levies, there is a substantial correlation between revenues and claims in the higher impact areas (being real estate and civil litigation).

120. However, the graph does indicate some subsidy by area of practice. This subsidy changes somewhat over time. For lawyers whose area of practice is classified as "All Other," premiums somewhat exceed losses.

121. Appreciating the foregoing variables and possibilities of comparison, by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year. Although a small amount of subsidy may exist for some areas of practice, taking into account the commercial realities and the relatively small amount of the subsidy, the cost of insurance under the program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "...no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."⁸

122. Other aspects reviewed in the analysis included the exposure based on the size of firm, year of call, geographic location and prior claims history. The results of this analysis reaffirm the premium discounts already in place, including the discounts for new and for part-time practitioners and the surcharge applied to those practitioners with a prior claims history. The results of this analysis support the conclusions of previous reports, and are summarized in the graphs in Appendix B.

123. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice as well as the higher risk associated with real estate conveyancing and civil litigation.

124. Accordingly, the LAWPRO Board is satisfied with the continued use of the transaction and claims history levy revenues as premium, with the result that the cost of insurance under the program continues to generally reflect the risk.

125. Various examples of premiums which would be charged to members depending upon the

⁸ 1994 Task Force Report, at page 17.

nature of their practice are summarized in Appendix C of this Report.

CONCLUSION

126. The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LAWPRO Board offers this program of insurance for 2009 and asks for Convocation's acceptance of this report at the September Convocation, so that the 2009 insurance program can be implemented by January 1, 2009.

ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO
CONVOCATION.

September, 2008

Ian D. Croft
Chairman of the Board
Lawyers' Professional Indemnity Company

James R. Caskey, Q.C.
Vice-Chairman of the Board
Lawyers' Professional Indemnity Company

APPENDIX A

- Standard Program Summary & Options

41

Appendix "A"

The Standard Insurance Program Coverage for 2009
--

Eligibility

- Required of all sole practitioners, lawyers practising in association or partnership, and lawyers practising in a Law Corporation, who are providing services in private practice.
- Required of all other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who do not fully meet the program exemption criteria.
- Available to lawyers who do meet the exemption criteria but opt to purchase the insurance coverage.

Coverage limit

- \$1 million per CLAIM/\$2 million aggregate (i.e. for all claims reported in 2009), applicable to CLAIM expenses, indemnity payments and/or cost of repairs together

Standard DEDUCTIBLE

- \$5,000 per CLAIM applicable to CLAIM expenses, indemnity payments and/or costs of repairs together.

Standard base premium

- \$2,450 per insured lawyer

Transaction Premium Levy

- \$50 per real estate or civil litigation transaction
- No real estate transaction levy generally payable by transferee's lawyer if titleinsured

Premium reductions for new lawyers

- Premium for lawyers with less than 4 full years of practice (private and public):
 - ◇ less than 1 full year in practice: premium discount equal to 40 per cent of base premium;
 - ◇ less than 2 full years in practice: premium discount equal to 30 per cent of base premium;
 - ◇ less than 3 full years in practice: premium discount equal to 20 per cent of base premium;
 - ◇ less than 4 full years in practice: premium discount equal to 10 per cent of base premium.

*Mandatory Innocent Party Coverage**Eligibility*

The minimum coverage of \$250,000 per claim/in the aggregate must be purchased by all lawyers practising in association or partnership (including general, MDP and LLP partnerships), or in the employ of other lawyers.

The minimum coverage must also be purchased by all lawyers practising in a Law Corporation, where two or more lawyers practise in the Law Corporation.

Premium

\$250 per insured lawyer

2009 Program Options

1. Deductible option

\$Nil deductible

- Increase in premium equal to 15 per cent of base premium (\$367.50 increase).

\$2,500 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Increase in premium equal to 7.5 per cent of base premium (\$183.75 increase).

\$2,500 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 12.5 per cent of base premium (\$306.25 increase).

Standard insurance program: \$5,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Base premium of \$2,450 per insured lawyer.

\$5,000 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 10 per cent of base premium (\$245.00 increase).

\$10,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Decrease in premium equal to 7.5 per cent of base premium (\$183.75 decrease).

\$10,000 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 7.5 per cent of base premium (\$183.75 increase).

\$25,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs

- Decrease in premium equal to 12.5 per cent of base premium (\$306.25 decrease).

2. Innocent Party Sublimit Coverage Options

Innocent Party Coverage Sublimit Buy-Up: For lawyers practising in associations, partnerships and Law Corporations

Lawyers practising in association or partnership (including general, MDP and LLP partnerships) or a Law Corporation (with more than one practising lawyer) can increase their Innocent Party Coverage in two ways:

Increase coverage sublimit to:	Additional annual premium:
\$500,000 per CLAIM/aggregate	\$150 per insured lawyer
\$1 million per CLAIM/aggregate	\$249 per insured lawyer

Optional Innocent Party Sublimit Coverage: For sole practitioners and lawyers practising alone in a Law Corporation

Coverage limits

- \$250,000 per CLAIM/in the aggregate
- \$500,000 per CLAIM/in the aggregate
- \$1 million per CLAIM/in the aggregate

3. Practice Options

Restricted Area of Practice Option

Eligibility

Available only to lawyers who agree to restrict their practice to criminal⁹ and/or immigration law¹⁰ throughout 2009.

Premium

Eligible for discount equal to 40 per cent of base premium, to a maximum of \$980.¹¹

Part-Time Practice Option

⁹ Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

¹⁰ Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act*. (S.C. 2001, c.27) and regulations and procedures and policies pertaining thereto, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

¹¹ The maximum premium discount for Restricted Area of practice, part-Time Practice options and the New Practitioners' discount combined cannot exceed 40 per cent of the base premium.

Eligibility

Available only to part-time practitioners who meet the revised part-time practice criteria.

Premium

Eligible for discount equal to 40 per cent of base premium, to a maximum of \$980.

*Real Estate Practice Coverage Options**Eligibility*

All lawyers who intend to practice REAL ESTATE LAW in Ontario in 2009 must be ELIGIBLE for and apply for this coverage option.

“ELIGIBLE” means eligible to practice REAL ESTATE LAW in Ontario in accordance with the *Law Society Act*, R.S.O. 1990, c. L.8. Proposed categories of lawyers who would not be ELIGIBLE to practice REAL ESTATE LAW in Ontario, include:

- Those who are in bankruptcy;
- those who have been convicted or disciplined in connection with a real estate fraud;
- those under investigation, where the Law Society obtains: an interlocutory suspension order or a restriction on the lawyer’s practice prohibiting the lawyer from practicing real estate; or an undertaking not to practise real estate.

Premium

\$500 per insured lawyer

4. Premium Payment Options

Instalment Options:

- Lump sum payment by cheque or pre-authorized payment: eligible for \$150 discount.
- Lump sum payment by credit card
- Quarterly instalments
- Monthly instalments

5. E-filing Discount

- \$50 per insured lawyer (if filed by November 3, 2008)

6. Continuing Legal Education (Risk Management) Premium Credit

- \$50 per course, subject to a \$100 per insured lawyer maximum discount, will be applied under the 2010 insurance program.
- For pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2008, and September 15, 2009, where the lawyer completes and files the required LAWPRO CLE electronic declaration by September 15, 2009.
- LAWPRO’S Online Coaching Centre is included as a pre-approved course, where the insured lawyer completes at least three modules between September 16, 2008, and September 15, 2009.

APPENDIX B

• Distribution of Claims by Geographic Region (graph)	47
• Distribution of Claims by Firm Size (graph)	48
• Distribution of Claims by Years Since Date of Call (graph)	49
• Distribution of Litigation Claims by Type of Error (chart)	50
• The 80-20 Rule (graph)	51

(see graphs in Convocation Report)

APPENDIX C

Premium Rating Example	55
------------------------	----

(see chart in Convocation Report)

APPENDIX D

Communications concerning recent forms of fraud	59
---	----

(see communications in Convocation Report)

It was moved by Mr. Caskey, seconded by Mr. Wright, that Convocation accept the LAWPRO Report.

Carried

ONTARIO LAWYERS' ASSISTANCE PROGRAM

Ms. Minor presented the Ontario Lawyers' Assistance Program's 2007 Annual Report.

FINANCE COMMITTEE REPORT

Ms. Hartman presented the Report.

Re: J. S. Shirley Denison Fund (in camera)

IN CAMERA Content Has Been Removed

.....
IN PUBLIC
.....

It was moved by Ms. Hartman, seconded by Mr. Wright, that Convocation approve the grants set out at paragraph 4 of the Report.

Carried

Report to Convocation
September 25, 2008

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

Purpose of Report: Decision
 Information

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

TABLE OF CONTENTS

For Decision:

J.S. Denison Fund - Approval of Grant Applications (In Camera)	TAB A
Law Society Banking Resolution and Cheque Signing Authority	TAB B
Errors and Omissions Insurance Fund Banking Resolution, Updating Signatories ..	TAB C

For Information:.....TAB D

1. 2009 Law Society Budget
2. Long-Term Investment Policy
3. Governance Task Force

COMMITTEE PROCESS

1. The Finance Committee (“the Committee”) met on September 11, 2008. Committee members in attendance were: Carol Hartman, Vice-Chair, Jack Braithwaite, Chris Bredt, Mary Louise Dickson, Susan Hare, Janet Minor, Ross Murray, Judith Potter, Jack Rabinovitch, Gerald Swaye and Brad Wright. Vern Krishna also attended.

2. Also in attendance was Dan Markovich from Hewitt Associates.
3. Staff in attendance were: Malcolm Heins, Wendy Tysall, Fred Grady, Jim Varro and Andrew Cawse.

FOR DECISION
CHEQUE SIGNING AUTHORITY

Motion

30. That Convocation approve a new banking resolution for the Law Society's General Fund, Osgoode Society in trust, and Compensation Fund bank accounts, which updates the authorized cheque signing officers and modifies the cheque signing instructions such that:
 - The authorized signing officers are updated for the new committee structure
 - Janet Minor and Paul Schabas be appointed as the designated bencher signing officers
 - The threshold governing cheque signing procedures be increased from \$100,000 to \$150,000.
31. As detailed in the accompanying banking resolution, the authorized signing officers of the Society are:
 - the Treasurer
 - the Chair of the Finance Committee
 - the Vice-Chair of the Finance Committee
 - the Chair of the Audit Committee
 - the Vice-Chair of the Audit Committee
 - designated Bencher(s)
 - the Chief Executive Officer
 - the Chief Financial Officer
 - the Director of Policy & Tribunals
 - Manager of Finance.

Designated Benchers as Signing Officers

32. It is recommended that Janet Minor and Paul Schabas, both members of the Finance Committee, be appointed as the designated bencher signing officers due to their proximity to Osgoode Hall.

Change in Signing Instructions (From \$100,000 to \$150,000)

33. For about twelve years, the signing instructions on cheques drawn on any of the Law Society's Bank accounts, other than those administered by LawPRO under the administrative services agreement entered into in 1996, have been as follows:
 - Cheques for \$100,000 or less require the signatures of any two signing officers
 - Cheques in excess of \$100,000 require two signatures with the first signature being that of either the Treasurer, Chair or Vice-Chairs of the Finance or Audit

Committees or a designated bencher with the second signature being that of Chief Executive Officer (CEO), the Chief Financial Officer (CFO), the Director of Policy & Tribunals or the Manager of Finance.

34. The process currently is that cheques for \$100,000 or less are electronically signed by the CEO and CFO with the appropriate internal controls in place around cheque printing and issuance. Cheques in excess of \$100,000 are manually signed with the signatures being as per the instructions outlined above.
35. The motion currently recommends that the \$100,000 threshold be increased to \$150,000. The signing instructions in the banking resolution would be changed to:
- Cheques for \$150,000 or less require the signatures of any two signing officers
 - Cheques in excess of \$150,000 require two signatures with the first signature being that of either, the Treasurer, Chair or Vice-Chairs of the Finance or Audit Committees or a designated bencher with the second signature being that of Chief Executive Officer (CEO), the Chief Financial Officer (CFO), the Director of Policy & Tribunals or the Manager of Finance.
36. The reasons for the recommended change are:
- As the organization has grown and with inflation over the last twelve years, the number of cheques requiring manual signature has increased over the years. Operationally, obtaining timely signatures, especially during the summer or holiday season, is sometimes challenging. For example, pension remittances and benefit payments are required to be remitted within a specified time period and can only be calculated after the payroll has been processed.

The table below sets out the volumes for 2007 and the first half of 2008.

Period	Number of Payments	Number of Cheques	Number of Cheques
	\$100,000 or less	Greater than \$100,000	Greater than \$150,000
2007 Year	10,094	67	18
2008 (Q1 & Q2)	4,538	33	10

- The Compensation Fund claim payment limit has recently been increased from \$100,000 to \$150,000, thereby potentially increasing the number of payments to be made.

SCHEDULE TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT (LF 327)

Effective Date: September 25, 2008

Schedule Dated: July 7, 2005

Account Number(s): 1301-224 (General Fund – General Bank Account)

- 1301-259 (General Fund – Denison Fund Bank Account)
- 1301-291 (General Fund – Payroll Bank Account)
- 1301-750 (General Fund – Accounts Payable Bank Account)
- 1392-701 (General Fund – Unclaimed Trust Fund Bank Account)
- 1454-984 (General Fund – Online Payments Bank Account)
- 4679-555 (General Fund – US Dollar Bank Account)
- 1532-460 (Osgoode Society in trust – McMurtry Fellowship Bank Account)
- 1301-232 (Compensation Fund – Compensation Bank Account)

Please Refer to Certificate and Agreement (LF327) dated: September 25, 2008

Title

Treasurer	Designated Bencher(s)
Chair, Finance Committee	Chief Executive Officer
Vice-Chair, Finance Committee	Chief Financial Officer
Chair, Audit Committee	Director, Policy & Tribunals
Vice-Chair, Audit Committee	Manager, Finance

Signing Instructions:

All Law Society cheques require two signatures from the above noted list of positions. Cheques in excess of \$150,000 require that the first signature be that of the Treasurer, the Chair of the Finance Committee, the Vice-Chair of the Finance Committee, the Chair of the Audit Committee, the Vice-Chair of the Audit Committee or a designated bencher with the second signature being that of the Chief Executive Officer, the Chief Financial Officer, the Manager of Finance or the Director, Policy & Tribunals.

The Law Society of Upper Canada

Per: _____
 Name:
 Title:

Per: _____
 Name:
 Title:

FOR DECISION
 ERRORS & OMISSIONS INSURANCE FUND BANKING RESOLUTION

Motion

- 37. That Convocation approve a new banking resolution in respect of the bank account for the Law Society's Errors and Omissions Insurance Fund, approving an additional signatory for cheques in excess of \$100,000.
- 38. The Lawyers' Professional Indemnity Company ("LAWPRO") signed an Administrative Services Agreement with the Law Society in 1995. Under the Agreement LAWPRO would administer the affairs of the Society's self administered group deductible on all

insurance policies for the year 1994 and prior, known as The Errors and Omissions Insurance Fund (“E&O Fund”).

39. On September 3, 2008, LAWPRO's board passed a resolution approving an additional signatory for cheques in excess of \$100,000. The required documentation is attached.

FOR INFORMATION
2009 LAW SOCIETY BUDGET

40. A Budget Information Session for all benchers will be held at 2:00 p.m. on September 25, 2008 in the Lamont Learning Centre to provide all benchers an opportunity to review and discuss the draft 2009 Law Society Budget.
41. Typically, Convocation adopts the annual budget at its October meeting (under the By-Laws the budget must be approved by Convocation prior to the end of November). The budget for the 2009 operating year for the Law Society will be presented to the Finance Committee in October, requesting a recommendation to Convocation later that month.
42. A budget has been drafted, which in compliance with the budget process approved by Convocation, will be presented to a budget information session, after Convocation at 2.00pm on September 25, 2008 in the Lamont Learning Centre.

2009 Budget Timetable Approved by Convocation in May 2008

DATE (2008)	PROCESS
May	<p>The Senior Management Team (SMT) commenced the budget process by considering individual and collective budget assumptions, variables and objectives. This review also included how the proposed 2009 budget fits into longer-term plans for the organization and departments.</p> <p>The Finance Committee and Convocation approved a process for preparing the 2009 budget that includes Standing Committee endorsement of operational reviews.</p> <p>Bencher's comments on the program reviews and budget process were invited.</p>
June	<p>SMT Budget Planning session – how each division should address the priorities of Convocation.</p> <p>Operational reviews for the Client Service Centre and Policy & Government Relations were presented to the Finance Committee and any other benchers who wished to attend. The Finance Committee reported the results of the program reviews to Convocation and program review material was made available to all benchers.</p>

DATE (2008)	PROCESS
July August	<p>The components reviewed and approved above were compiled into an operating budget for the Law Society.</p> <p>Facilities and Information Systems have compiled a capital budget with the assistance of user departments.</p> <p>Assessments of LibraryCo operations were carried out as part of drafting a 2009 budget for the county library system.</p>
September	<p>Opportunity for the Priority Planning Committee / Convocation to convey policy objectives and budget priorities to the Finance Committee.</p> <p>A Committee of the Whole / budget information session will be held on September 25, 2008 at 2pm in the Lamont Learning Centre for all benchers to ensure a full exchange of information on the 2009 budget.</p> <p>LibraryCo's preliminary submissions on 2008 activities and 2009 projections to the Law Society's Finance Committee have been deferred to October pending funding and electronic product mix decisions.</p> <p>2009 budget requests from external organizations such as CDLPA received by this time.</p>
October	<p>Draft operating budgets for lawyers and paralegals and a capital budget for 2009 is presented to the Finance Committee, Paralegal Standing Committee, Compensation Fund Committee and Convocation for approval.</p>

FOR INFORMATION
LONG-TERM INVESTMENT POLICY

43. Mr. Dan Markovich from consultant, Hewitt Associates attended the meeting to discuss possible changes in the administration of the Long-Term Investment Policies with the Committee.

FOR INFORMATION
GOVERNANCE TASK FORCE

44. In conjunction with the Governance Task Force's request to Convocation for approval of consultations related to Law Society governance, the Committee reviewed a request from the Task Force for \$95,000 to fund expenses related to the consultations.
45. Most of the consultation expenditures would be incurred in the 2008 financial year and so require funding out of the contingency account. The 2008 budget contained a contingency amount of \$725,000 of which \$50,000 has been allocated for increased expenses for the Discrimination and Harassment Counsel. In addition, the contingency account could be used for bencher remuneration expenses in excess of the budgeted amount of \$300,000 as a result of changes to the remuneration by-law in 2008.

46. The Committee did not approve the request.

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

- (1) Copy of Law Society's General Fund, Osgoode Society in trust and Compensation Fund Banking Resolution. (pages 13 – 15)
- (2) Copy of Errors & Omissions Insurance Fund Banking Resolution. (pages 18 – 21)

Re: Law Society Banking Resolution

It was moved by Ms. Hartman, seconded by Mr. Wright, that Convocation approve a new banking resolution for the Law Society's General Fund, Osgoode Society in trust, and Compensation Fund bank accounts, which updates the authorized cheque signing officers and modifies the cheque signing instructions such that:

- The authorized signing officers are updated for the new committee structure
- Janet Minor and Paul Schabas be appointed as the designated bencher signing officers
- The threshold governing cheque signing procedures be increased from \$100,000 to \$150,000.

Carried

Re: Errors and Omissions Insurance Fund Banking Resolution, Updating Signatories

It was moved by Ms. Hartman, seconded by Mr. Wright, that Convocation approve a new banking resolution in respect of the bank account for the Law Society's Errors and Omissions Insurance Fund, approving an additional signatory for cheques in excess of \$100,000.

Carried

Items for Information

- 2009 Law Society Budget – Review of Process and Budget Information Session
- Governance Task Force Budget Request
- LibraryCo Inc. 2009 Budget – Status Update
- Investment Manager and Investment Changes at LAWPRO and Impact on Law Society of Upper Canada

LICENSING AND ACCREDITATION TASK FORCE REPORT

Professor Krishna presented the Report.

Report to Convocation
September 25, 2008

Task Force Members

Vern Krishna (Chair)
 Raj Anand
 Constance Backhouse
 Larry Banack
 Thomas Conway
 Susan Hare
 Carol Hartman
 Janet Minor
 Laurie Pawlitzka
 Bonnie Tough

Purpose of Report: Decision

Policy Secretariat
 (416-947-5209)

EXECUTIVE SUMMARY

In March 2007 Convocation approved the establishment of a Licensing and Accreditation Task Force to consider issues related to the licensing of lawyers in Ontario.

The task is a considerable one. One of the Law Society's most important functions is to ensure the entry level competence of newly called lawyers. Ontario has the largest bar in the country, an increasingly diverse legal profession, growing numbers of international lawyers and Canadian students with law degrees from outside Canada seeking admission to the bar, and challenging market place factors that affect articling placements, post-call hiring and practice realities.

The Task Force has examined the problems with the delivery of the skills and professional responsibility and articling components of the licensing process and assessed the need for change and improvement to meet the following objectives:

- a. Ensure entry level competence for newly called lawyers.
- b. Consider the unique needs of candidates from Aboriginal, Francophone, racialized, National Committee on Accreditation (NCA), disabled and other communities.
- c. Address the *Fair Access to Regulated Professions Act* requirements for transparent, objective, impartial and fair licensing processes.
- d. Develop flexible program delivery methods.
- e. Be cost efficient.

In January 2008 the Task Force presented a consultation report to Convocation, seeking its approval to disseminate that report to the profession, law schools and legal organizations. Convocation determined that written submissions on the skills and professional responsibility and articling programs should be accepted until May 31, 2008. The Task Force has reviewed the submissions and is reporting to Convocation on the results of the consultation process and its additional considerations and recommendations respecting the articling program and skills and professional responsibility training.

Articling

The consultation report identified problems in the articling program, including a potentially significant increase in placement shortages. The Task Force sought input on four options:

- a. Continue the program, but make it clear that the Law Society makes no guarantees that candidates will find employment.
- b. Accept that if there is to be an apprenticeship requirement the Law Society should take responsibility for all candidates who qualify, and develop an alternative stream for those unable to find a placement.
- c. Abolish the articling requirement.
- d. Seek additional solutions from those being consulted.

Respondents overwhelmingly rejected the abolition of articling. They emphasized that a competent profession requires practical training before call to the bar. Articling should not be characterized as a barrier, but rather as a core component of the licensing process. To address challenges facing the program the Law Society should make further efforts to increase the number of jobs available, appeal to the profession to assist, and streamline the program.

While the Task Force continues to have concerns about the potential increase in candidates seeking articling positions in the future, it is possible that such increases will be fewer than anticipated, at least in the short term. The Task Force is satisfied that the value of the articling requirement as a competence measure makes it worthwhile to pursue solutions to its problems. However, while the enthusiasm with which the profession supported articling in this consultation process is heartening, it will be of limited value if not accompanied by a commitment among those who have not traditionally hired students to now do so. The willingness of more lawyers to play a role in training the next generation is essential to a re-vitalized articling program.

The Law Society must also undertake initiatives designed to enhance the number of articling placements, reduce the program's administrative complexity, and monitor the placement issue. The Task Force recommends that the Law Society retain the 10 month articling requirement and undertake the following initiatives designed to increase articling placements:

- a. Engage legal organizations in efforts to support and enhance the articling process.
- b. Conduct a survey, with the assistance of legal organizations, on articling opportunities.
- c. Develop an online Articling Registry to enhance information on articling opportunities.
- d. Pursue discussions with government, the Law Foundation of Ontario and other third parties to increase funding for articling positions.
- e. Create one additional staff position dedicated to outreach, promotion and coordination of articling initiatives and additional job placements.
- f. Implement a streamlined articling administrative process to reduce the burden on articling principals.
- g. Permit candidates in the licensing process to fulfill their entire 10 month articling requirement in national or international articles that the Law Society approves.

Respondents critiqued the Law Society for insufficient recognition of internationally trained candidates' practice experience as lawyers in other jurisdictions. The Task Force examined the current rules. They set arbitrary requirements. In considering whether the legal experience of

lawyers from other jurisdictions should result in an articling exemption or abridgment the relevant factors should be the length of practice experience, the legal system in which the practice experience is gained and the extent to which that experience addresses the Law Society's articling competencies. Internationally trained candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates should, however, be required to attend an intensive three-day program on professional conduct as part of the licensing process. All other internationally trained lawyers should be required to complete the 10 month articling requirement, subject to their ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.

The Law Society should also work with external partners to develop a voluntary bridging program for internationally trained candidates in the licensing process to support their integration into the Ontario legal profession.

It is essential that there be regular monitoring of the articling program, through the Professional Development & Competence Committee, to review the success of the initiatives, the number of unplaced candidates and additional areas for improvement. It is important to monitor the challenges that candidates from Aboriginal, Francophone, racialized, disabled and other communities face. The Law Society should also gather additional information from other jurisdictions that have adopted practical legal training courses as an alternative to articling, should the number of unplaced candidates continue to rise.

An Integrated Approach to Professional Responsibility and Practice Training

The Law Society should continue to play a role in professional responsibility and practice training. In assessing the problems with the current program and evaluating the comments it received, the Task Force has tried to develop a more relevant process for licensing candidates.

It proposes a two-pronged approach: a pre-call professional responsibility and practice requirement to provide candidates with guidance during articling, and a post call professional development requirement. Both will place the learning in context, in recognition that individuals who are actively engaged in articling tasks (pre-call) and already in practice (post-call) will be better able to relate the instruction to their day-to-day needs.

This integrated approach allows candidates to directly relate what they learn in the program to their experience in a "real world" environment. It increases hands-on supervision from articling principals. It also provides time and cost savings to candidates. The new pre-call and post-call requirements combined represent a lengthier and more rigorous educational program than is currently required in the licensing process. They also focus more time and attention on professional responsibility issues.

The proposed approach will demonstrate that practising with professionalism and the appropriate level of skill requires more than compliance with minimum standards. Professionalism and practice management capabilities are competencies that lawyers develop through education, training, and experience.

(a) Proposed Pre-Call Professional Responsibility and Practice Requirement

The proposed pre-call professional responsibility and practice requirement contains four modules: Professional Responsibility (2 days); Client Communication (1 day); Managing a Client File (1 day); and Practice Management (1 day). Following the course, candidates will be required to complete a professional responsibility and practice assessment, to be reviewed with the articling principal.

Law Society and Law PRO statistics have historically revealed that most negligence claims and client complaints are related to managing the client relationship and the operation of lawyers' practices. Yet, these are areas in which lawyers are reluctant to take continuing legal education once called to the bar. The redesigned program places specific focus on these critical issues.

To ensure that the importance of professional responsibility issues is maximized, the percentage of related questions on the barrister and solicitor licensing examinations will also be increased from 15% to 20% per examination.

The pre-call program will demonstrate best practices for conducting interviews, negotiations, and motions. It will be designed for online presentation and self-paced learning. Today's law graduates have been immersed in technology that would have been unimaginable even twenty years ago. They are used to learning environments that allow them the freedom to study, interact with peers, instructors and mentors, undertake research, pose questions and receive answers without ever having to leave their computer. While lawyers from previous generations may find online training problematic or isolating, a new generation of students prefers it as flexible, accommodating and interactive. It is not the only way to learn, but in particular circumstances it can be the most appropriate.

This format accommodates an increasing number of licensing candidates in Toronto, and recognizes the travel dilemmas that previously faced those working outside the largest cities. The modules can be taken at any time during the articling period. Articling principals will verify that candidates have completed the course. The format addresses the need for flexible learning opportunities. Another important advantage of this approach is consistency of delivery.

(b) Proposed Post-Call Professional Development Requirement

New lawyers will be required to attend 24 hours of accredited professional development programs during the first 24 months of their entry into a practice category.

The objective of this component of the training program is to ensure that candidates receive the practical training they need during their first 24 months of practice to serve their clients in accordance with the expectations of lawyers prescribed in the *Rules of Professional Conduct*. Law practice skills and professional responsibility issues will be integrated with substantive law programming.

The requirement will engage adult learners who have the professional capacity to make appropriate decisions about the direction and focus of their education. The Law Society will accredit specific courses to ensure that the content covers the requisite professional responsibility and practice management components. However, the Law Society will not dictate specific course structures or content requirements. The post-call instruction is designed to create a tighter nexus between learning and day-to-day practice requirements, permitting students to relate their educational materials directly to the events and issues that confront them in their own law practice. It also allows more diversity in the practice-based learning, permitting individuals to tailor the education to their specific needs when they choose among a range of

approved courses. It inculcates in new lawyers the principle that legal education is a life-long enterprise, and that continuing legal education is an essential component of professional responsibility.

The post-call component will allow new lawyers to choose the accredited program and provider of their choice. A substantial proportion of the program content must cover defined professional responsibility and practice skills competencies. The balance of the program can address the substantive law that meets practice needs. To ensure that lawyers outside of city centers have access to these professional development opportunities without having to leave their communities multiple delivery methods will be used, including traditional live programming, webcasting, teleseminars, archived audio and video and others. In addition, efforts will be made to develop programming that accommodates the learning needs of different cultural and other groups within the profession.

The Law Society will monitor attendance. A lawyer who fails to meet the professional development requirement will be administratively suspended from practice. To be reinstated, the lawyer must simply complete the requirement and file proof of attendance with the Law Society. To remind lawyers of the obligation, notices will be sent to them at regular intervals within the 24 month time frame. Lawyers will be warned in advance of suspension. The post-call requirement will also apply to lawyers who transfer from other jurisdictions within Canada in the first 24 months of their entry into practice.

Resource Implications

Estimated costs for articling related enhancements, including the articling survey, the Articling Registry, and the addition of one full-time equivalent staff will be approximately \$220,000. The on-line professional responsibility and practice course will result in a substantial decrease in expenditures for this portion of the licensing process of approximately \$1,200,000. This represents approximately one-half the cost of the current skills and professional responsibility program. Funding will be required to support the changes related to administrative processes, development and production of the new pre-call professional responsibility and practice course (integrated with articling). The development costs will be approximately \$250,000 and relate to production expenditures and presenter costs.

Overall, the 2009 funding requirements for the licensing process (including articling) will be approximately \$700,000 less than the 2008 budget. The majority of this reduction will be passed on to licensing candidates through a reduced licensing fee. This will offset the professional development programs they will be required to take during the initial 24 months of practice.

The Law Society's post-call professional development programming for lawyers in their first 24 months of practice will be developed using existing staff and resources in 2009 and early 2010. Once developed, the programs that the Law Society offers will be provided to the profession on a cost recovery basis. The Task Force has assumed that other professional development providers will participate in developing programming for these lawyers. It encourages them to do so.

The lawyers required to meet the post-call professional development component will have benefited from reduced licensing fees. They will be able to spread the professional development costs over 24 months. The range of programming available to them will allow them to choose programs that meet their time and cost requirements. Some providers, including the Law Society, also provide price reductions for lawyers earning below a specified amount.

Introduction of the New Programs

If approved, the new pre-call professional responsibility and practice requirement will be introduced for the 2009/2010 licensing process. Revisions to the articling program, including to the administrative structure, and development of the new professional responsibility and practice assessment, will be available for the 2009/2010 articling period. The Articling Registry development will commence immediately and be available by May 2009.

The post-call professional development requirement will come into effect after the 2009/2010 licensing process group is called to the bar, beginning in June 2010. The Law Society programming to meet the post-call professional development requirement will be available commencing September 2010 and will be held throughout each year from September through to June. The Law Society will ensure that all interested providers understand the timing and implementation of any program Convocation approves.

Communication Plan

A well developed communication plan is essential to moving the recommendations in this report forward, particularly those relating to articling initiatives. The report outlines what the Law Society currently does and how this may be expanded and improved. The Task Force recommends that the Law Society develop a more extensive communication plan to,

- a. advise students, law schools and the profession about the articling program, including the role of outreach staff, and the Law Society's role in assisting them with the establishment of placements;
- b. re-affirm candidates' responsibility to secure their own articling placement; and
- c. communicate changes to the licensing process.

LICENSING & ACCREDITATION TASK FORCE REPORT

TABLE OF APPENDICES

Task Force Consultation Process.....	Appendix 1
Notice to the Profession	Attachment A
Recipients of the Licensing & Accreditation Consultation Document	Attachment B
Licensing & Accreditation Task Force Consultation Presentations	Attachment C
List of Submissions	Appendix 2
Summary of Submissions on Articling	Appendix 3
Bridging Programs	Appendix 4
Eligible Articling Placements	Appendix 5

Summary of Submissions on the Skills and Professional Responsibility Program	Appendix 6
Proposed Professional Responsibility and Practice Requirement Course Outline	Appendix 7
Competency Profile for Post-Call Professional Development Requirement Program Accreditation	Appendix 8
Post-Call Professional Development Requirement Accreditation Process.....	Appendix 9

TASK FORCE PROCESS

2. On January 24, 2008 Convocation approved the dissemination of the Task Force's consultation report to the profession, law schools and legal organizations for the purpose of receiving written comments on Part 3 (Skills and Professional Responsibility Program) and Part 4 (Articling) of that report.
3. Since January 2008 the Task Force has met on February 20, 2008, March 26, 2008, April 2, 2008, May 5, 2008, May 21, 2008, June 25, 2008, July 14, 2008, August 11, 2008, August 27, 2008, September 2, 2008 and September 11, 2008.
4. The Task Force has acquired six new members who have participated in the consideration of the consultation submissions and the recommendations included in this report.

MOTION

5. That Convocation approve the following respecting the articling program:
 - a. The Law Society will retain the 10 month articling requirement.
 - b. The Law Society will undertake initiatives designed to increase articling placements as follows:
 - i. Engage legal organizations in efforts to support and enhance the articling process.
 - ii. Conduct a survey, with the assistance of legal organizations, on articling opportunities.
 - iii. Develop an online Articling Registry to enhance information on articling opportunities.
 - iv. Pursue discussions with government, the Law Foundation of Ontario and other third parties to increase funding for articling positions.
 - v. Create one additional staff position dedicated to outreach, promotion and coordination of articling initiatives and additional job placements.

- vi. Implement a streamlined articling administrative process to reduce the burden on articling principals.
- c. The Law Society will provide for exemptions or abridgments of the articling requirement for internationally trained lawyers who are candidates in the licensing process as follows:
- i. Internationally trained candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates would be required to complete an intensive three-day course on professional conduct as a mandatory component of the licensing process.
 - ii. All other internationally trained lawyers are required to complete the 10 month articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.
- d. The Law Society will work with external partners to develop a voluntary bridging program for internationally trained candidates in the licensing process to support their integration into the Ontario legal profession.
- e. Candidates in the licensing process will be entitled to fulfill their entire 10 month articling requirement in national or international articles that the Law Society approves.
6. That Convocation approve the development of,
- a. a pre-call professional responsibility and practice requirement as described in paragraphs 94-106 and Appendix 7 to be integrated with the 10 month articling program; and
 - b. a post-call professional development requirement of 24 hours to be taken during the first 24 months of entry into a practice category.
7. That Convocation approve the development of a more extensive Law Society communication plan as described in paragraphs 133-144 to,
- a. advise students, law schools and the profession about the articling program, including the role of outreach staff, and the Law Society's role in assisting them with the establishment of articling placements;
 - b. re-affirm candidates' responsibility to secure their own articling placement; and
 - c. communicate changes to the licensing process.

Task Force Objectives

8. In March 2007 Convocation approved the establishment of a Licensing and Accreditation Task Force to consider issues related to the licensing of lawyers in Ontario.
9. The task is a considerable one. One of the Law Society's most important functions is to ensure the entry level competence of newly called lawyers. Ontario has the largest bar in the country, an increasingly diverse legal profession, growing numbers of international lawyers and Canadian students with law degrees from outside Canada seeking admission to the profession, and challenging market place factors that affect articling placements, post-call hiring and practice realities.
10. The Task Force has examined the problems with the delivery of the skills and professional responsibility and articling components of the licensing process and assessed the need for change and improvement to meet the following objectives:
 - a. Ensure entry level competence for newly called lawyers.
 - b. Consider the unique needs of candidates from Aboriginal, Francophone, racialized, National Committee on Accreditation (NCA), disabled and other communities.
 - c. Address the *Fair Access to Regulated Professions Act* requirements for transparent, objective, impartial and fair licensing processes.
 - d. Develop flexible program delivery methods.
 - e. Be cost efficient.
11. In January 2008 the Task Force presented a consultation report to Convocation, seeking its approval to disseminate that report to the profession, law schools and legal organizations. The report provided background information on licensing issues that have a national scope, but sought input and advice on issues related to the Law Society of Upper Canada's skills and professional responsibility program and its articling program.
12. Convocation determined that written submissions on the skills and professional responsibility and articling programs should be accepted until May 31, 2008 after which the Task Force would prepare a further report for Convocation's consideration. Appendix 1 sets out the steps the Task Force took to bring the consultation report to the profession's attention.
13. The Task Force received over 60 responses from individuals and approximately 40 institutional responses, from most of the major legal organizations in the province. Appendix 2 sets out the submissions list.¹
14. Almost all of the submissions commented on the articling component of the licensing process; approximately half commented on the skills and professional responsibility component.

¹ The submissions are collected in a separate volume, available upon request.

Purpose of this Report

15. The Task Force has reviewed the submissions. This report provides Convocation with the results of the consultation process, sets out the Task Force's additional considerations and makes recommendations respecting the articling program and skills and professional responsibility training.

ARTICLING

General

16. The consultation report identified problems in the articling program, including a potentially significant increase in placement shortages. The Task Force identified four options on which it sought input:
 - a. Continue the program, but make it clear that the Law Society makes no guarantees that candidates will find employment. (Option 1)
 - b. Accept that if there is to be an apprenticeship requirement the Law Society should take responsibility for all candidates who qualify, and develop an alternative stream for those unable to find a placement. (Option 2)
 - c. Abolish the articling requirement. (Option 3)
 - d. Seek additional solutions from those being consulted. (Option 4)
17. The Task Force received approximately 60 comments on articling from individuals and approximately 40 institutional responses. These are summarized at Appendix 3.

TASK FORCE CONSIDERATIONS AND RECOMMENDATIONS

Retention of Articling Program

18. Respondents overwhelmingly rejected the abolition of articling. They emphasized that a competent profession requires practical training before call to the bar. Articling should not be characterized as a barrier, but rather as a core component of the licensing process.
19. Respondents acknowledged the challenges the program faces, but believe that radical change is not warranted. The Law Society should make further efforts to increase the number of jobs available, appeal to the profession to assist, and streamline the program.
20. The Task Force has considered these submissions in the context of the challenges to the program it identified in its consultation report. While it continues to have concerns about the potential increase in candidates seeking articling positions in the future, it is possible that such increases will be fewer than anticipated, at least in the short term. For example, the Ontario government announced in July 2008 that it will not be approving new law faculties at this time.
21. The Task Force is satisfied that the value of the articling requirement as a competence measure makes it worthwhile to pursue solutions to the problems the Task Force has identified. However, while the enthusiasm with which the profession supported articling in this consultation process is heartening, it will be of limited value if not accompanied by a commitment among those who have not traditionally hired students to now do so. Currently, there are 1171 approved articling principals, yet there are approximately

31,000 lawyers in private practice, government and corporate practice and other employment.² The willingness of more lawyers to play a role in training the next generation is essential to a re-vitalized articling program.

22. In addition, the Law Society must undertake initiatives designed to enhance the number of articling placements, reduce the program's administrative complexity, and monitor the placement issue. It must also continue to explore alternative routes to licensing should the numbers of those unable to secure articles become significant.
23. The Task Force recommends that the Law Society retain the articling program.

Articling Term

24. Very few submissions made any reference to the length of the articling term. Of the few that did, most suggested a shorter term of five months solely to encourage firms to hire double the number of students, rather than because five months is a sufficiently long exposure to practical training. A few submissions suggested that increasing the articling term to 12 months would encourage more small firms to hire a student because the current two month gap between students is disruptive to smaller practices.
25. The current 10 month articling term dates back to September 21, 2000 when Convocation sought to balance a number of factors, including,
 - a. the length of time necessary for candidates to benefit from practical experience, mentoring and acculturation to the profession;
 - b. the recognition that the Law Society's licensing process was, at that time, among the longest in the country; and
 - c. the views of those firms that provide the majority of jobs.
26. At that time, some lawyers suggested that reducing the articling term from 12 months to ten would create administrative problems for smaller firms, deterring them from hiring students. The evidence suggested, however, that even with a 12 month articling term, relatively few small firm lawyers acted as principals. Factors such as student salaries, time available to act as a principal, and the burden of administrative requirements were far more likely to affect the decision to take a student. There is no evidence that this has changed in the last eight years.
27. The Task Force does not endorse a change to the articling term. The only reason given for reducing the term to five months is that firms might double their hiring. Large firms assured the Task Force that this would not occur. More importantly, the Task Force believes that five months is insufficient time for candidates to absorb the benefits of articling.

² While not all of these would be eligible to act as articling principals, there is substantial scope for more placements.

28. The Task Force has seen little evidence to support a two month increase in the length of the articling term. Few people suggested it. There has been little evidence in the last eight years that the length of the articling term has made a difference to small firm hiring. Moreover, without strong evidence to justify disrupting the systems that employers have put in place to accommodate the 10 month term, the Task Force believes it would be ill-advised to make such a recommendation.
29. The Task Force recommends the articling term remain 10 months.

Role of Legal Organizations

30. One of the Ontario legal profession's strengths is the network of legal organizations that address lawyer issues from the perspectives of their constituencies. This diverse group, including those representing lawyers from Aboriginal, Francophone, racialized, disabled and other communities, overwhelmingly supported the continuation of articling in the public interest. Moreover, a number of them volunteered to partner with the Law Society to increase the number of articling placements. This commitment is essential to the success of efforts to enhance articling.
31. To effect change there must be more than good will. There must be action. Given that most legal organizations rely on volunteers whose board membership changes annually, the Law Society must liaise with the various organizations to determine the most effective way to turn their goodwill into action. In the case of groups representing Aboriginal, Francophone, racialized, disabled and other communities, this liaison can build on work already being done in the Law Society's Equity Initiatives department.
32. The Task Force recommends that the Law Society engage legal organizations in efforts to support and enhance the articling process.

Articling Survey

33. While there is some information on articling opportunities available throughout the province, it has not been systematically collected. Legal organizations encouraged the Law Society to seek their assistance in gathering information on placements, opportunities to increase them, reasons for jobs going unfilled, reasons candidate turn down offers and lawyers choose not to hire, and hiring issues specific to candidates from Aboriginal, Francophone, racialized, disabled and other communities.
34. The Task Force agrees that such a survey is important. It will also provide an opportunity to educate more lawyers on the articling system. Legal organizations have committed to encouraging lawyers to respond to the survey and the Law Society should work with these groups to achieve a high response rate.
35. The cost of undertaking a survey and potential follow-up activities is expected to be in the range of \$30,000 to \$40,000, assuming that an external consultant formulates the survey questions and analyzes the results. If approved, this amount would be included in the 2009 licensing process budget.
36. The Task Force recommends that the Law Society conduct a survey, with the assistance of legal organizations, on articling opportunities.

Articling Registry

37. A number of respondents suggested that a central location for information on available articling placements and students seeking employment would assist in job matching. The Law Society's website already contains a section for firms to list available jobs and candidates to post their résumés, but the profession appears to have limited knowledge of the Society's support services.
38. This suggestion, like many of the others, focuses primarily on enhancing awareness about jobs available outside the large firm environment and major centres. If this is an untapped market, a tool to "job match" may be useful.
39. The Law Society of British Columbia has recently launched an on-line articling registry to promote articling throughout the province, enhance the ability of small firms to recruit articling students and lawyers, and expand opportunities for students. Although designed as an articling registry, it has the capacity to become a broader based tool for pre and post-call recruitment.
40. Such a registry would not be expensive to create and maintain. Expected development costs for the registry would be approximately \$50,000, which would be included in the articling systems administration budget for 2009. If properly promoted, law schools, legal organizations, law firms and law students may come to view it as a meaningful partner in the recruitment and job search process.
41. The Task Force recommends that the Law Society develop an online Articling Registry to enhance information on articling opportunities.

Additional Funding for Articling Placements

42. Respondents suggested incentives to encourage sole and small firms to hire students. They also recommended pursuing alternative funding sources for articling placements.
43. Suggested incentives for hiring included levying the profession to establish a sole and small firm hiring subsidization fund, reduced CLE fees for those who act as principals, and reduced annual fees for articling principals in certain categories.
44. These suggestions create their own problems. The only source for such funding or subsidization is the lawyers' annual fee. The very people for whom subsidization is sought would be paying higher annual fees to support the subsidization. Moreover, to make any meaningful difference to willingness to hire, the amount of the levy increase would have to be significant. A lawyer who has refrained from hiring a student because of cost considerations is unlikely to do otherwise because he or she is receiving a modest subsidy of a few thousand dollars or paying reduced CLE fees. Realistic subsidies would have to be in the \$15,000 - \$20,000 range per eligible articling principal to cover a meaningful portion of salaries.
45. The Task Force agrees, however, with those who suggested that outside bodies such as government or the Law Foundation of Ontario be approached to discuss funding additional jobs. The Law Foundation of Ontario already provides funding toward five public interest articling placements, to be increased to seven for 2009/10. This represents the Law Foundation's appreciation of the need to diversify articling opportunities. The Law Society should pursue additional job placements such as these.

46. A number of respondents also suggested that the Law Society discuss with government additional articling jobs in Ontario's legal clinics. This possibility could also enhance access to justice for the Ontario public. There may be additional funding possibilities the Law Society should explore.
47. The Task Force recommends that the Law Society pursue discussions with government, the Law Foundation of Ontario and other third parties to increase funding for articling positions.

Staff Outreach Position

48. The key to the success of the recommended initiatives is personal contact, coordination, consistency and monitoring. Respondents agree that outreach to areas and firms outside of Toronto, Ottawa, and some of the other larger centres, is the best opportunity to locate additional jobs. Additional outreach respecting the needs of candidates from Aboriginal, Francophone, racialized, disabled and other communities is also essential. This requires the time and personal contact necessary to build relationships. The development of the articling survey and promotion of the Articling Registry will require coordination with legal organizations, law schools and law firms across the province.
49. Increasing the number of articling placements will be a challenge. The most effective way to advance the initiatives is to create a staff position dedicated to this job. Current articling staff administers the program and cannot assume this new and significant role. Moreover, the creation of a dedicated staff position would signify the seriousness with which the Law Society approaches the articling program.
50. The Task Force anticipates that this position would require approximately \$130,000 in salary and benefits beginning in 2009.
51. The Task Force recommends that the Law Society create one additional staff position dedicated to outreach, promotion and coordination of articling initiatives and additional job placements.

Administrative Requirements

52. The complexity of the program's administrative requirements appears to have deterred lawyers from becoming or remaining articling principals. Respondents frequently cited the filing requirements as a major irritant, particularly for sole and small firm lawyers.
53. The Task Force reviewed the program's administrative structure, much of which stemmed from the 1990 Report on Articling Reform. Although designed to enhance consistency in the articling process, many of the requirements are duplicative or ineffective. These should be replaced with a streamlined process that continues to require principals to provide specified learning experiences to students, but reduces paperwork and removes steps that have had little positive effect.
54. The Task Force has determined that articling principal and student filings could be reduced from nine contacts with the Law Society to two, plus the initial application a lawyer files to be approved as a principal.
55. The Task Force recommends the following administrative process:

- a. Initial approval application form: lawyers complete once. No annual renewal application or additional documentation will be required. Prospective principals must have been in practice for three of the previous five years.³ Conduct checks are undertaken at the time of the application. Principals will have a positive requirement to inform the Law Society of any change in status or conduct. The Law Society will undertake conduct checks on all principals on a rotating basis once every two years to confirm status.
- b. The principal application will include a section on the skills competencies that the principal is expected to address with the student, to the best of his or her ability. By signing and submitting the application form the lawyer applicant is committing to working with these skills competencies.
- c. Articling students and principals will sign and file the Articles of Clerkship form within 10 days after the commencement of articles.
- d. Articling students and principals will sign and file the Certificate of Service under Articles at the end of the articling term. The form will include confirmation that the student has completed the required professional responsibility and practice course and the assessment related to that course.⁴

Internationally Trained Candidates

56. To be eligible to enter the Law Society's licensing process a candidate must have either an L.L.B./J.D. degree from an accredited Canadian law school or a Certificate of Accreditation from the NCA, which assesses the law degrees of internationally trained candidates and those with civil law degrees from Quebec and sets equivalency requirements.
57. Approximately 110 NCA candidates enter the Law Society's licensing process annually. Some have received an international law degree, but have not yet been admitted to practice as a lawyer in any jurisdiction. For the purposes of the licensing process requirements these NCA candidates are no different from domestic candidates who have not yet been called to the bar.
58. Other NCA candidates are already lawyers in other jurisdictions with varying degrees of practice experience. Approximately 95% come from common law jurisdictions.⁵
59. Respondents critiqued the Law Society for insufficient recognition of internationally trained candidates' practice experience as lawyers in other jurisdictions.

³ This is the current requirement.

⁴ See paragraphs 94-106 for a discussion of the Professional Responsibility and Practice Course and the assessment.

⁵ Most internationally trained candidates from common law jurisdictions come from USA (25%), India (20%), England and Wales (20%), Nigeria (7%), Australia (6%), Pakistan (4%).

60. The current articling policies, stemming from the 1990 Report on Articling Reform, provide that internationally trained candidates with a minimum of 7 years practice experience in another jurisdiction may apply for an articling exemption in Ontario. The nature of their experience, including the legal system in their home jurisdiction and the relevance of their experience to the Law Society's articling competencies is assessed to determine if they should be called to the Ontario bar without articling at all or if they should be considered for an abridgment. There is no empirical evidence supporting the choice of seven years as the basis for exemption eligibility.
61. Candidates with fewer than seven years of practice experience or who do not meet the exemption criteria despite having seven years experience, may apply for an articling abridgment. The nature of their experience, including the legal system in their home jurisdiction and the extent to which that experience addresses the Law Society's articling competencies, is assessed. At most they can be excused from six months of articling. They must find articles for at least four months. This has proven very difficult for candidates as firms are reluctant to hire someone for such a brief period.
62. In the case of both exemption and abridgment applications, candidates from common law jurisdictions are more likely to be exempted or receive an abridgment because their experience and practice context approximates that undertaken in the 10 month articling period.
63. The purpose of the 10 month articling term is to provide a bridge between law school and practice. Domestic students obtain a common law degree and understand the legal principles that govern the justice system in Ontario, but require exposure to practical skills. Following 10 months of such exposure and subject to meeting the other requirements of the licensing process, the Law Society calls these candidates to the bar, entitling them to practise on their own, should they wish to do so.
64. The Task Force agrees that an internationally trained candidate who has not been called to the bar anywhere else should continue to be treated no differently than a domestic law school graduate for the purposes of the articling requirement. The 10 month practical experience is as essential for these candidates as it is for graduates from Canadian common law schools. The current approach should not change.
65. In considering whether the legal experience of lawyers from other jurisdictions should result in an articling exemption or abridgment the Task Force considers the following factors relevant:
 - a. The length of the practice experience.
 - b. The legal system in which the practice experience is gained.
 - c. The extent to which the practice experience addresses the Law Society's articling competencies.
66. Seven years as a threshold for considering exemptions is excessive and arbitrary. Ten months should be the relevant threshold, tied as it is to the articling requirement the Law Society imposes on domestically educated students. If 10 months is a sufficient bridge from law school to practice for domestic candidates, then 10 months of practice experience should also be considered an appropriate threshold for considering exemption requests of internationally trained lawyers.

67. The 10 months of experience is not, however, in and of itself sufficient to warrant an exemption or abridgment. The legal system in which the experience is gained is a fundamental consideration. Internationally trained lawyers who have been called to the bar and practised for at least 10 months in a common law legal system will have been exposed to rules of practice, principles of precedent based jurisprudence, and legal administrative structures that frame the Ontario and Canadian common law system. This is not the case for those whose practice experience is in a non-common law jurisdiction. Provided the internationally trained lawyer's common law experience addresses the Law Society's competencies, those candidates with 10 months practice experience in a common law legal system may be exempted from articling.
68. At the same time, however, they should receive some instruction on the Ontario Rules of Professional Conduct. Completion of an intensive three-day program should be required for these candidates prior to call to the bar.
69. For those international candidates called to the bar in non-common law jurisdictions, articling should be required to ensure that they are exposed to rules of practice, principles of precedent based jurisprudence, and legal administrative structures that frame the Ontario and Canadian common law system. At the same time, however, some abridgment of articling may be justified in individual cases based on the length of the candidates' experience and its relevance to the Law Society's articling competencies.
70. The Task Force recommends that the Law Society provide for exemptions or abridgments of the articling requirement for internationally trained lawyers who are candidates in the licensing process as follows:
 - a. Internationally trained candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates would be required to complete an intensive three-day program on professional conduct as a mandatory component of the licensing process.
 - b. All other internationally trained lawyers are required to complete the 10 month articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.

Bridging Program

71. Various respondents encouraged the establishment of voluntary support systems for internationally trained candidates, the goal of which would be to orient them to the Ontario market and enhance their ability to integrate into the profession. Information about bridging programs is set out at Appendix 4.
72. A voluntary bridging program for internationally trained lawyers could include a number of law specific training modules building on their former education and experience, without duplication. Topics such as the following could be offered:
 - a. Comprehensive information about the practice of law in Ontario.
 - b. Common law terminology.
 - c. Employment counseling and support.

- d. Mentoring and job development services.
 - e. Individual assessments.
73. Funding for the program could be sought from various organizations, including the Ministry of Citizenship and Immigration (currently soliciting proposals for such bridging programs) and the Law Foundation of Ontario. The Law Society could also partner with other organizations developing such programs. A service provider would deliver the program.
74. If this project is approved, it is anticipated that the research and development for the program would occur in 2009 and the program would be available in 2010.
75. The Task Force recommends that the Law Society work with external partners to develop a voluntary bridging program for internationally trained candidates in the licensing process to support their integration into the Ontario legal profession.

Eligible Articles

76. Respondents suggested expanding the type of placements that would be eligible to meet the articling requirement. In the majority of cases these suggestions are already part of the articling process. Appendix 5 contains information on the current rules addressing,
- a. traditional articles;
 - b. national articles;
 - c. international articles;
 - d. joint articles; and
 - e. part-time articles.
77. Currently, students doing national or international articles must complete at least four months of articling in Ontario. This is an unnecessary requirement. The National Mobility Agreement accepts that lawyers trained in one common law jurisdiction in Canada have had a sufficiently similar experience that no additional qualifications need be met upon transfer. Articling is part of that recognized training. An Ontario candidate should be able to complete all 10 months of articles in any Canadian common law jurisdiction, once the Law Society has approved the principal.
78. Students articling internationally also do so with a principal the Law Society has approved and who has agreed to provide the required educational competencies. This international experience should be sufficient to satisfy the entire articling requirement.
79. The Task Force recommends that candidates in the licensing process be entitled to fulfill their entire 10 month articling requirement in national or international articles that the Law Society approves.

Monitoring

80. In its consultation report the Task Force described concerns about the articling program. Respondents acknowledged problems, but expressed strong support. Initiatives recommended here are designed to address the problems, but it is essential that there be regular monitoring to review their success, the number of unplaced candidates and additional areas of improvement. It is important to monitor the challenges that candidates from Aboriginal, Francophone, racialized, disabled and other communities

face.

81. The Law Society should also gather additional information about practical legal training courses as an alternative to articling, should the number of unplaced candidates continue to rise.
82. As the committee with the mandate to provide policy options to Convocation on matters related to lawyer licensing, the Professional Development & Competence Committee is the appropriate monitoring body.

PROFESSIONAL RESPONSIBILITY AND PRACTICE TRAINING

The Task Force's Initial Views

83. In its consultation report, the Task Force recommended the elimination of the skills and professional responsibility program, based upon a number of factors including:
 - a. the results of a survey prepared with the cooperation of law schools across the country tracking their skills based curricula, the numbers of hours devoted to skills training, the percentage of students undertaking such training and the degree to which such training is mandatory. The Task Force concluded that law school skills training is accomplishing most, if not all, of what the current Law Society program does; and
 - b. the Law Society's program has encountered difficulty in meeting its goals, making it virtually impossible to run the program in its current form. These difficulties include,
 - i. increasing numbers of candidates (both actual and anticipated);
 - ii. anticipated difficulty in finding locations to run the program in Toronto;
 - iii. difficulty recruiting practising lawyers to teach the program, in part because of the length of the time commitment; and
 - iv. negative student feedback on the effectiveness of the program.
84. The Task Force received approximately 20 comments on the skills and professional responsibility program from individuals and 25 institutional responses. The comments are summarized at Appendix 6.

THE TASK FORCE'S CONSIDERATIONS AND RECOMMENDATIONS

General

85. The Task Force has found the comments it received on the skills and professional responsibility program helpful, and the following points persuasive:
 - a. There is value in a Law Society mandated professional responsibility and practice program. Although many law students take some skills and professional responsibility training at law school, the content and scope varies.
 - b. The Law Society should continue to provide training that acts as a bridge between law school and practice.

- c. It is insufficient for the Law Society to address the Rules of Professional Conduct and professional ethics through examinations only. There should be an instructional component as well.
- d. This type of program may be particularly relevant for those who enter sole and small firm practice.
- e. A different and flexible program structure should be developed to address the difficulties currently encountered.

An Integrated Approach to Professional Responsibility and Practice Training

- 86. The Law Society should continue to play a role in professional responsibility and practice training.
- 87. The Task Force has deliberated on ways to overcome problems such as the increasing numbers of candidates, instructor recruitment difficulties, criticism of program relevance and effectiveness, with particular attention to program timing, and teaching location limitations. In particular it has considered how best to engage candidates in the learning process and convince them of its relevance.
- 88. This analysis is essential to ensure that the program adapts to the needs of the profession and in the public interest. In assessing the current program, evaluating the comments it received, and deliberating on possible approaches, the Task Force has developed what it believes to be a more relevant process for licensing candidates.
- 89. It proposes a two-pronged approach that will consist of a pre-call professional responsibility and practice requirement to provide candidates with guidance during articling, and a post-call professional development requirement that builds upon the initial phase. The content will reflect the approved lawyer competencies that the Law Society validated during extensive consultation with the profession in 2004 and 2005 to ensure that the licensing process provides candidates with the necessary tools to become competent practitioners.
- 90. This proposed approach places the learning in context, in recognition that individuals who are actively engaged in articling tasks (pre-call) and already in practice (post-call) will be better able to relate the instruction to their day-to-day needs. Combined, the pre-call and post-call requirements represent a lengthier and more rigorous educational program than is currently required in the licensing process. They also focus more time and attention on professional responsibility.

Proposed Pre-call Professional Responsibility and Practice Requirement

- 91. During the consultation process, the respondents stressed that articling represents the most important component of practical training and the best opportunity prior to call to the bar for candidates to become familiar with mentors and senior practitioners. In the context of articling, candidates are introduced to the actual legal culture and practice and ethical environment of their profession in a concentrated fashion.
- 92. The overlap of professional responsibility and practice training with the articling term occurs in a variety of ways across Canadian law societies. Some law societies, such as British Columbia, New Brunswick and Nova Scotia, offer their skills programs at various times throughout the year with students interrupting their articles for concentrated

periods to attend the practice programs. Through their Canadian Centre for Professional Legal Education (CPLED) program Alberta, Saskatchewan, and Manitoba have adopted an integrated model in which the learning occurs within the articling term. Students obtain their practical training and take the course at the same time, through on-line and in-person modules.

93. An integrated approach has a number of benefits for Ontario:
 - a. It allows candidates to directly relate what they learn in the program to their experience in a “real world” articling environment.
 - b. It increases the articling principal’s involvement in the training because candidates will undertake the course during their articling term. Articling principals will also be involved in a professional responsibility assessment that flows from the course content (see below).
 - c. There will be time and cost savings to candidates.
94. The proposed pre-call requirement will demonstrate that practising with professionalism and the appropriate level of skill requires more than compliance with minimum standards. Professionalism and practice management capabilities are competencies that lawyers develop through education, training and experience.
95. The topics presented in the course will focus on critical issues in professional responsibility and practice management and promote discussion about the complex decisions that lawyers make. The course outline is set out at Appendix 7.
96. The course is based on principles of adult education and designed to recognize the specific needs of candidates as adult learners. Course activities will allow candidates to engage actively in the learning process, to exchange views with their articling principal and/or fellow candidates, and to connect the concepts being taught to their own knowledge and articling experiences.
97. The course contains four modules: Professional Responsibility (2 days); Client Communication (1 day); Managing a Client File (1 day); and Practice Management (1 day). Candidates must complete the course in conjunction with their articles, prior to being called to the bar. It will not be possible to take the course outside of articling.
98. To reinforce the learning objectives, candidates will be required to complete a professional responsibility and practice assessment following completion of the course. This assessment will replace the professional responsibility test that is currently used in the articling program. The new assessment will support the key learning outcomes and expectations of the course and the articling experience. Candidates will complete the assessment and discuss responses with articling principals.
99. The candidate will be responsible for the following:
 - a. Completing all four modules of the course during the articling term.
 - b. Completing the professional responsibility and practice course assessment.

- c. Discussing the completed assessment with his or her articling principal.
 - d. Verifying attendance and completion of the course.
100. The articling principal will be responsible for the following:
- a. Scheduling the times at which the candidate will take the course during the articling term.
 - b. Evaluating the professional responsibility and practice course assessment.
 - c. Reviewing the completed assessment with the candidate and providing input.
 - d. Verifying attendance and completion of the course and assessment.
101. In developing the content for the program, the Task Force emphasized the following:
- a. The need for the Law Society to continue to provide training in professional responsibility. Under the new proposal, the vast majority of students will have written their licensing examinations by the time they take the course. They will have already learned the Rules of Professional Conduct for the examinations. The program will build on that knowledge. Students will analyze those ethical issues that most often arise in a practical setting.
 - b. Integrating the program into the articling period will reinforce the learning, because the students will complete the professional responsibility test for their principals' review at the same time. Moreover, the issues may reflect real experiences students encounter in their articles.
 - c. Law Society and LawPRO statistics have historically revealed that most negligence claims and client complaints are related to managing the client relationship specifically and the operation of lawyers' practices generally. Yet, these are areas in which lawyers are reluctant to take continuing legal education once called to the bar. The redesigned program will focus on these critical issues.
102. To ensure that awareness of professional responsibility issues is maximized, the percentage of related questions on the barrister and solicitor licensing examinations will be increased from 15% to 20% per examination.

Program Delivery

103. Today's law graduates have been immersed in technology that would have been unimaginable even twenty years ago. They are used to learning environments that allow them the freedom to study, interact with peers, instructors and mentors, undertake research, pose questions and receive answers without ever having to leave their computer. While lawyers from previous generations may find on-line training problematic or isolating, a new generation of students prefers it as flexible, accommodating and interactive. It is not the only way to learn, but in particular circumstances it can be the most appropriate.

104. The Task Force proposes that this program be designed for on-line presentation and self-paced learning. This format accommodates an increasing number of licensing candidates in Toronto, and recognizes the travel dilemmas that previously faced those working outside the largest cities.
105. The modules can be taken at any time during the articling period. Articling principals will verify that candidates have completed the course. The format addresses the need for flexible learning opportunities.
106. Another important advantage of this approach is consistency of delivery, addressing one of the complaints with the current program. Candidates will all see the same lectures, demonstrations and panel discussions modeled by exemplary mentors and practitioners.

Proposed Post-Call Professional Development Requirement

107. In considering how best to solidify the bridge between law school and practice the Task Force has looked beyond the pre-call licensing phase. The pre-call program integrated with articling will provide a valuable introduction to the practical competencies a newly called lawyer requires. But more can and should be done to enhance new lawyers' competence in the early years of practice.
108. The Task Force proposes that new lawyers be required to complete 24 hours of accredited professional development programs during the first 24 months of their entry into a practice category.⁶ The objective is to ensure that candidates receive the practical training they need during their first 24 months of practice to serve their clients in accordance with the expectations of lawyers prescribed in the *Rules of Professional Conduct*. Law practice skills and professional responsibility issues will be integrated with substantive law programming.
109. The advantage of engaging in the learning once in practice is that the lawyers may determine what kind of programming best suits their practice needs. The requirement recognizes that the legal profession is diverse, with many different practice realities (e.g. sole, small firm, large firm, clinic, corporate, government, non-governmental organization) that require different content and delivery options.
110. The requirement will engage adult learners who have the professional capacity to make appropriate decisions about the direction and focus of their education. The Law Society will accredit specific courses to ensure that the content covers the requisite professional responsibility and practice management components. However, the Law Society will not dictate specific course structures or content requirements. The learner is free to choose programs that best suit his or her practice situations and stage of knowledge and skill development.

⁶ These are lawyers who are in private practice and other categories where they practise law and are required to pay 100% membership fees. If they are not in these categories the requirement will be deferred until they are. The requirement will also apply to new lawyers who transfer from other jurisdictions within Canada in the first 24 months of their entry into a practice category.

111. The post-call instruction is designed to create a tighter nexus between learning and day-to-day practice requirements, permitting lawyers to relate their educational materials directly to the events and issues that confront them in their own law practice. It also allows more diversity in the practice-based learning, permitting individuals to tailor the education to their specific needs when they choose among a range of approved courses.
112. Finally, it recognizes that timing is critical for another reason. Directly on the heels of many years of university learning, licensing candidates have traditionally been reluctant to bring their full educational potential to bear upon the Law Society's licensing course. The Law Society has responded over the past many decades to the various critiques and difficulties that have confronted the admission process with regular revisions and time-consuming, costly overhauls. Unfortunately, no format has yet managed to achieve full acceptance. In some respects, it is the very timing of the course that has proven to be a significant barrier. Law students are simply weary of being treated as "students" and anxious to undertake their careers as full members of the profession, and are quick to perceive additional instruction as dismissive of their capabilities and knowledge.
113. Moving some of the key professional responsibility and practice management competencies to the post-call venue may be the best solution to this complicated variable, allowing the intended recipients to obtain this essential education as lawyers, amongst other professional lawyers. It also inculcates in new lawyers the principle that legal education is a life-long enterprise, and that continuing legal education is an essential component of professional responsibility.
114. Lawyers may choose the accredited program and provider of their choice. A substantial proportion of the program content must cover the professional responsibility and practice skills competencies outlined in Appendix 8. The balance of the program can address the substantive law of their choice that meets their practice needs. The accreditation process is set out at Appendix 9.
115. Accredited programs will be delivered in a variety of flexible formats. This includes live lecture, discussion, demonstration, small group workshop, or a combination of these methods. To ensure that lawyers outside of city centers have access to these professional development opportunities without having to leave their communities multiple delivery methods will be used, including traditional live programming, webcasting, teleseminars, archived audio and video and others. In addition, efforts will be made to develop programming that accommodates the learning needs of different cultural and other groups within the profession.
116. The Law Society will monitor attendance. Providers whose modules the Law Society accredits will be expected to implement attendance-tracking systems and provide confirmation of lawyer attendance in the prescribed format, at the Law Society's request.
117. A lawyer who fails to meet the compulsory professional development requirement will be administratively suspended from practice. To be reinstated, the lawyer must simply complete the requirement and file proof of attendance with the Law Society. To remind lawyers of the obligation notices will be sent to them at regular intervals within the 24 month time frame. Lawyers will be warned in advance of suspension.

118. Accredited programs that fulfill the compulsory professional development requirements will be open to lawyers in their first 24 months of practice and to any others who wish to attend.
119. Interweaving substantive law and the professional responsibility and practice management issues that are specific to individual practice areas can only improve the awareness and care new lawyers bring to their work. For those who enter sole and small firm settings this additional support will be invaluable.
120. The Task Force recommends that the Law Society implement,
 - a. a pre-call professional responsibility and practice requirement as described in paragraphs 94-106 and Appendix 7 to be integrated with the 10 month articling program; and
 - b. a post-call professional development requirement of 24 hours to be taken during the first 24 months of entry into a practice category.

RESOURCE IMPLICATIONS OF TASK FORCE RECOMMENDATIONS

121. Estimated costs for articling related enhancements, including the articling survey, the Articling Registry, and the addition of one full-time equivalent staff will be approximately \$220,000.
122. The on-line professional responsibility and practice course will result in a substantial decrease in expenditures for this portion of the licensing process of approximately \$1,200,000. This represents approximately one-half the cost of the current skills and professional responsibility program.
123. Funding will be required to support the changes related to administrative processes, development and production of the new pre-call professional responsibility and practice course (integrated with articling). The development costs will be approximately \$250,000 and relate to production expenditures and presenter costs.
124. Overall, 2009 funding requirements for the licensing process (including articling) will be approximately \$700,000 less than the 2008 budget. The majority of this reduction will be passed on to licensing candidates through a reduced licensing fee. This will offset the professional development programs they will be required to take during the initial 24 months of practice.
125. A licensing process budget will be developed for Convocation's 2009 budget approval process, including a detailed analysis of the impact of program changes, to follow Convocation's approval of this report.
126. The Law Society's post-call professional development programming for lawyers in their first 24 months of practice will be developed using existing staff and resources in 2009 and early 2010. Once developed, the programs that the Law Society offers will be provided to the profession on a cost recovery basis.
127. The Task Force has assumed that other professional development providers will participate in developing programming for these lawyers. It encourages them to do so. This group of lawyers will develop an early and increasingly sophisticated interest in

professional development programming that is innovative and enhances their competence. The rich professional development tradition that the legal profession in Ontario currently enjoys will become even more responsive to lawyer needs.

128. The lawyers required to meet the post-call professional development component will have benefited from reduced licensing fees. They will be able to spread the professional development costs over 24 months. The range of programming available to them will allow them to choose programs that meet their time and cost requirements. Some providers, including the Law Society, also provide price reductions for lawyers earning below a specified amount.

Introduction of the New Programs

129. If approved, the new professional responsibility and practice course to be completed during articling will be introduced for the 2009/2010 licensing process. The modules will be available in August of 2009, in readiness for the start of articling placements, the majority of which begin in mid-August of each year.
130. Revisions to the articling program, including to the administrative structure, and development of the new professional responsibility and practice assessment, will be available for the 2009/2010 articling period. The Articling Registry development will commence immediately and be available by May 2009.
131. The post-call professional development requirement will come into effect after the 2009/2010 licensing process group is called to the bar, beginning in June 2010. The Law Society programming to meet the professional development requirement will be available commencing September 2010 and will be held throughout each year from September through to June. The Law Society will ensure that all interested providers understand the timing and implementation of any program Convocation approves.

COMMUNICATION PLAN

132. A well developed communication plan is essential to moving the recommendations in this report forward, particularly those relating to articling initiatives.

Articling

133. Respondents emphasized the importance of communication with students, law schools and the profession (in person and online) regarding,
- a. permissible articles, including private practice, in-house, national and split;
 - b. opportunities to article in small firms and smaller communities;
 - c. preparation for articling interviews;
 - d. becoming a principal;
 - e. initiatives to increase the number of placements; and
 - f. ongoing developments in the articling program.

134. The Law Society already communicates regularly with schools and candidates. Staff visits all Ontario law schools to make presentations about the licensing process and how to become an applicant. The Law Society has regular contact with Law Deans, Career Development Officers and the student body, and maintains a detailed web site on articling matters.⁷
135. The submissions suggest that the Law Society should consider ways to increase its contact and build on the commitment the profession made in this consultation process to the articling program. The Law Society should communicate in a number of different ways (e.g. law schools visits, online interaction, notices in the Ontario Reports, communication with legal organizations and their student groups). If Convocation approves the addition of an outreach staff person he or she would play a significant liaison role. This is important because it was clear in the consultation process that respondents are not aware of much of what the Law Society already does.
136. A communication plan should also re-affirm candidates' responsibility to secure their own articling placements. Candidates should be advised that where necessary they may have to consider jobs in a different city, firm or practice area than they would have preferred.
137. Any recommendations relating to internationally trained candidates should be provided to applicants through the NCA website and information packages and the Law Society's website and career map.
138. The monitoring process recommended to take place through the Professional Development & Competence Committee should include ongoing consideration of communication issues.

Licensing Process

139. The changes to the licensing process are limited to the development of the new pre-call professional responsibility and practice course that would be provided online during the articling term and the changes that would reduce the administrative processes for principals and articling students. If Convocation approves this report notice of the changes should be provided in the *Ontario Reports*, the *Ontario Lawyers Gazette* and on the Law Society's website and to all law schools in Ontario and the rest of Canada.
140. Licensing candidates entering the process in 2009 should also receive information about the new components of the licensing process in their application packages sent out to all law schools in Fall of 2008.
141. If Convocation approves this report, all currently approved articling principals should receive the same notification as the rest of the profession, as well as a specific package of materials outlining the improved administrative process, in preparation for receiving articling students in the Summer of 2009.

Post-Call Professional Development Requirement

⁷ See www.lsuc.on.ca/licensingprocess

142. The proposed post-call professional development requirement for the first 24 months of practice would apply only to newly called lawyers commencing with the call to the bar in June of 2010. Information about this change should be communicated along with all other general communications following Convocation approval.
143. New 2009 licensing process candidates should receive information on the new requirement, including all of the administrative obligations for reporting. The package should include information on the purpose of the professional development requirement, scope of the expected learning, how to find the programming and how to report.
144. The Law Society should provide all providers of legal programming with an information package outlining the new program, the opportunity to participate and the requirements for such participation, detailed information on the accreditation process and timelines for accreditation activities. An easily identifiable logo would be developed that providers would affix to programs approved for accreditation.
145. The Task Force recommends that the Law Society develop a more extensive communication plan as described in paragraphs 133-144 to,
 - a. advise students, law schools and the profession about the articling program, including the role of outreach staff, and the Law Society's role in assisting them with the establishment of articling placements;
 - b. re-affirm candidates' responsibility to secure their own articling placement; and
 - c. communicate changes to the licensing process.

Appendix 1

TASK FORCE CONSULTATION PROCESS

The Task Force took the following steps to bring the Report to the profession's attention:

The Law Society placed a Notice to the Profession in the *Ontario Reports* in English and French. A copy of the English text is set out at Attachment A.

The Law Society highlighted the Report and Notice to the Profession on its website at <http://www.lsuc.on.ca/latest-news/a/hottopics/licensing-and-accreditation-task-force/>.

On March 31, 2008 the Law Society sent an e-mail to over 22,000 lawyer members for whom it has an e-mail address.

The *Ontario Lawyers Gazette* included an article in the Spring 2008 edition.

The Law Society sent the report to over 100 legal organizations, law schools and law societies. The list is set out at Attachment B.

Task Force members and staff attended 22 meetings to provide information about the report and the consultation. A list is set out at Attachment C.

Many organizations surveyed their members (e.g. Ontario Bar Association, County and District Law Presidents' Association, Thunder Bay Law Association, County of Carleton Law Association, Association of Law Officers of the Crown) and compiled their institutional responses.

A number of magazines and weblogs ("blogs") conveyed information about the consultation process and sought comments.

Attachment A

NOTICE TO THE PROFESSION

CONSULTATION ON THE REPORT OF THE LICENSING AND ACCREDITATION TASK FORCE

The licensing of lawyers is an integral part of the Law Society of Upper Canada's mandate to regulate the profession in the public interest. The Law Society is currently considering a number of issues related to legal education.

On January 24, 2008 the Law Society's Licensing and Accreditation Task Force presented a consultation report to Convocation. The purpose of the report is to seek the profession's comments on the Task Force's proposal and options respecting the Law Society's Licensing Process, in particular the Professional Responsibility and Skills component (Part 3 of the Report) and the Articling component (Part 4 of the Report).

The profession is encouraged to review the report and to provide written comments on the proposals and options set out in the report or to provide additional options for consideration. The goal of the consultation process is to consider practical solutions to the issues the consultation report raises. The report is available on the Law Society's website at:

<http://www.lsuc.on.ca/media/licensing.pdf>

Written comments must be received no later than May 31, 2008. Please direct them to,

Sophia Sperdakos, Policy Counsel
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6
ssperdak@lsuc.on.ca
phone: 416-947-5209
facsimile: 416-947-7623

Attachment B

RECIPIENTS OF THE LICENSING & ACCREDITATION CONSULTATION REPORT

Law Schools

1. University of Alberta (Law Dean, David Percy)
2. University of BC (Law Dean, Mary Anne Bobinski)
3. University of Calgary (Acting dean, Alastair Lucas)
4. Carleton University (Chair, Peter Swan)
5. Dalhousie University (Law Dean, Phillip Saunders)
6. Université de Laval (doyen de droit, Pierre Lemieux)
7. University of Manitoba (Law Dean, Harvey Sector)
8. McGill University (Law Dean, Nicholas Kasirer)
9. Université de Moncton (doyenne de droit, Marie-France Albert)
10. Université de Montréal (doyenne de droit, Anne-Marie Boisvert)
11. University of New Brunswick (Law Dean, Phillip Bryden)
12. University of Ottawa, Common Law Section x2 (Acting Law Dean, Daniel Gervais & Manager Student Services, Lisa Blair)
13. University of Ottawa, Civil Law Section (Law Dean, Nathalie Des Rosiers)
14. Université de Québec a Montréal (Terry Bourgoignie, Director)
15. Queen's University x2 (Law Dean, William Flanagan & Dir. of Career Serv. Deanna Morash)
16. Queen's Law Students' Society (President Jeffrey Fung)
17. University of Saskatchewan (Law Dean, Brent Cotter)
18. Université de Sherbrooke (doyen, Daniel Proulx)
19. University of Toronto x2 (Law Dean, Mayo Moran & Dir. Career Development Programs, Lianne Krakauer)
20. University of Victoria (Law Dean, Andrew Petter)
21. University of Western Ontario (Law Dean, Ian Holloway)
22. University of Western Student Legal Society
23. University of Windsor x2 (Law Dean, Bruce Elman & Leeann Marchand)
24. University of Windsor Student's Law Society (Executive Judith Atwood)
25. Osgoode Hall Law School x2 (Law Dean, Patrick Monahan & Dir of Career Services, Chantal Morton)
26. Osgoode Hall Law School Legal Literary Society (Jessica Catton)

Legal Associations

27. Ontario Bar Association (President, Gregory Goulin)
28. Ontario Bar Association: Soles and Small Firm Section (Chair, Bonnie Patrick)
29. Ontario Bar Association Young Lawyers' Division EAST (Chair, Lillian L. Camilleri)
30. Ontario Bar Association Young Lawyers' Division SOUTHWEST (Chair, Lianne Armstrong)
31. Ontario Bar Association Young Lawyers' Division CENTRAL (Chair Susannah B. Roth)
32. Ontario Bar Association Students group (Alastair Clarke)
33. Toronto Lawyers Association (Library Anne Matthewman)
34. The Advocates Society (Exec. Dir Alexandra Chyczij)
35. The Lawyers Club (Pres. James Maloney)
36. The Thomas More Lawyers' Guild of Toronto (Pres. Rosanne Rocchi)
37. The Canadian bar Association (CEO John Hoyles)
38. Criminal Lawyers' Association (Exec. Dir Anthony Laycock)
39. CDLPA (Chair Paul Kowalyshyn)
40. Family Lawyers Association (Chair Sarah Wunch)

41. Ontario Crown Attorneys' Association (Pres. James Chaffe)
42. National Committee on Accreditation (Exec. Dir. Vern Krishna)
43. Federation of Law Societies of Canada (Exec. Dir. Jonathan Herman)
44. Legal Aid Ontario (CEO Robert Ward)
45. The Law Foundation of Ontario (CEO Elizabeth Goldberg)
46. Ontario Trial Lawyers Association (Exec. Dir. Marsha Phelps)
47. Association des jurists d'expression française de l'Ontario (Exec. Dir. Sonia Ouellet)
48. Refugee Lawyers association of Ontario (Pres. Geraldine MacDonald)
49. Ontario Real Estate Lawyers Association (Pres. Raymond Leclair)
50. Women's Law Association (Virginia MacLean)

Law Societies

51. Law Society of British Columbia (CEO & Exec. Dir. Timothy McGee)
52. Law Society of Alberta (Exec. Dir. Donald F. Thompson)
53. Law Society of Saskatchewan (Exec. Dir. Tom Schonhoffer)
54. Law Society of Manitoba (CEO Allan Fineblit)
55. Barreau du Québec (Exec. Dir. Jacques Houle)
56. Chambres des Notaires du Québec (Exec. Dir. Christian Tremblay)
57. Law Society of New Brunswick (Exec. Dir. Marc Richard)
58. Nova Scotia Barristers' Society (Exec. Dir. Darrel Pink)
59. Law Society of P.E.I. (Secretary-Treasurer & Exec. Dir. Susan Robinson)
60. Law Society of Newfoundland & Labrador (Exec. Dir. Peter G. Ringrose)
61. Law Society of the Northwest Territories (Exec. Dir. Linda G. Whitford)
62. Law Society of Yukon (Exec. Dir. Lynn Daffe)
63. Law Society of Nunavut (CEO Craig W.J. Goebel)

Courts/Government

64. Court Of Appeal for Ontario (Hon. Warren K. Winkler)
65. Superior Court of Justice (Hon. Heather K. Forster Smith)
66. Ontario Court of Justice (Hon. Annemarie E. Bonkalo)
67. Attorney General (Attn: Chief of Staff Betsy Hall)
68. Attorney General (Dir of Policy Development Andrea Strom)
69. Deputy Attorney General (Mark Leitch)
70. Association of Law Officers of the Crown (D. Exner)
71. ADM (M. Segal)

Equity Advisory Group

72. Milé Komlen, Senior Consultant, Employment Equity and Diversity,) CIBC
73. Faisal Bhabha - Bakerlaw
74. Zahra Binbrek - African Legal Clinic
75. Ritu Bhasin - Stikeman Elliot LLP (Dir. Student and Associate Programmes,
76. Joseph K Cheng - Legal Counsel, Department of Justice Canada
77. Michelle Dagnino – Associate, Cavalluzzo Hayes Shilton McIntyre Cornish
78. Alan D'Silva - The Advocates Society
79. Dania Majid - Arab Canadian Lawyers Association)
80. Debra McAllister - ARCH Disability Law Centre
81. Danielle Manton - AJEFO Representative

82. Frank E. Walwyn - Canadian Association of Black Lawyers
83. Victoria Romero Co-Vice Chair - Hispanic Ontario Lawyers Association
84. Ron Choudhury - President -South Asian Bar Association
85. Sheryl Beckford - Women's Law Association of Ontario
86. Laurie Joe (Staff Lawyer - West End Legal Services)
87. Kristi McHenry (Legal Aid Ontario)
88. Sandra Nishikawa -Dept of Justice Ontario Regional Office
89. Kirsti Mathers McHenry - Legal Aid Ontario
90. Sandra Yuko Nishikawa - Department of Justice, Ontario Regional Office

Aboriginal Working Group

91. Susan Hare
92. Kimberly Murray (Exec. Dir) Aboriginal Legal Services Toronto
93. Theresa Bananish
94. Evonne Wright - (Justice Initiatives Manager,) - Ontario Federation of Indian Friendship Centres
95. Evelyn Baxter -Nishnawbe-Aski Legal Services
96. Martin Bayer (Weaver Simmons LLP)
97. Kevin Bell, Counsel - Ontario Native Affairs Secretariat/MAG
98. Fred Bellefeuille – Counsel, Union of Ontario Indians
99. Brian Eyolfson Vice Chair/Adjudicator , Human Rights Tribunals of Ontario
100. Margaret Froh, Counsel, Mnjikaning First Nation
101. Jeffrey Hewitt, Legal Counsel, Mnjikaning First Nation
102. Marian Jacko Counsel - Office of the Children's Lawyer/MAG
103. Robert Jamieson – CEO National Aboriginal Achievement Foundation
104. Darlene Johnston Faculty and Aboriginal Student Advisor) University of Toronto
105. Ralph Keesickquayash - Department of Justice
106. Kathleen Lickers
107. Jason Madden
108. Lora Mackie , Counsel - United Chiefs and Council of Manitoulin
109. Clem Nabigon – Staff Lawyer -Durham Children's Aid Society
110. David Nahwegahlow - Nahwegahbow Corbiere
111. Tracey O'Donnell -Nipissing First Nation
112. Catherine Rhineland (counsel MAG)
113. Katherine Hensel, Stockwoods LLP
114. Ron George
115. Jeff Schuerer (McDonald and Company)
116. Brenda Small -Negahneewin College/Confederation College
117. Prof. Patricia Stirbys - University of Ottawa Common Law Section
118. Jean Teillet - Pape Salter Teillet
119. Lance Triskle – Aboriginal Court Worker -Barrie Native Friendship Centre
120. Jodie Lynn Waddilove - MAG Crown Counsel

Other

121. Peter Hamiwka (member of the profession, came in to pick up)

Attachment C

LICENSING & ACCREDITATION TASK FORCE CONSULTATION PRESENTATIONS

Group	Date	Notes
1. OBA Executive	June 14, 2007	Initial discussion of issues along with SSF issues
2. Toronto Lawyers' Association Trustees	September 6, 2007	At TLA
3. PD Consortium	October 24, 2007	At Bennett Jones
4. Fasken Martineau	November 29, 2007	Managing Partner, Articling and Student Committees
5. Osgoode Hall Law School	December 6, 2007	At Osgoode PD Centre
6. Ottawa Law Firms	January 15, 2008	At Gowlings
7. MTCU Universities Branch	January 25, 2008	Re: new law schools
8. Steve Pengelly, Executive Director, OBA	February 6, 2008	
9. Deans of Ontario Law Schools	February 20, 2008	At LSUC
10. OBA Executive	February 28, 2008	
11. CDLPA Plenary	March 6, 2008	Executive – Toronto
12. Ministry of the Attorney General	March 25, 2008	Articling and Student Committee
13. OBA Council	March 28, 2008	
14. McCarthy Tétrault	April 8, 2008	
15. Equity Advisory Group	April 9, 2008	
16. Ottawa lawyers	April 21, 2008	At Borden Ladner Gervais, Ottawa
17. Equity Groups	May 5, 2008	At LATF meeting
18. CDLPA Plenary	May 8, 2008	Windsor

19.	CCLA	May 9, 2008	At Montebello Ottawa
20.	Middlesex Law Assoc.	May 20, 2008	London
21.	McMillan Binch	May 21, 2008	
22.	Law Deans	June 25, 2008	At LSUC

Appendix 2

LIST OF SUBMISSIONS

INDIVIDUAL LAWYERS

1. Paul Battin
2. Raj Bharati
3. Janet Blair
4. Elaine Borg
5. Blair L. Botsford
6. Paul Calarco
7. Terrance S. Carter / Nancy E. Claridge
8. Mervet Cook
9. James Cox
10. Victoria Crewe-Nelson
11. Larry Crossan
12. David Debenham
13. Rica Sean Demos
14. Albert Engel
15. Roderic G. Ferguson, Q.C.
16. David Fernandes
17. Paul Field
18. Bruce Forth
19. Jean-Sebastien Gallant
20. Harold Geller
21. Simon Gencher
22. John Gravel
23. J. Douglas Grenkie
24. Kenneth G. Hare
25. Marjorie Hiley
26. Paul N. Iacono, Q.C.
27. Mark Johnson
28. Michael A. Katzman
29. John Mark Keyes
30. Denelle Lambert
31. Lucy Lee
32. Barn-Yen Li
33. Mary Mackinnon
34. Denise Marshall
35. D.Bruce McChesney
36. Greg McConnell

37. Scott McEachran
38. Gary McKay
39. Catherine McKenna
40. Anne Mundy-Markell
41. Marcia Mills
42. G. Edward Oldfield
43. Allison Ostafew
44. Michael Pasquale
45. Natalija Popovic
46. Robert D. Preston
47. Gordon Prisco
48. Helene Bruce Puccini
49. Gerald P. Sadvari
50. William Sharpe
51. Jack B. Siegel
52. Jennifer Dietrich Suzor
53. Margaret R. Truesdale
54. Peter I. Waldmann
55. John C. Walker, Q.C.
56. John W. Whiteside, Q.C.
57. Eric M. Wolfman
58. Roger D. Yachetti, Q.C

There were additional submissions from lawyers who provided comments for the Task Force's use only or did not provide consent for public attribution.

INSTITUTIONAL COMMENTS

Judiciary

1. Chief Justice Heather Smith, Ontario Superior Court of Justice
2. Chief Justice Annemarie E. Bonkalo, Ontario Court of Justice
3. Justice Peter Harris, Ontario Court of Justice

Law Faculties/Universities

4. University of New Brunswick, Faculty of Law
5. Osgoode Hall Law School, Dean's Office
6. Osgoode Hall Law School, Director, Professional Development
7. University of Ottawa Faculty of Law (Common Law)
8. Queens University, Faculty of Law
9. University of Toronto Faculty of Law, Career Development Office,
10. Faculty of Law, University of Windsor
11. Dean Ian Holloway, Q. C. (Faculty of Law, Western University) [in individual capacity].
12. Neil Gold, University of Windsor [in individual capacity]
13. Wilfrid Laurier University

Law Firms

14. Harrison Pensa LLP

15. Heenan Blaikie LLP
16. Lerner LLP
17. McCarthy Tetrault LLP
18. McMillan LLP
19. Ridout & Maybee LLP
20. Stikeman Elliott LLP
21. Submissions from Law Firm Professional Development and Student Program Officers

Law Society of Upper Canada Committees

22. Access to Justice Committee
23. Equity and Aboriginal Issues Committee (prepared taking into account the views of the Equity Advisory Group and the Aboriginal Working Group)

Law Societies

1. Law Society of British Columbia
2. Allan Fineblit, Q.C., Chief Executive Officer, Law Society of Manitoba.
3. Chambre des notaires du Québec
4. Law Society of Saskatchewan

Legal Organizations

5. The Advocates' Society
6. ARCH Disability Law Centre
7. Association of Law Officers of the Crown
8. Canadian Association of Black Lawyers
9. County and District Law Presidents' Association
10. County of Carleton Law Association.
11. Federation of Asian Canadian Lawyers
12. Ontario Bar Association
13. South Asian Legal Clinic of Ontario (SALCO) and South Asian Bar Association (SABA) - joint submission
14. Thunder Bay Law Association
15. Toronto Lawyers Association

Other

16. Competition Bureau of Canada
17. Office of the Fairness Commissioner
18. City of Toronto Legal Division, Diana W. Dimmer, Chair, Articling Program

One additional institutional submission was provided for the Task Force's use.

Appendix 3

SUMMARY OF SUBMISSIONS ON ARTICLING

1. Of the individual responses only four appear to support outright abolition of articling. One proposes further study to ensure that the system cannot be fixed and only then abolition. Six individuals propose a re-conceptualization of law school education to include skills training either through co-op programs or as a replacement for the third year curriculum.
2. Of the institutional responses, two support the abolition of articling, one of which is the Office of the Fairness Commissioner. Three of the responses also propose fundamental change to law school education to incorporate co-op programs and skills training. The remaining submissions strongly oppose the abolition of articling for a number of reasons that will be discussed below. A number make suggestions for improvement.
3. Respondents made a number of the same general comments:
 - a. The Task Force appears to have based its approach on an anticipated substantial increase in the number of candidates seeking admission to the bar of Ontario. Making radical change based on predictions would be premature.
 - b. The Task Force's approach is based less on the view that articling is unnecessary and therefore could be abolished than that it is difficult to sustain for practical reasons. This is the wrong way of approaching the issue and "any decision about articling ought to consider the public interest as its paramount concern." "To suggest that because of large numbers being taken into law schools we might abandon articling is a complete abdication of our responsibility to the public." "The numbers issue should not be addressed by resolving it at the expense of the integrity of the profession."
 - c. The Law Society is considering changes to articling because Aboriginals, Francophones, members of racialized communities, and NCA candidates face potential barriers to finding jobs in disproportionate numbers. Rather than do away with articling, the Law Society should directly address the equity issues.
 - d. The Law Society does not have an obligation to guarantee that all graduates of law school will be called to the bar or guaranteed articling positions. No other profession makes such a guarantee. The Law Society should, however, do all it can to maximize the number of articling positions. Individuals, law schools, legal organizations, and law firms all opposed a guarantee of jobs.
 - e. The Task Force is unwarranted in concluding that there would be little point in exhorting the Law Society to find more placements.
 - f. The Task Force is incorrect in suggesting that since articling experiences are inconsistent, the value of articling may be undermined. It would be unrealistic to expect consistency across 1300 positions. The articling experience is still invaluable in bridging academic learning with practice.

SUBMISSIONS ON THE TASK FORCE REPORT OPTIONS – PROS AND CONS

Option 3: Support for Abolition of Articling

4. A limited number of respondents supported the abolition of articling:
 - a. A respondent stated that the profession has outgrown “forced apprenticeship that is tailored to general practice lawyers and does not accommodate the highly specialized modern lawyer.” The free market has bypassed articling with most law firms now hiring first year law students as summer students who eventually become articling students. Articling, therefore, is a barrier to entry that adds no value and should be replaced with an experience requirement that any newly licensed lawyer must work under supervision of a licensed lawyer for one year before practising alone.
 - b. A respondent with international training and experience considered articling unnecessary for those who already have legal experience or who simply want the credential without wanting to practise law in Canada. With multiple degrees these individuals have already proven themselves academically, and have worked in the field for years.
 - c. One respondent noted that the United States does not require articling and questioned its necessity in Canada.
 - d. One institutional respondent stated that articling results in talented Ontario law graduates going elsewhere. If the requirement to article were eliminated, legal employers would continue to hire graduate law students, likely in similar numbers, and would incorporate many of the training and mentoring elements of the articling process into the educational plan for the first-year law associate curriculum. “Continued reliance by the Law Society on the availability of private-sector articling positions is an arbitrary, and arguably inequitable, means of determining practice eligibility - particularly in light of pervasive quality discrepancies in articling experiences.” The respondent acknowledged, however, that those jurisdictions that do not have articling or apprenticeship requirements have rigorous licensing exams with historically lower pass rates than has been the norm in Ontario.
 - e. One respondent noted that articling skews students’ career choices since they are driven to the large law firms where the majority of jobs exist.
 - f. The Fairness Commissioner supported the abolition of articling for a number of reasons:
 - i. It would accelerate the licensing process for all applicants.
 - ii. It would remove the burden of securing articles.
 - iii. For those who already have practical experience, articling is unnecessary.
 - iv. It may not be the only way to demonstrate competency and the necessary skills to practise as a lawyer.
 - v. The value added of the program is uncertain.

- vi. Elimination of the program is the only way to ensure that a potentially unreasonable barrier to call to the bar is eliminated.
 - vii. It does away with ongoing concerns that the educational value of the articling program is only as good as the principal's commitment.
- g. A further submission supported the abolition of articling, but proposed alternatives to ensure students have skills, knowledge and professional responsibility for practice through co-op education, pre-and post-call learning, and clinical training in law school.

Option 3: Support for Retention of Articling

5. The vast majority of respondents strongly supported the retention of articling. A number of common themes emerged.

Competence and the public interest

6. Respondents from all groups clearly linked articling, competence and the public interest. Most who supported articling said it represents the only substantial practical training that students receive before call to the bar. To allow graduates with no training to practise law unsupervised would undermine a critical Law Society mandate - protection of the public. Respondents emphasized the importance of mentorship and guidance prior to call to the bar and suggested that without this experience there could be an increase in negligence claims and disciplinary complaints. They disagreed with any characterization of articling as a potentially unreasonable barrier. It is a valuable and necessary prerequisite for admission to the Ontario bar.
7. A number of respondents who have acted as principals noted that law graduates do not have the practical knowledge to practise law. Articling, regardless of unevenness and limited substantive coverage, is still better than no pre-call practical training. To do away with it would undermine the justification for self-regulation.
8. The Chambre des notaires du Québec, the Law Society of British Columbia and Law Society of Saskatchewan emphasized the importance of licensing bodies providing practical training.

Articling and National Mobility

9. Respondents said that the abolition of the articling program would affect national mobility. The National Mobility Agreement is premised on law societies having similar pre-call requirements for their members, thereby allowing lawyers from one jurisdiction to work in another jurisdiction without having to meet additional requirements.
10. If Ontario has the shortest call requirement it may be flooded with candidates seeking admission to this bar.
11. Assuming other provinces retain articling, clients might prefer to hire graduates who have articulated over ones who have not.
12. Two of the licensing bodies referred to the importance of a national response to pressures on articling, suggesting that under national mobility it is inadvisable for law societies to act individually on such national issues. One urged the Law Society of Upper Canada to take the lead in encouraging a national discussion.

Minimal Impact of Abolition on Equity and Other Issues

13. Abolition of articling would simply push placement problems to post-call. At the same time, its abolition would remove a valuable tool that many candidates use to establish contacts within the legal community, learn about practising, and absorb lessons about the legal culture. The same people who have difficulty obtaining articling positions would have difficulty post-call obtaining jobs, but would be in a position to practise on their own having had no practical experience.
14. Some suggested that abolishing articling could flood the Ontario market. Although articling shortages would not be an issue, job shortages would. Moreover without articling there would be a wide open market, and no reason for law schools not to continue to increase enrollments.

Untapped placement opportunities

15. Many respondents believe that additional placements could be found if the Law Society, in partnership with law associations and organizations, is prepared to work on this issue. Even if placement shortages are the problem, any discussion of abolition is premature until concentrated efforts are made to address this.

Option 1 (No guarantee of placement)

16. Having rejected the abolition of articling respondents considered the other options. Reactions to Option 1 fell within three categories:

- a. No profession guarantees that all candidates will be admitted to practice. The Law Society has never done so. Given that the Law Society has no control over,
 - i. the number of graduates from law schools;
 - ii. the number of Ontario or Canadian students who will attend law school outside the country and then seek to return; or
 - iii. the number of foreign lawyers who will seek admission in Ontario;

it cannot and should not guarantee that those who seek admission will obtain it, regardless of what the market will bear. To make such a guarantee would suggest that even in cases where candidates were not suited to practice they would be guaranteed a job. The Law Society has never made such a guarantee and there is no reason to begin now.

- b. It is wise to warn students that there is no guarantee they will complete all licensing requirements just because they have been accepted to law school. Market forces have traditionally played a role in providing articling placements. However, the Law Society cannot absolve itself of the obligation to proactively assist as many qualified graduates as possible to obtain articling positions. The number of graduates not finding placements should be as low as possible. Option 1 should be a first or temporary step while improvements are made to the program and further placements are sought. Students should be advised that they may have to extend their search for articles beyond their preferred choice of firms, city, or substantive law area and pay scale. This was the most common response to Option 1.

- c. This option is unacceptable. Even if it is already made clear to students that they are not guaranteed articling positions, they are not really in any position to assess that information. Law schools do not provide information on how many students are still currently looking for work. The option would have differential effects on students depending on their background. It puts all the responsibility on the shoulders of students, while pretending that all students are treated the same. The Law Society has an obligation to eliminate barriers.

Option 2 (Practical Legal Training Course)

- 17. Most who commented on this option opposed it, in a number of cases because a general discussion did not allow for evaluation. Respondents agreed with the limitations the Task Force had identified in its consultation report:
 - a. The potential development of a two-tiered legal community, made up of those who had articulated and those who had taken the course.
 - b. Candidates having to pay for the course while those who article receive salaries.
 - c. The course atmosphere could not replicate the practical training that articling students receive. Further, the students might view the experience as artificial.
- 18. Respondents also suggested,
 - a. it might be difficult to find appropriate providers;
 - b. no Canadian jurisdiction has experience with this model. The Australian experience may not be comparable to the Canadian one, making it difficult to assess how its introduction would work here;
 - c. the introduction of such a program could have the unintended effect of making Ontario a preferred location for individuals who might have difficulty qualifying to practise elsewhere.
- 19. Those who supported the option or at least investigating it further suggested,
 - a. it might be the most reasonable compromise to ensure that articling continued;
 - b. it would be necessary to have an assistance fund for students who could not afford the course; and
 - c. it was the most acceptable of the options provided it was implemented with ongoing practice supervision, perhaps for one or two years, for lawyers who become sole practitioners or work in firms under a certain size. The supervision could include a limited or graduated license, mandatory mentorship programs, regular file audits and mandatory post-call learning.

Option 4: Additional Suggestions

- 20. The majority of additional suggestions addressed ways to increase the number of articling placements.

Appendix 4

BRIDGING PROGRAMS

What are Bridging Programs?

Bridging programs help immigrants fill education gaps or other professional requirements, provide them with cultural and/or workplace orientation, and/or help them find work that makes use of their skill set and former training.⁸

Bridging programs include those that bridge towards specific qualifications and requirements of regulatory bodies, professional practices, and/or job market and cultural awareness. Private companies and businesses, municipal and provincial governments, NGOs, and institutions of higher learning usually operate them.

Ontario Regulated Professions' Current Bridging Programs

Bridging programs exist in Canada and in Ontario for many professions. Their development has been ad hoc. As a result, the programs take various forms and models. Some programs are occupation-specific while others focus on providing participants with Canadian work experience.

The Public Policy Forum's report notes that the most important barriers faced by immigrants when attempting to join the labour force include the following:

- lack of Canadian work experience;
- lack of information about available programs and services;
- barriers relating to licensing and accreditation;
- lack of access to language and technical skills upgrading.

Bridging programs aim at alleviating those barriers. They are available in many professions in Ontario, including accounting, architecture, engineering, nursing and teaching. The design and implementation of bridging programs usually involves a number of partners, including regulatory bodies, governments and educational institutions. Educational institutions are particularly important in developing such initiatives, as they are able to provide information regarding Canada's labour market mechanisms, as well as advice and career counseling services. They typically have the capability to offer labour market preparation programs in addition to mentorship programs and in some cases, routes to funding.

Appendix 5

ELIGIBLE ARTICLING PLACEMENTS

The Law Society continues to offer candidates a high degree of flexibility in completing the articling program. The Professional Development and Competence department emphasizes the availability of non-conventional placements such as international articles, national articles, joint articles, part-time articles and the rescheduling of articles.

The "traditional" articling placement involves the articling student spending the entire length of the articling term in one firm under the supervision of one principal approved to oversee such a placement.

⁸ Public Policy Forum, *Improving Bridging Programs*, January 2008. See online report at www.ppforum.ca/common/assets/publications/en/bridging_programs.pdf

This can include placements in any type of practice setting: private law firm, government office, in-house legal department, legal clinic, or other setting where a lawyer in good standing with the Law Society of Upper Canada and approved as a principal is present to supervise the development of legal skills of an articulated student and the experience includes those competencies that are expected to be achieved during that learning process. The Articling Office has worked with many lawyers in a variety of settings to develop placements that will achieve the learning outcomes of articling.

Other permitted articling placements include the following:

National Articles

National articles are placements served anywhere within Canada and supervised by a lawyer in good standing who has been called to the bar in the relevant Canadian jurisdiction, or by an approved Ontario principal practising in that jurisdiction.

Candidates may complete articles within the Federal government, not-for-profit organizations and in-house legal departments. In the past placements have included, for example, the Royal Canadian Mounted Police, the Canadian Red Cross, Office of the Superintendent of Bankruptcy, and the Commission for Environmental Cooperation in Montreal.

International Articles

International articles are placements served outside Canada and supervised by a lawyer in good standing who has been called to the bar in another jurisdiction, or by an approved Ontario principal practising in that jurisdiction.

Each year candidates take advantage of this flexibility and, currently, complete a portion of their articles abroad in law firms as far away as Dubai, the Republic of Congo, Greece and Singapore. Or they may remain close to home and complete international articles for a foreign lawyer or Foreign Legal Consultant advising on international law for Ontario clients. International articles have also been completed at the World Trade Organization in Geneva, the Extraordinary Chambers in the Courts of Cambodia (ECCC) in Cambodia and the International Criminal Tribunal for the former Yugoslavia, The Hague, the African Development Bank in Tunisia, the Supreme Court of Israel in Israel and the Special Court for Sierra Leone, in Africa.

Joint Articles

A candidate may enter into joint articles to expand the range of the articling experience. Two or more principals may agree to share the obligation of supervising an articling student for the articling period. The joint articles may be either concurrent or consecutive.

Candidates who wish to complete joint Ontario articles may also divide their time between two sole practitioners by structuring an arrangement where the student works 2 or 3 days a week at each office.

Part-Time Articles

Candidates have been completing articles on a part-time basis since 1994. This allows flexibility in accommodating the individual circumstances or special needs of an articling student.

Students may work on a part-time basis toward completing the ten-month term equivalent. Since students have three years to complete their licensing process requirements, some have articulated on a part-time basis while pursuing other career or educational opportunities or maintaining family responsibilities.

Appendix 6

SUMMARY OF SUBMISSIONS ON THE SKILLS AND
PROFESSIONAL RESPONSIBILITY PROGRAM

1. Approximately one-third of the individuals and approximately half of the institutional respondents provided comments on the skills and professional responsibility program. The majority of the individuals supported the continuation of some form of skills and professional responsibility program, be it the current program or a variation on it. A few of the institutional respondents supported outright elimination of the program with no Law Society training to replace it. A number supported the continuation of the current program. Others supported some form of Law Society training. Still others agreed with the program's elimination only if there were assurance that all candidates were acquiring the training in law school.

Support for Continuation of a Skills and Professional Responsibility Component

2. Of those who supported continuation of professional responsibility and skills training at the Law Society, the majority did so because they disagreed with the Task Force's initial view that law school skills training is sufficient. Most respondents claimed that although skills training opportunities at law schools have increased significantly over the years,
 - a. there are still insufficient law school courses to ensure that all students can take them because skills training is resource intensive;
 - b. content is not consistent across all law schools, and not all students receive the same basic skills training as they would in the licensing program;
 - c. the mandates of law schools differ from those of law societies and may emphasize a different focus on skills training; and
 - d. professional responsibility, the ethical requirements of practice, and the Rules of Professional Conduct should not be left solely to law schools.
3. While law schools agree that skills training and professional ethics form an increasingly important part of the law school curricula, as attested by the survey results, they do not believe they have the necessary resources to ensure that all students have exposure to practice skills. Moreover a Law Society course acts as an important bridge between law school and practice.
4. Other reasons for supporting a skills and professional component included,
 - a. it is important to provide candidates with an opportunity to interact with practising lawyers (even in the face of some difficulty recruiting);
 - b. although there is negative candidate feedback about the program, there is some support as well, particularly for those with limited exposure to skills in law schools, and with respect to the professional responsibility module. Moreover, recent graduates are not always in the best position to evaluate the long term benefits of what they have experienced in the program;

- c. given the prevalence of NCA candidates in sole and small firm practice after call to the bar, the Law Society's skills program is an essential bridging program to practice. Respondents expressed similar concerns respecting the needs of candidates from Aboriginal, Francophone, racialized, disabled and other communities;
- d. elimination of the skills program could have implications for national mobility given that the National Mobility Agreement was premised on similar law school and bar admission requirements across jurisdictions;
- e. if difficulties in mounting the program influenced the proposal to eliminate it, this should be addressed by making changes to the program, not abolishing it.

Support for Elimination of a Skills and Professional Responsibility Component

5. Respondents supported the abolition of the program for a variety of reasons:

- a. The current program is an impediment to the attraction and integration of foreign trained lateral associates.
- b. Elimination would result in cost savings to candidates and the Law Society.
- c. Elimination is acceptable provided articling continues and there are alternate mechanisms in place to ensure students receive a minimum level of skills and professional responsibility training, including,
 - i. mandatory requirements for law school curricula;
 - ii. post-call education requirements for new lawyers or NCA candidates; and
 - iii. mandatory elements within the articling program.
- d. If the program is unsustainable, replace it with enhanced web-based training.
- e. Replace the program with mandatory post-call learning for new lawyers as the learning will be more relevant to their needs as practitioners.

Appendix 7

PROPOSED PROFESSIONAL RESPONSIBILITY AND PRACTICE REQUIREMENT COURSE OUTLINE

1. Professional Responsibility Module (2 days)

Learning Objectives:

- 1. Become aware of the critical issues in professional responsibility
- 2. Develop an ethical approach to resolving the conflicts among the duties lawyers owe to their clients, the administration of justice, the profession, the public and themselves

Day One - Outline of Activities

After a brief introduction, candidates will view a series of vignettes based on a hypothetical case study that raises a variety of professional conduct dilemmas. Using a suggested model for analyzing ethical issues, the problems facing the lawyer in the case study will be highlighted and proposed solutions will be explored. In a panel presentation, lawyers and judges will outline the approaches they have taken to ethical issues that have arisen throughout their careers.

Topic Summary:

- Understanding the requirement to practise with civility
- Upholding the dignity and integrity of the profession
- Recognizing conflicts of interest between the lawyer's duty to the client and to the administration of justice
- Avoiding becoming a tool or dupe of the client
- Taking steps to avoid inadvertent breaches of the duty of confidentiality
- Knowing the rules for when lawyers are permitted to withdraw from representation

Day Two – Outline of Activities

The facts involved in a professional regulation case will be presented, followed by interviews with the lawyer and the client involved. The ethical issues involved in the case will be the subject of a demonstration of a hearing of the matter before a discipline panel. Following the demonstration, there will be a discussion about the issues presented in the hearing, the disposition of the matter and the ways in which the lawyer could have avoided the situation.

This session lends itself to introducing critical areas of risk in the practice of law by demonstrating the consequences of engaging in high-risk practice. For instance, a real estate fraud matter, where the lawyer has been duped, would provide important knowledge and reinforce the need for lawyer vigilance in accepting clients and legal work.

Topic Summary:

- Know your client
- Doing business with clients
- Understanding the obligations involved in joint retainers
- Identifying and dealing with conflicts of interest
- Meeting the obligation to protect client property

2. Client Communication Module (1 day)

Learning Objectives:

1. Understand when the lawyer-client relationship begins
2. Understand the fiduciary nature of the lawyer-client relationship
3. Become familiar with effective techniques for interviewing clients
4. Develop strategies for engaging in difficult conversations with clients
5. Understand lawyers' obligations to clients with disabilities
6. Understand the responsibility to keep the client informed
7. Know techniques for effective written communication

Outline of Activities:

The various stages and types of communications in the lawyer-client relationship, from the first contact to the reporting letter, will be examined. Vignettes will be used to illustrate best practices and potential pitfalls in lawyer-client communications. Examples of difficult lawyer-client conversations will be used to illustrate professional approaches to dealing with the issues. The barriers to effective oral and written communication will be outlined, along with techniques for overcoming communication challenges.

Topic Summary:

- Handling the initial contact with a potential client
- Understanding the lawyer's fiduciary duty to the client
- Interviewing effectively
- Keeping the client informed at all stages of the matter
- Keeping client information and communication confidential
- Managing client expectations
- Meeting obligations to clients with disabilities
- Dealing with difficult clients and difficult conversations
- Mastering written communication

3. Managing a Client File (1 Day)

Learning Objectives:

1. Identify the key requirements involved in managing a client file
2. Become familiar with techniques for fact-gathering and issue analysis
3. Know how to work with the client to develop a strategy
4. Know how to prepare for negotiation
5. Become familiar with post-negotiation steps to take
6. Become familiar with how to report to the client when the matter has concluded

Outline of Activities:

Candidates will be guided through the "life cycle" of a hypothetical client file, focusing on the key steps in handling the matter. A demonstration of an initial interview will be presented, followed by a discussion about the additional facts that would need to be explored on a follow-up interview. Candidates will be shown how to do an analysis of the good and bad facts and how to prepare for negotiation. After a demonstration of the negotiation, presenters will lead a discussion about the techniques used and the results achieved in the negotiation, as well as the steps to take post-negotiation. A sample reporting letter will be presented, along with the rules and best practices for concluding a client matter. The module will conclude with a panel discussion about what to do when something goes wrong in the course of managing a client file.

Topic Summary:

- Gathering and assessing the facts
- Analyzing the issues
- Working with the client to develop a strategy for dealing with the matter
- Preparing for negotiation
- Taking the appropriate post-negotiation steps to conclude the matter

- Reporting to the client

4. Practice Management (1 day)

Learning Objectives:

1. Understand the considerations involved in deciding whether to enter into sole practice or to join a firm
2. Understand how to set and achieve career goals
3. Become familiar with the steps involved in building and maintaining a practice
4. Become familiar with appropriate strategies for marketing legal services
5. Understand financial and trust accounting obligations
6. Become familiar with time and stress management techniques
7. Become familiar with the options for alternative legal careers
8. Understand the importance of committing to life-long learning

Outline of Activities:

Through a series of mini-lectures and panel presentations, candidates will be introduced to the considerations for choosing the type and size of practice that suits their needs and abilities. They will learn the steps in opening a practice and building a client base, as well as appropriate methods for marketing their services. Through sample case scenarios, presenters will demonstrate the importance of meeting financial and trust accounting obligations. Panel presentations will feature discussions on the need to be realistic about the time and effort that will be required to achieve career goals and the importance of maintaining a healthy personal life. Candidates will be provided with information and suggestions for committing to investing time in professional development throughout their careers.

Topics Summary:

- Choosing a practice
- Strategic planning and goal setting
- Formulating a business plan
- Managing finances
- Marketing services
- Using law office technology to save time and money
- Delegating to staff
- Planning for interruptions and disruptions in the practice
- Balancing work and personal life
- Committing to life-long learning

Appendix 8

COMPETENCY PROFILE FOR POST-CALL PROFESSIONAL DEVELOPMENT REQUIREMENT PROGRAM ACCREDITATION

Barrister Practice Skills Competencies

1. Identifying the Client

- Taking appropriate steps to determine who the client is and the client's role in the matter (e.g. multiple parties, spouses/family members, business partners, trustee v. beneficiary, officers/directors/shareholders v. corporation, authority to bind)
 - Taking appropriate steps to avoid problems associated with phantom clients
 - Obtaining identification from the client where appropriate (e.g. follow the *Proceeds of Crime and Terrorist Financing Act*)
 - Taking steps to identify fraudulent transactions
2. Conflicts of Interest
- Using a conflict of interest checking system and monitors for conflicts of interest on an ongoing basis
 - Identifying potential conflicts of interest before acquiring confidential information (e.g. multiple parties)
 - Taking appropriate action in situations where a potential conflict of interest is identified
3. Interviewing Principles
- Interviewing to obtain an understanding of the problems, issues, context and goals or objectives of the client and to gather relevant information
 - Making an initial assessment of whether or not the client's goals, objectives, and expectations can be met through legal processes and ethical solutions
 - Determining whether or not the client is capable to giving instructions (e.g. mental capacity, authority, duress, undue influence)
 - Determining issues that might affect the resolution of the problem
 - Demonstrating cultural and logistic awareness and sensitivity
4. The Retainer
- Establishing the scope of the retainer
 - Addressing the key solicitor-client issues in the retainer
 - Confirming the retainer and any limitations in writing
 - Confirming changes to the retainer
5. Client Communication
- Communicating with clients in a timely and effective manner
 - Managing and updating the client's expectations with respect to timeframes, results, and costs
 - Recognizing and being sensitive to clients' circumstances, special needs, and intellectual capacity (e.g. multi-cultural, language (need for interpreter), gender, disability, socioeconomic status, demeanour)
 - Explaining to clients the risk of communicating by means of electronic media (e.g. cell phones, blackberries, e-mail)
 - Dealing with client complaints
 - Drafting letters to clients
 - Drafting written legal opinions
 - Drafting reporting letters
 - Keeping the client informed about legal fees and costs

- Drafting statements of accounts that will be understood and accepted by your client

Solicitor Practice Skills Competencies

1. File Administration
 - Maintaining an electronic and written record for each matter
2. Information Gathering and File Analysis
 - Obtaining and reviewing relevant facts
 - Recognizing urgency and taking emergency steps where necessary
 - Ascertaining the completeness of the documentation provided by the client
 - Identifying factual and legal issues
 - Identifying and obtaining additional information and/or resources as needed (e.g. experts, legal research, specialized counsel)
 - Conducting or delegating research and investigation related to the matter as appropriate
 - Complying with privacy legislation
3. Developing the Action Plan
 - Generating options and recommendations and presenting them to the client
 - Identifying the risks and costs of various options
 - Confirming client instructions with respect to options and recommendations
4. Executing the Action Plan
 - Conducting due diligence as appropriate for the client
 - Conducting negotiations related to the matter as appropriate
 - Preparing and/or reviewing documentation appropriate for the transaction
 - Communicating with the other parties in a timely manner (e.g. other lawyers)
 - Utilizing and revising checklists where appropriate
 - Determining and satisfying third party requirements
 - Identifying problems, solutions/options and obtaining client instructions (e.g. conflicts)
5. Closing the Transaction
 - Preparing a closing agenda
 - Completing original organization of companies, including by-laws, resolutions and Form 1 filings
 - Reviewing documentation with the client and obtaining signatures as appropriate
 - Updating searches and certificates and obtaining necessary pre-closing clearances and consents as appropriate
 - Supervising staff or others involved in the closing
 - Providing interim reports on a timely basis as required
 - Arranging closing logistics (e.g. transfer of funds and third party consents)
 - Arranging for appropriate undertakings
 - Conducting a final review of the checklist
 - Taking appropriate steps when the transaction fails to close (e.g. tendering)
 - Completing the transaction in a timely and appropriate manner (e.g. exchanging of deliverables, completing registrations)

6. Post-Closing Actions
 - Ensuring appropriate undertakings, both given and received, are completed
 - Advising all necessary parties of the closing
 - Obtaining documents to complete the file
 - Providing final reports and accounting to clients and third parties
 - Conducting a final review of the file prior to making the file inactive

General Practice Skills Competencies

1. Time Management
 - Managing time and setting priorities
 - Docketing
 - Using technology effectively
 - Researching thoroughly and efficiently
2. Office Systems
 - Setting up a conflict checking system
 - Setting up a tickler system
 - Managing and delegating work appropriately to support staff
 - Maintaining orderly and up-to-date files
 - Storing and/or destroying files in an appropriate manner
 - Developing and using a knowledge management system (precedents, databases, etc.)
3. Financial Management
 - Securing a retainer
 - Billing and collecting
 - Trust accounting
4. Risk Management
 - Understanding obligations regarding insurance and liability
 - Knowing when not to take a client
 - Taking steps to avoid fraudulent clients and transactions
 - Dealing with client complaints regarding billing and other issues
 - Communicating with the Law Society and LawPRO

Appendix 9

POST-CALL PROFESSIONAL DEVELOPMENT ACCREDITATION PROCESS

1. Legal education providers may apply for accreditation of programs. To be eligible to receive accreditation, the provider must submit an Accreditation Application (“Application”) to the Law Society in the prescribed form. A list of accredited modules and information about providers and scheduling will be published on the Law Society’s website.

2. The Law Society will review the Application for completeness and will provide a letter of acknowledgement once the Application is received. If a review of the Application reveals that one or more modules do not meet one or more of the requirements or do not contain the required competency topics listed in the Competency Profile for Program Accreditation, or if additional information or revisions are required to complete the Application, the Law Society will notify the provider and will provide specific details regarding the information that is necessary to complete the application. The Law Society will reconsider the revised Application.
3. The Law Society reserves the right to attend the presentation of accredited modules delivered by the provider to validate the information in the Application and to assess the effectiveness of the module content and processes.

It was moved by Professor Krishna, seconded by Ms. Pawlitza,

that Convocation approve the following respecting the articling program:

- a. The Law Society will retain the 10 month articling requirement.
- b. The Law Society will undertake initiatives designed to increase articling placements as follows:
 - i. Engage legal organizations in efforts to support and enhance the articling process.
 - ii. Conduct a survey, with the assistance of legal organizations, on articling opportunities.
 - iii. Develop an online Articling Registry to enhance information on articling opportunities.
 - iv. Pursue discussions with government, the Law Foundation of Ontario and other third parties to increase funding for articling positions.
 - v. Create one additional staff position dedicated to outreach, promotion and coordination of articling initiatives and additional job placements.
 - vi. Implement a streamlined articling administrative process to reduce the burden on articling principals.
- c. The Law Society will provide for exemptions or abridgments of the articling requirement for internationally trained lawyers who are candidates in the licensing process as follows:
 - i. Internationally trained candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates would be required to complete an

intensive three-day course on professional conduct as a mandatory component of the licensing process.

- ii. All other internationally trained lawyers are required to complete the 10 month articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.
- d. The Law Society will work with external partners to develop a voluntary bridging program for internationally trained candidates in the licensing process to support their integration into the Ontario legal profession.
- e. Candidates in the licensing process will be entitled to fulfill their entire 10 month articling requirement in national or international articles that the Law Society approves.

That Convocation approve the development of,

- a. a pre-call professional responsibility and practice requirement as described in paragraphs 94-106 and Appendix 7 to be integrated with the 10 month articling program; and
- b. a post-call professional development requirement of 24 hours to be taken during the first 24 months of entry into a practice category.

That Convocation approve the development of a more extensive Law Society communication plan as described in paragraphs 133-144 to,

- c. advise students, law schools and the profession about the articling program, including the role of outreach staff, and the Law Society's role in assisting them with the establishment of articling placements;
- d. re-affirm candidates' responsibility to secure their own articling placement; and
- e. communicate changes to the licensing process.

Carried

ROLL-CALL VOTE

Aaron	For	Krishna	For
Anand	For	Lawrie	For
Backhouse	For	Lewis	For
Banack	For	McGrath	For
Boyd	For	Marmur	For
Braithwaite	For	Minor	For
Bredt	For	Pawlitza	For
Caskey	For	Porter	For
Chahbar	For	Potter	For
Conway	For	Pustina	For
Crowe	For	Rabinovitch	For

Dickson	For	Robins	For
Dray	For	Ross	For
Elliott	For	Rothstein	For
Epstein	For	St. Lewis	For
Go	For	Siskand	For
Gottlieb	For	Silverstein	Against
Hainey	For	Simpson	For
Hare	For	C. Strosberg	For
Hartman	For	H. Strosberg	For
Heintzman	For	Swaye	For
Henderson	For	Tough	For
		Wright	Abstain

Vote: 43 For; 1 Against; 1 Abstention

HERITAGE COMMITTEE REPORT

Professor Backhouse presented the Report.

Report to Convocation
September 25, 2008

Heritage Committee

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

Purposes of Report: Decision

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

COMMITTEE PROCESS

1. The Committee met on September 11, 2008. Committee members Constance Backhouse (Chair), Bob Aaron, Patrick Furlong, Gary Lloyd Gottlieb, Vern Krishna, and

Laura Legge attended. Staff members Deidré Rowe-Brown and Sophia Sperdakos also attended.

2. The Committee wishes to express its deep regret at the passing of long-standing Committee member, the Hon. Allan Lawrence, P.C., Q.C., LSM, who was vitally interested in the heritage of Osgoode Hall and the history of the legal profession. He will be greatly missed.

CELEBRATING EARLY LAWYERS FROM DIVERSE COMMUNITIES PROJECT

Motion

1. That Convocation approve funding in the 2009 budget in the amount of \$49,900 for a Heritage Committee project on early lawyers from diverse communities.

Background

2. The Heritage Committee has coordinated two projects to record the histories of Ontario lawyers. The first consisted of interviews with three senior former Treasurers – Laura Legge, O. Ont., Q.C., the late John Arnup, O.C., Q.C., and the late Brendan O'Brien, Q.C., LSM.
3. The second project focused on sole and small firm lawyers writing their memoirs. At seminars in four cities across the province local lawyers gathered to exchange stories and learn about writing their autobiographies. Over the four-year span of the project a number of lawyers submitted memoirs and remembrances and donated photographs and memorabilia to the Law Society archives. Constance Hunt McLean from Hamilton narrated her memoirs to an interviewer, historian Allison Kirk-Montgomery. As a result of the project, all retiring lawyers will now receive an invitation to write their memoirs and material to facilitate their efforts.
4. Tapes, transcripts and other materials from both projects are housed in the Law Society's Corporate Records and Archives department and are available to researchers.
5. During the seminars some lawyers spoke about being among the early members of their cultural, ethnic, religious, Aboriginal, or Francophone community to be called to the bar. Others participants reflected on the difficulties and experiences that early lawyers from these and other diverse communities encountered.
6. These observations pointed to yet another piece of Ontario legal history that should be recorded. The Law Society's commitment to diversity should include recording the early efforts various communities took to make a place for themselves in the profession. Cataloguing individual names and biographies would provide greater recognition to these communities and enrich the profession's history. It would also provide scope for a wider audience to become aware of these efforts.
7. The Heritage Committee proposes to initiate and coordinate such a project.

Framework for the Proposal

8. The project would consist of three phases, the first two occurring in 2009:
 - a. Phase One:
 - i. Set the scope of the project and its goals.
 - Seek the assistance of diverse communities to identify the subject groups and possible individuals for focused study in later phases.
 - Advertise the project in the *Ontario Reports* and other publications.
 - Develop a template for the later interview phase (Phase Two).
 - ii. Explore additional external funding sources for Phases Two and Three.
 - iii. Produce a catalogue of names and brief biographies (scope of the catalogue to be determined).
 - b. Phase Two: Interviews, Seminars, Transcriptions, Acquisition of Memorabilia
 - Develop and conduct group seminars and individual interviews. (The numbers of each would depend upon the outcome of Phase 1 and obtaining additional non-Law Society funding sources.)
 - c. Phase Three: (concept only at this stage-budget not being sought for 2009)
 - Depending upon the outcomes of Phases One and Two the Law Society would develop an on-line exhibition highlighting the project. This would be a valuable research tool and would allow a wide audience to learn more about early lawyers from diverse communities. This would require separate budget consideration.

Resources

9. The Committee has prepared a projected budget for Phases One and Two of the project for 2009. The budget is set out at Appendix 1.
10. A project coordinator is essential to the success of this project as the scope is beyond what current staff in Corporate Records and Archives, Policy Secretariat or Facilities can undertake in addition to their regular activities. The project coordinator will be in a position to determine the scope of the project based upon whether additional funding can be obtained beyond the internal budget.
11. The project coordinator would,
 - a. develop project goals, working with various communities (Phase One);
 - b. catalogue names and develop catalogue biographies of the interviewees (Phase One);
 - c. explore external funding sources (Phase One);
 - d. organize and conduct seminars (Phase Two);
 - e. interview selected individuals (Phase Two); and

- f. coordinate the phases (Phases One, Two and Three).
12. The budget also includes projected costs for conducting and transcribing individual interviews and seminar costs, including travel, food and accommodation.

Appendix 1

PROPOSED BUDGET FOR CELEBRATING EARLY LAWYERS FROM
DIVERSE COMMUNITIES PROJECT (for 2009)

Phase One	
Project Coordinator (including planning, research, outreach, budgeting, communication, producing catalogue and brief biographies of interview candidates)	\$5,000.00
Transportation, printing, postage, communication	\$2,000.00
Phase Two (Project Coordinator costs included)	
4 seminar roundtables including travel, accommodation, food, project manager costs	\$15,000.00
Individual Interviews and transcription (9 interviewees x \$3100)	\$27,900.00
Total	\$49,900.00

It was moved by Professor Backhouse, seconded by Mr. Gottlieb, that Convocation approve funding in the 2009 budget in the amount of \$49,900 for a Heritage Committee project on early lawyers from diverse communities.

Carried

GOVERNANCE TASK FORCE REPORT

Mr. Heintzman presented the Report.

Governance Task Force
September 25, 2008

Third Report to Convocation

Task Force Members
Thomas Heintzman (Chair)
Vern Krishna (Vice-Chair)
Raj Anand
Larry Banack
Christopher Bredt
Abraham Feinstein
Janet Minor
Linda Rothstein

Purposes of Report: Decision

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

GOVERNANCE TASK FORCE THIRD REPORT TO CONVOCATION

MOTION

1. That Convocation approve consultations on principles of governance for the Law Society with benchers and key members of and other stakeholders within the professions, and the associated budget of \$95,000 for the consultations.

INTRODUCTION

2. The Governance Task Force has been meeting since May 2006 to review issues relating to its terms of reference ¹. To date, Convocation has adopted the Task Force's recommendations as provided in two reports.² These dealt with a range of issues including agenda-setting for Convocation, financial systems and oversight, and related matters.
3. Following that work, the Task Force focused on the structure of Convocation. While a policy report on issues related to Convocation's structure was provided to Convocation in April 2007, it was not considered. At May 2007 Convocation, the Treasurer requested that the Task Force continue its work and in particular, include in its review the issue of term limits for benchers.
4. In addition to the terms of its mandate, impetus for the focus on the structure of Convocation was provided by the results of the bencher retreat in September 2007, in which the governance structure was identified as one of the priorities for the Law Society.³

¹ See Appendix 1 for the terms of reference.

² These reports, adopted by Convocation in November 2006 and March 2007, dealt with procedures for the Treasurer's election, the setting of Convocation's agenda, a strategic planning process and creation of the Priority Planning Committee. Other matters were the Law Society's financial systems, creation of separate Finance and Audit Committees, and processes to ensure the integrity of Convocation as a board.

³ The motion adopted by Convocation in November 2007 in the report of the Priority Planning Committee in part stated:

That Convocation approve the following nine priorities as Convocation's priorities for the next four years:

- Discipline
- Access to justice
- Regulation of paralegals
- Small firms and sole practitioners
- Governance structure
- Strategic communications
- Maintenance of high standards and ensuring effective competence
- Diversity within the profession
- Licensing and accreditation

5. In reviewing this issue, the Task Force entered into informal discussions with benchers groups on some of the issues discussed in the April 2007 report, and received a range of views⁴. After considering the views of these groups, the Task Force concluded that there should be a consultation with a wider group of stakeholders, including benchers collectively, on the performance of the Law Society's current governance structure in fulfilling the Law Society's statutory mandate.
6. The Task Force explored this concept with the assistance of Tim Plumptre, founder of the Institute on Governance⁵. Discussions then led to a consensus that there is merit, for the reasons discussed below, in engaging in an initial consultation and review process to assist the work of the Task Force.
7. The Task Force is requesting that Convocation approve a two-phase process of limited consultations related to Law Society governance based on a series of governance principles. The program would begin with a session with benchers to seek their preliminary views on whether further changes to Law Society governance beyond those previously approved are warranted. Thereafter, the Task Force would engage a limited number of lawyers and paralegals, including leaders in the professions and other informed stakeholders, in discussions on Law Society governance. The program would conclude with a meeting of benchers where the results of these meetings would be provided. Details of the limited consultations are provided later in this report.
8. The results of these deliberations will assist the Task Force in determining whether any further consultation should be pursued, and ultimately, whether changes to governance at the Society should be considered, and if so, in what areas.

OVERVIEW

Reasons for Examining Governance Reform

9. The Task Force believes that the following are cogent reasons for exploring the question of governance reform:
 - a. The Law Society's mandate has recently seen statutory expression. It is timely for Convocation to determine whether its current governance structure is suitable to fulfill that mandate.
 - b. The history and recent trends with respect to the size, composition and representative nature of Convocation, including concerns expressed by some persons about those trends, raise important governance issues.
 - c. The professions, including the legal profession, are facing changing legal and business environments. As regulator, the Law Society should assess whether its

⁴ Former Treasurers, lay benchers and the Paralegal Standing Committee.

⁵ The Institute On Governance (IOG) is a non-profit organization with charitable status founded in 1990 to promote effective governance. The Institute works with a wide variety of partners, including government agencies, international organizations, NGOs and the private sector. The Institute's professional staff have many years of multidisciplinary public service, advisory and research experience and works with associates who contribute their expertise and skills to specific Institute programs and projects.

governance structure enables it to respond to that changing environment in a timely and effective manner.

These reasons are discussed in detail below.

Examining Reform Based on Governance Principles

10. Having identified reasons to examine governance reforms, the Task Force articulated principles to assist it in determining what the concept of "good" or "sound" governance might mean for the Law Society. It did so with the assistance of Tim Plumptre of the Institute on Governance, who also assisted in preparing this report.
11. The main purpose of the proposed consultations would be to obtain the views of benchers and others on the reasons to explore reform in paragraph 9 and a set of governance principles. These principles, discussed later in this report, are:

Legitimacy and voice:	Governance process inspires confidence, provides adequate voice to members and other stakeholders and to the public at large. The process encourages participation. Decisions are based on a consensus orientation.
Performance:	Yields results of value both to society and to members; governance processes are efficient (as required by the Law Society Act) as are the programs and activities of the Society.
Direction:	Delivers sustained and clear strategic purpose, apparent both to members and to the public at large.
Accountability and transparency:	Decision-makers can be held to account through recognized governance processes and standards, these are open and understandable, failure to observe standards has known and enforceable consequences; information is widely available to the public and the profession and is actively shared.
Fairness and balance:	Members and other stakeholders are fairly treated, there is an absence of special deals for 'insiders' or conflicts of interest, interests of the general public are taken into account in the process of decision-making.

REASONS FOR CONSIDERING GOVERNANCE REFORM

- a. The legislative mandate of the Law Society and the suitability of the current governance structure to fulfill the mandate
12. Unlike most organizations, the Law Society has a governance mission that encompasses two fiduciary roles: first, the requirement to ensure that the legal

professions meet the requisite standards of competence and professional conduct, and second, the responsibility to provide strategic direction to a large organization with a budget of over \$70 million and nearly 440 staff.

13. When the *Law Society Act* was amended in 2006, an explicit public interest mandate was for the first time included in the Law Society's governing legislation. The Law Society Act now states:

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
 3. The Society has a duty to protect the public interest.
 4. The Society has a duty to act in a timely, open and efficient manner.
 5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.
14. The question posed by the Task Force is whether the Law Society can meet these legislative requirements effectively and responsibly through its current governance arrangements.
15. Moreover, lawyers counsel clients on the observance of sound governance practices. It follows that the governance practices of the regulatory organization for the professions should be exemplary.
- b. Historical developments and trends related to the Law Society's governance structure, including concerns expressed about the size, composition and representative nature of Convocation
16. The Law Society's experience with governance reform in the past and observations made about the current structure and composition of Convocation, discussed below, illustrate a continued interest within the Law Society in achieving a governance structure that is equipped to deal with the responsibilities that flow from the Law Society's legislative mandate.
17. At this stage, with the benefit of that history and the changes in the composition of Convocation in recent benches terms, the Task Force believes there is a need to undertake a dialogue with knowledgeable persons about governance reform at the Law Society.
18. In the past 15 to 20 years, Convocation has considered a series of reports related to the governance of the Law Society. Current governance arrangements and a brief history of recent governance reform initiatives appear at Appendix 2.
19. In some cases, these governance reports were informed by surveys of lawyers and other stakeholders. Some surveys raised concerns about the Law Society, including the

relevancy of the regulator, whether it provides “value for money”, a lack of consensus about its core mandate and the Society’s credibility.

20. Other Law Society policy initiatives have touched on aspects of governance on which input from the profession and others was received. In these contexts, issues have been raised by the members of the profession and members of Convocation itself on the cost of running the Law Society, the remoteness from the regulator that lawyers feel, the plethora of programs that have little to do with the core responsibility of regulation, concerns about diversity within Convocation and whether it is representative of the public and the profession.
21. Past committee and task force reports on governance included recommendations for substantive change to the Law Society’s governance arrangements and some recommendations that had less substantive impact. Convocation tended to adopt the latter recommendations.
22. The more significant proposals in these previous reports related to:
 - a. the size of Convocation;
 - b. clarification of the role of the Treasurer, including the responsibility of the incumbent to be the official spokesperson of Convocation and to review the performance of the CEO;
 - c. an executive committee to work with the Treasurer;
 - d. the number of committees;
 - e. focusing the work of Convocation on a limited range of high priority or strategic issues; and
 - f. monitoring the performance of the Society, in particular, in the implementation of its strategic plan.

The Composition of Convocation

23. The Task Force’s research disclosed several trends and facts relating to the current and future composition of Convocation.
24. As far as the Task Force can determine, in relation to other governing bodies of professions in the country, Convocation is the largest active board. The fundamental character of Convocation is that of a democratically elected board. Benchers are elected as members of Convocation every four years. Convocation currently includes 83 members: forty elected lawyer benchers, two paralegal benchers appointed by the Attorney General, eight lay benchers appointed by the Attorney General, 12 life benchers (*ex officio*), 11 former Treasurers (*ex officio*), the Attorney General of Ontario and nine former Attorneys General (*ex officio*). The 40 elected members of Convocation represent 48% of the board.⁶
25. By the end of the current bencher term (2011), there will be another nine life benchers, assuming those eligible as life benchers accept this status⁷, and at least one additional former Treasurer.⁸ This will increase the size of Convocation to 93. The proportion of

⁶ Charts 1 and 2 in Appendix 3 provide a profile of elected benchers for the last four elections.

⁷ Although they cannot vote in Convocation (only in committees), life benchers may speak in Convocation. Most other law societies in Canada do not have life benchers.

⁸ Two new former Treasurers are usually added to Convocation every term.

elected benchers will then decrease to about 43%. This percentage decrease will continue with the regular addition of *ex officio* benchers to Convocation.

26. All life benchers are male⁹, and less than half of the current 12 life benchers participate regularly in Convocation. All former Treasurers have a vote. Only about half of them attend Convocation with any regularity, but all participate to vote in the election of a new Treasurer.
 27. The composition of Convocation is changing slowly. Statistics since 1999 show that most incumbents are re-elected, and there is no limit on the number of terms that a bencher can serve. As a consequence, previously elected benchers make up over 70% of Convocation.
 28. The number of older benchers is increasing each term. Only one individual over 60 was elected in 1995. In 2007, this number had increased to 16. If this trend continues, by the next term, more than half the bench could be over the age of 60.¹⁰ The average age of life benchers is 72. The average age of elected benchers is 58. In 1995, the average age of elected benchers was 49. The average age of lawyers in Ontario is about 47 years.
- c. The changing legal and business environment facing the legal profession
29. The environment in which legal professionals provide their services and the services themselves are being affected by a number of factors and trends. These trends, some of which are discussed below, raise important issues for the Law Society, as they touch on access to justice, the demands of practice, the regulatory framework, business structures and the value of self-regulation.
 30. At the governance level, the question is whether the present governance structure enables Convocation to anticipate change, and to respond promptly and appropriately to the wide array of issues that may require the attention of the Law Society.

Trends Affecting Practice

31. These trends include:

- a. Technological advances affecting communications, documentation and applications that assist lawyers in providing services and managing their offices, and the consequential client expectations vis-à-vis the delivery of legal services;
- b. Greater emphasis on legal specialization and demands for firms to offer the expertise that sophisticated clients require;
- c. Concerns about the survival of small firms and sole practices which serve the vast majority of Ontario citizens; and
- d. An aging population, a growing number of immigrants, changing definitions of the family, the demands of e-commerce and the impact of the Internet on the provision of legal services.¹¹

⁹ In Appendix 3, Chart 3 provides data on the current life benchers. With respect to women in Convocation, Chart 1 at Appendix 3 discloses that since the 1999 bencher election, the number of women candidates and the number elected has steadily increased (currently, 17 women serve as elected benchers). Women also account for 54% of the new lawyers in 2007.

¹⁰ See the information in Charts 1 and 2 in Appendix 3.

¹¹ See the Canadian Bar Association's 2000 report, *The Future of the Legal Profession: The Challenge of Change*.

32. The composition of the bar is changing. Studies of the profession, including some completed by the Law Society, explain how this is happening.
33. Fewer lawyers are providing services to the public (a 25% drop in 30 years). This is particularly true in rural areas where over 40% of lawyers are over 50, and fewer lawyers are choosing to work in these environments. Among younger lawyers (under 30) women now outnumber men, but most women in private practice leave after eight to ten years.
34. Some segments of the profession are suffering from an undersupply of lawyers.¹² This problem is manifested in certain geographic areas, areas of practice and demographic communities. In some cases, the undersupply of lawyers is linked to the inability of clients to purchase services at a rate that will sustain sole and small firm practices.
35. There is now a worldwide market for legal services, driven by clients seeking to operate globally. Certain clients are looking for lawyers who are tapped in to the global market and are able to provide seamless service.
36. The legal profession is facing increasing competition from other service providers. The pressure is coming from banks, insurers and retail operations who want to provide certain legal services. The Canadian Competition Bureau recently examined five self-regulating professions, including the legal profession. It concluded that current restrictions on business structures unduly limit competition in the delivery of legal services in Canada.
37. The business structure of the profession is shifting. In England and Wales, non-lawyers are now permitted to invest in and own law firms. Last year, Slater & Gordon in Australia became the first law firm to be listed on a stock exchange.

Trends Affecting Self-Regulation and Independence

38. The profession's ability to maintain self-regulation has been eroded in other jurisdictions. In the last five years, the legal profession in Australia, New Zealand, England & Wales, Scotland and Ireland has effectively lost this privilege. A major contributing factor was the failure, both real and perceived, of these law societies to regulate in the public interest and adapt to change.
39. Other forces are affecting the legal profession's responsibility to self-regulate. In the recent past, governments and other institutions have sought to impose intrusive regulation on the profession, such as anti-money laundering and client identification requirements. Such initiatives presume to strike a balance between competing societal interests. However, while the legislative mandates may operate to achieve a general societal benefit, they may be implemented through a process that effectively erodes the profession's deeply held values of independence and client loyalty.

¹² See the Law Society's 2006 Sole Practitioner and Small Firm Task Force Report.

Trends Affecting Corporate Governance

40. Significant developments in the field of governance have occurred in the last decade. Corporate scandals in both public and private sectors convinced legislators in many jurisdictions that existing governance practices provided inadequate protection for the public. Reforms to both principles and practices were instituted in many countries, including Canada. Professional organizations in other spheres of Canadian society have been adapting their governance practices in recent years.
41. In the Task Force's view, it is incumbent upon organizations such as the Law Society, which have been granted the privilege of self-regulation, to keep pace with these developments. The heightened interest in the public realm, and specifically among governments, in corporate governance means that the Law Society should be prepared to engage in reforms if necessary, and take sufficient measures to keep its own governance practices up to date.

GOVERNANCE IN THE PUBLIC INTEREST: PRINCIPLES TO GUIDE THE REVIEW OF GOVERNANCE

42. In the Task Force's view, the information discussed in this report justifies a further exploration of whether the Law Society should make any changes to its existing governance arrangements. Such an exploration should be pursued with reference to some foundational concepts related to good governance. Indeed, the Task Force's objective in addressing its mandate, and the focus of the expert opinion it sought, is "good governance" for the Law Society.
43. There appear to be three schools of thought with respect to good governance. For some, good governance is seen as the need for compliance with detailed rules related to how the structures and processes of governance should be configured. Others, however, take the view that good governance cannot be assured simply by insisting on adherence to rules. They maintain that good governance should be more concerned with results achieved rather than rules and procedures. A third, blended view states that good governance requires consideration both of how decisions are reached and what results are being achieved by the organization in question. It is the third view that the Task Force is suggesting be pursued.

Governance in the Public Interest

44. For statutory regulators, the interests of a number of groups must be taken into account. For the Law Society, the landscape of its relationships is reflected in the following diagram. The Society has both explicit and implicit accountabilities (as illustrated by the dotted lines).

Governance of the Law Society of Upper Canada:
Key relationships

(see chart in Convocation Report)

45. The missions of public interest regulators are usually more complex and nuanced than those of a business corporation. This is illustrated in the debates in Convocation about how the "public interest" is to be interpreted at the Law Society.

46. Defining the public interest as it relates to a specific organization can be difficult. However, it is important if possible to establish a clear understanding of this concept and its implications for an organization, and to be consistent over time, for the following reasons.
47. Political leaders sometimes interpret "the public interest" to encompass anything that benefits any member of the public, anywhere. "Pet projects" often spring up. Organizations experiencing this kind of direction find themselves unable to set priorities.
48. A consequence can be "mission drift", where the organization loses sight of the main purpose for which it was established. A related problem, sometimes found in government, is that of "hollow programs", or new initiatives begun with a burst of enthusiasm that are tangential to the organization's central mandate. Such programs are often inadequately financed and tend to dissipate in due course.
49. A third consequence is that the public profile of the organization becomes blurred. People who are not involved regularly with an organization, who may include its members or stakeholders, cannot understand what it stands for.
50. A final difficulty is from the point of view of operational staff, who may feel pulled in many different directions. They may feel they are spread too thin and doing too many things not as well as they would wish.

The Importance of Process

51. Politicians or civil servants with experience working in the public sphere realize that the public interest is not something "out there" waiting to be found. Rather, it has to be defined by leaders drawing on their own knowledge and, from time to time, on democratic processes that
 - a. take into account the interests of those stakeholders with a direct interest in a particular issue of public policy,
 - b. relate those interests to those of the of the public at large, which may be different from those of immediate stakeholders, and
 - c. link them to basic values considered important in a democratic society, as reflected in the mandate of the particular organization.
52. Determining where the public interest lies in any particular case requires balancing the interests of stakeholders and the general public. As there is no obvious spokesperson for the "general public", there is usually a need for a mix of voices to be heard. One method is to constitute a decision-making body with a range of stakeholders representing relevant views. Alternatively, as in the case of the Law Society, lay representatives are invited to sit at the table as surrogates for the general public.
53. Representative measures may have to be complemented by processes of consultation and outreach. In today's society, such measures respond to the growing trend among citizens to demand more say in decisions that affect them. Such processes, properly designed and executed, can enrich decision-making, revealing considerations not previously apparent to those in charge.

Principles for the Law Society

54. Canada's Institute On Governance (IOG), a think tank that focuses its work on public interest organizations, has developed a set of five principles of good governance for the public sphere. They speak to:
- a. the democratic character of decision-making processes, including who can participate and whose voices are heard;
 - b. the outcomes of the decision-making process, including who benefits and what impact is achieved; and
 - c. the acceptability of the process, including its efficiency, its transparency and the accountability of decision-makers.
55. Since the mandate of the Law Society is to govern lawyers and paralegals in the public interest, the Task Force thought that this set of principles, adapted to the Law Society, would provide a solid foundation upon which to consider more specific reforms.¹³ These principles, set out at paragraph 11, would be applicable to all aspects of the Society's governance. This includes Convocation, its committees and task forces, and related processes conducted under the auspices of Convocation, notably those for dealing with complaints and discipline.
56. General principles may be interpreted in a number of ways. For example, in the case of the Law Society, "legitimacy and voice" might suggest the need to enlarge Convocation to accommodate more voices at the table. Alternately, the size of Convocation may remain unchanged but other measures could be instituted, such as periodic consultative initiatives to obtain the views of different constituencies.
57. Principles can also conflict with each other. For example, the principles of performance and direction might suggest the need to make Convocation more efficient, whereas the principle of legitimacy might suggest the need to take more time in decision-making to ensure all voices have been heard.

SUMMARY AND TASK FORCE PROPOSALS

58. The legal professions require leadership and regulation by a governing body that is responsive to the speed and breadth of changes taking place in the legal and business environment. In the Law Society's governance structure, this responsibility falls to Convocation.
59. Good governance requires a forward-thinking Convocation that is open, efficient and effective. In the Task Force's view, the information it has gathered about the profession, Convocation and governance validates as a first step to possible reform the consideration of the proposed principles of governance for the Law Society.
60. As the application of principles requires careful work within an appropriate process, the Task Force believes it would be desirable to seek views from a range of constituents

¹³ The IOG principles are derived from a more comprehensive set developed initially by the United Nations Development Program. This latter set of principles is designed to apply to societies rather than organizations. They in turn rest on various UN conventions, such as the Universal Declaration of Human Rights. Appendix 4 sets forth the UNDP principles and correlates them with the more condensed list developed by the IOG, also in the Appendix.

within the professions. In this way, the Task Force can determine views about the current state of governance at the Law Society, utilizing principles of governance.

61. The Task Force's proposal is in two phases. In the first phase, the Task Force wishes to obtain the views of benchers about the governance principles and how Convocation is performing in respect of each of the principles. This will help the Task Force to determine where to focus its efforts. The plan is to hold a meeting of the Committee of the Whole in October 2008, to seek benchers' views on these matters.
62. In the second phase, with the benefit of benchers' input, the Task Force wishes to engage in a process of limited consultations with a small cross-section of the professions on the current governance structure at the Law Society. This would involve a series of meetings with leaders in the professions and other stakeholders, characterized as "soundings" to obtain input on governance issues. Details appear in the discussion about the budget for the consultations.
63. The results of the discussions would be reported back to benchers, with a summary of the input received and the governance issues identified. This information will assist the Task Force in deciding whether further consultation might be desirable and ultimately in preparing its report to Convocation on possible governance reforms.

Budget Information

64. The Task Force wishes to arrange the bencher session and a series of meetings with members of the professions for the consultations and engage Tim Plumptre to facilitate the session and meetings. The total budget for the two-phase consultation, for Convocation's approval, is \$95,000.
65. With respect to the first phase involving the bencher session, Mr. Plumptre would facilitate the discussion with an assistant who would also provide technical support. The informal format, which is characterized as a bencher workshop, would involve the use of key pads for each bencher to electronically respond to a series of statements based on the governance principles. The questions would relate to the importance of the governance principles to Law Society governance and their practical application at the Law Society. The responses for discussion among benchers would be tabulated electronically on a screen.
66. With respect to the second phase involving external limited consultations, the Task Force is proposing a series of six to eight meetings. Up to two meetings would be arranged in Toronto with leaders of various legal organizations, many of which the Law Society has consulted with on past initiatives. The remaining meetings would be held in Toronto, Ottawa, London and a northern community (e.g. Thunder Bay) to which approximately 10 lawyers and paralegals from a cross-section of practice and geographic areas would be invited. The plan is to ask the county law associations and Ontario Bar Association to help the Task Force compile a list of possible attendees in various regions for these meetings. Tim Plumptre would facilitate the discussion and up to two Task Force members would also attend. Background information on the Law Society's current governance structure and an outline of the proposed topics for discussions would be sent in advance to those attending the session. It is anticipated that the sessions would begin in early November and conclude in mid-December 2008. Summaries of the discussion at the sessions would be prepared.

67. The estimated cost for the benchers workshop and the meetings with the professions, including preparatory and post-meeting work, is \$82,600 for Mr. Plumptre's portion and \$12,600 for the benchers and Law Society portion, including travel expenses and venue costs. Details of the estimated budget for the consultations is provided in Appendix 5.
68. The Finance Committee reviewed the budget proposal at its September 11, 2008 meeting, in keeping with the Convocation's policy that requires the Finance Committee's review of proposed expenses associated with Law Society initiatives that have not been included in the yearly budget. The Finance Committee did not approve the budget. While some Committee members agreed that consulting with benchers was appropriate (but not for the requested amount for the benchers session), the Committee decided that an expenditure on consultations of this nature with the professions was not warranted.

Request to Convocation

69. The Task Force's request to Convocation is for approval of the consultations described in this report and the associated budget of \$95,000.

APPENDIX 1

GOVERNANCE TASK FORCE TERMS OF REFERENCE (Approved May 25, 2006)

1. The Task Force will consider and recommend to Convocation improvements to the corporate governance of the Law Society to fulfill its mandate through:
 - a. efficient and effective corporate governance;
 - b. co-ordination of corporate governance with the operational management of the Law Society, and
 - c. effective priority setting, including budgetary considerations.
2. In addition, The Task Force will study the following two specific issues referred to it by Convocation:
 - a. the Treasurer's election process, including certain provisions of By-Law 6, based on the Secretary's report to Convocation of March 23, 2006;
 - b. procedural issues relating to Committee recommendations and motions before Convocation, arising from adoption of Rules of Procedure for Convocation (amendments to By-Law 8) on March 23, 2006.

APPENDIX 2

CURRENT GOVERNANCE ARRANGEMENTS AND RECENT EFFORTS AT REFORM

Current Governance at the Law Society: An Overview

Since 1871, benchers have been elected by the Law Society's membership in elections originally held every five years and since 1970, every four years. The eligible voters are the 39,000 licensees of the Law Society.¹⁴ The total number of benchers is 83.

¹⁴ An election process for paralegal benchers will eventually replace the appointments to Convocation by the Attorney General.

The Work of Convocation

Convocation meets nine times a year to conduct its business – every month except July, August and December, although on occasion a meeting is arranged for the latter month. A number of standing committees assist Convocation with its policy and other work. When the Law Society restructured its governance in 1996, the number of standing committees was reduced to four. In 2001, the number of standing committees was six. The number of committees and other groups has since grown to 15.

The Treasurer and Convocation assign new policy issues to the appropriate standing committee. Where a new issue of importance to the Society does not fall within the mandate of one of the standing committees, the Treasurer will form a task force and populate it with benchers (or others if necessary) who have the appropriate expertise with the particular subject matter. Since the late 1990s, over 10 task forces have been constituted, and many have completed their work with final reports to Convocation.

Rules of procedure for Convocation were adopted by Convocation in June 2006. They are intended to bring more structure to the consideration of issues at Convocation, and provide guidance to the Treasurer and benchers on proper procedures in Convocation.

Convocation's adoption of earlier recommendations of the present Governance Task Force on priority setting, including creation of a Priority Planning Committee, will bring more structure to this function.

Discipline

Another aspect of governance at the Law Society is the separate adjudicative function for the discipline of its members. Discipline is a key part of the self-governance of the profession. The adjudicative function is fulfilled by benchers (elected, appointed and ex officio) as members of the Hearing and Appeal Panels. To external parties, the integrity of the hearing process and the manner in which the benchers execute their duties as adjudicators is a measurement of how well the Law Society's governance structure has operated in maintaining a separate adjudicative process which benchers are also involved. Recently, Convocation approved the addition of four non-bencher lawyers to the Hearing Panel to increase its adjudicative expertise. Four non-lawyer panelists were also added.

Recent history related to governance reform

Pressure to consider governance reform has been mounting slowly but steadily over a number of years for the reasons outlined in the main body of this report. The Law Society responded in an effort to address some of the governance issues that have been raised.

In 1996, the Law Society underwent its first comprehensive change in recent years. Convocation agreed it should focus its attention on questions of policy and "ends" and disengage itself from involvement in operations or "implementation", which were recognized as the responsibility of staff. This was driven by consideration of an approach to governance known as the "Carver model" of policy governance.

Consideration of the policy governance model led to a more detailed review of various governance issues, some of which had been the subject of discrete studies in the past. What followed was a wide-ranging governance review in the context of the Society's Strategic

Planning Committee initiative of 2000-2003. Convocation adopted an initial Strategic Plan in May 2000 and directed the Committee to undertake further work to outline options for the implementation. The Committee's report on implementation recommended various changes, notably:

- a. That the Treasurer be the spokesperson for Convocation and be accountable for overseeing the performance of the CEO;
- b. Formation of an Executive Committee or Treasurer's advisory committee with responsibility for streamlining Convocation's agenda and generally assisting the Treasurer to lead the work of Convocation;
- c. Adoption of rules of debate;
- d. Reduction in the size of Convocation;
- e. Adoption of a process to monitor implementation of the strategic plan;
- f. Better management of the process for establishing and overseeing the work of committees, task forces and working groups;
- g. A recommendation for committees in future to bring forward reports containing options for consideration by Convocation, with analysis of pros and cons, whether or not the committee recommends a particular option.

A follow-up report in 2001 included a recommendation for a Treasurer's advisory committee, arguing in effect that such a committee was critical to improve the efficiency of Convocation, and particularly the work of other committees. However, Convocation rejected this proposal and other related reforms, including the idea of staggering the terms of benchers. It deferred consideration of the proposal that the size of Convocation be reduced, and ultimately, no changes were made on this issue. However, a project to draft rules of procedure was undertaken and these were eventually adopted.

Governance issues persisted as a result of other work related to the Society's core values. In September 2004, Convocation appointed a new Task Force to examine certain aspects of governance.¹⁵ The report of this Task Force was received by Convocation in February 2006 but it was never finally debated. In any event, it had no recommendations related to the larger issues mentioned above.

At February 2006 Convocation, newly elected Treasurer Gavin MacKenzie proposed that Convocation create another Task Force (the present one) to consider governance matters. Convocation approved the Task Force's terms of reference in May 2006.

The current governance review is thus part of a series of efforts aimed at reform that began over 12 years ago.

APPENDIX 3

¹⁵ The method by which members become benchers and the size of Convocation as a board; the role of the Treasurer as chair of the board (Convocation), the notion of an executive committee, priority planning, and the frequency and the procedural and substantive efficacy of Convocation; the role of Benchers and electronic voting in bencher elections.

STATISTICS ON THE COMPOSITION OF CONVOCATION, 1995 - 2007

Chart 1 – Profile of Elected Benchers 1995-2007

Year	Number of candidates	Number of new benchers elected and %	Number of incumbents elected and %	Number from regions outside Toronto elected	Female Benchers	Racialized Elected	Francophone Elected	Aboriginal Elected
1995	122 (46 Toronto; 76 outside)	24 of 100 new candidates (60% of elected benchers)	16 of 22 incumbents (40% of elected benchers)	No regional bencher process	13 elected from 33 female candidates	1	0	0
1999	84 (35 Toronto; 49 outside)	11 of 53 new candidates (27.5% of elected benchers)	29 of 31 incumbents (72.5% of elected benchers)	*CE – 2, CS – 2, CW – 2, E – 7, NE – 1, NW – 2, SW – 4	8 elected from 21 female candidates	1	0	0
2003	102 (55 Toronto; 47 outside)	12 of 71 new candidates (30% of elected benchers)	28 of 31 incumbents (70% of elected benchers)	CE – 1, CS – 2, CW – 2, E – 8, NE – 2, NW – 1, SW – 4	11 elected from 28 female candidates	1	0	2
2007	99 (51 Toronto; 48 outside)	12 of 68 new candidates (30% of elected benchers)	28 of 31 incumbents (70% of elected benchers)	CE – 2, CS – 2, CW – 2, E – 7, NE – 3, NW – 1, SW – 3	18 elected from 33 female candidates	2	0	1

*CE – Central East, CS – Central South, CW – Central West E – East, NE – Northeast, NW – Northwest, SW – Southwest

Chart 2 – Profile of Elected Benchers – Practice, Firm Size and Age 1995-2007

Year	Number of candidates	Practice areas represented by all candidates (where they can be identified)	Practice areas represented by elected benchers	Barristers vs. solicitors among elected benchers	Size of law practices of elected benchers	Ages of elected benchers (numbers greater than 1 of a particular age noted)
1995	122 (46 Toronto; 76 outside)	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia, public sector/government, clinic lawyer,	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia, public sector/government	30 barristers 7 solicitors	Large firm – 8, small/medium firm – 20, sole practitioners - 9	Range: 38 to 65 38, 40, 41, 42(2), 43 (2), 44(4), 45(2), 46(3), 47, 48(2), 50(5), 51 (3), 52(3),

Year	Number of candidates	Practice areas represented by all candidates (where they can be identified)	Practice areas represented by elected benchers	Barristers vs. solicitors among elected benchers	Size of law practices of elected benchers	Ages of elected benchers (numbers greater than 1 of a particular age noted)
		journalist				53(3), 55, 57(2), 58, 59(2), 65
1999	84 (35 Toronto; 49 outside)	Family law, criminal law, civil litigation, ADR, real estate, estates, immigration, corporate/commercial, academia, public sector/government, clinic director	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia	30 barristers 7 solicitors	Large firm – 9, small/medium firm – 19, sole practitioners - 9	<u>Range: 44 to 78</u> 44, 45(2), 46, 47(2), 48(2), 49(2), 50, 51, 52(4), 54(6), 56(4), 57, 59(2), 60(2), 61(3), 62, 63(2), 64, 76, 78
2003	102 (55 Toronto; 47 outside)	Family law, criminal law, Crown Attorney, civil litigation, immigration, real estate, estates, corporate/commercial, academia, public sector/government, legal aid, in-house counsel, clinic director	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia, public sector/government, in-house counsel	30 barristers 5 solicitors	Large firm – 9, small/medium firm – 19, sole practitioners - 7	<u>Range: 42 to 68</u> 42, 44(3), 48, 51(6), 52(2), 53(2), 54(2), 56(3), 57(2), 58(5), 60(2), 61, 62, 63(2), 64(2), 66, 67(3), 68
2007	99 (51 Toronto; 48 outside)	Family law, criminal law, Crown Attorney, civil litigation, real estate, estates, immigration, corporate/commercial, academia, public sector/government, legal aid, in-house counsel, clinic director	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia, public sector/government, clinic director	30 barristers 5 solicitors	Large firm – 9, small/medium firm – 21, sole practitioners – 5	<u>Range: 39 to 80+</u> 39, 41, 46, 47, 48(3), 50, 51, 52(4), 54, 55(4), 56(2), 57(2), 58, 59, 61(3), 62(2), 64, 65, 66, 68(2), 69, 70, 71(2), 74, 80+

Chart 3 - Profile of the 12 Current Life Benchers

Bencher	Location	Practice Area/Retired	Barrister or Solicitor	Size of Firm If Applicable	Years Served as Bencher ¹⁶
1	Toronto	Counsel (Criminal law firm)	Barrister	Small/medium	36
2	Toronto	Criminal/civil litigation	Barrister	Small/medium	16
3	Outside Toronto	Real estate	Solicitor	Small/medium	16
4	Toronto	Civil litigation	Barrister	Large	16
5	Outside Toronto	Civil litigation	Barrister	Small/medium	32
6	Toronto	Litigation ADR	-	-	32
7	Toronto	Civil litigation	Barrister	Small/medium	20
8	Outside Toronto	Civil litigation	Barrister	Small/medium	24
9	Outside Toronto	Counsel (full service firm)	Solicitor	Small/medium	16
10	Outside Toronto	Criminal Law	Barrister	Sole practitioner	16
11	Outside Toronto	Retired	-	-	28
12	Outside Toronto	Litigation	Barrister	Small/medium	28

APPENDIX 4

EXTRACTS FROM THE OECD PRINCIPLES OF CORPORATE GOVERNANCE¹⁷

I. The rights of shareholders

The corporate governance framework should protect shareholders' rights.

[Rights include those related to share ownership and transfer, election of directors, sharing in profits, participation in shareholder meetings, and equality of treatment/ control among shareholders.]

II. The equitable treatment of shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

[Provisions here relate to issues such as voting rights and procedures for shareholders, and disclosure of relevant information by the board and management.)

III. The role of stakeholders in corporate governance

The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

IV. Disclosure and transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

¹⁶ Based on four year terms up to 2007.

¹⁷ OECD Document SG/CG(99)5, April 1999.

[Provisions speak to the kind of information that should be disclosed, including financial and operating information, corporate objectives, risks, ownership, & corporate remuneration.]

V. The responsibilities of the board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

[Provisions speak to the fiduciary responsibilities of directors. The principles outline the duties of board members in some detail, including their responsibility to guide corporate strategy, select key executives, review their performance and pay, monitor corporate assets, ensure integrity of financial systems and practices, and devoting sufficient time to their responsibilities.]

THE UNDP AND IOG PRINCIPLES OF GOOD GOVERNANCE

The IOG Principles	The Related UN Principles
1. Legitimacy and Voice	<p>Participation – all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.</p> <p>Consensus orientation – good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures</p>
2. Accountability	<p>Accountability – decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external.</p> <p>Transparency – transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.</p>
3. Performance	<p>Responsiveness - institutions and processes try to serve all stakeholders.</p> <p>Effectiveness and efficiency – processes and institutions produce results that meet needs while making the best use of resources</p>

and (c) draft substantive recommendations respecting elements of reform including discussions with Policy staff, revisions of drafts: (12)	24,300
For participation in two meetings of Task Force to review these matters and collaboration with Policy staff in revision of Task Force Report to Convocation: (7)	<u>15,000</u>
TOTAL ESTIMATE:	<u>\$ 82,400</u>

Cost estimates for consultation
(Law Society portion)

Bencher/staff travel expenses 3 return flights to 3 offsite meetings for up to 3 people, plus ground transportation, meals, hotel (if necessary)	\$10,000
Travel expenses for lawyers/paralegals attending sessions (i.e. mileage/parking charges)	\$1,200
Toronto and offsite meeting venue expenses (on the assumption that Ottawa and London meetings could be arranged with local law (bencher) firms)	<u>\$1,400</u>
TOTAL ESTIMATE:	\$12,600

It was moved by Mr. Heintzman, seconded by Professor Krishna, that Convocation approve consultations on principles of governance for the Law Society with benchers and key members of and other stakeholders within the professions, and the associated budget of \$95,000 for the consultations.

Carried

ROLL-CALL VOTE

Aaron	Against	Heintzman	For
Aitken	For	Henderson	For
Anand	For	Lawrie	For
Backhouse	Against	Lewis	Against
Banack	For	McGrath	For
Boyd	For	Marmur	For
Braithwaite	Against	Minor	For
Bredt	For	Pawlitza	For
Campion	For	Porter	For
Caskey	Against	Potter	Against
Chahbar	Against	Pustina	For
Conway	For	Rabinovitch	For
Crowe	Against	Ross	For
Daud	For	Rothstein	For
Dickson	Against	Sandler	For

Dray	For	Schabas	For
Elliott	For	Sikand	For
Epstein	Against	Silverstein	For
Go	For	Simpson	For
Gottlieb	Against	C. Strosberg	Against
Hainey	For	H. Strosberg	Against
Hare	Against	Swaye	Against
Hartman	For	Tough	For
		Wright	Against

Vote: 31 For; 16 Against

It was moved by Mr. Wright, seconded by Mr. Crowe, that the motion be amended as follows:

That Convocation approve the holding of a committee of the whole with benchers on governance issues as soon as possible.

Not Put

It was moved by Ms. Potter, seconded by Ms. Ross, that Mr. Plumptre be retained for the purpose of facilitating the committee of the whole.

Not Put

MATTERS NOT REACHED

Tribunals Committee Report

- Publication Policy When Hearing Panels Issue Invitations to Attend

Paralegal Standing Committee Report

- Paralegal Professional Conduct Guidelines
- Exemption - Application of Canadian Society of Professionals in Disability Management
- Exemption - Trade Union Representatives Appearing in Small Claims Court
- Amendments to By-Law 11 Re: Practice Audits
- Amendment to By-Law 8 Re: Paralegal's Annual Report
- Amendment to Paralegal Rules of Conduct Re: Business Structures
- Amendment to Rule 8 of Paralegal Rules of Conduct Re: Advertising and Marketing

For Information

- Canadian Society of Immigration Consultants

Professional Regulation Committee Report

- Proposed Amendments to Subrule 6.03(9) of the *Rules of Professional Conduct*
- Amendments to By-Law 7
- Amendments to Rule 3 of the *Rules of Professional Conduct*

For Information

- Member's Annual Report 2008
- Professional Regulation Division Quarterly Report

Government and Public Affairs Committee Report (in camera)

REPORTS FOR INFORMATION ONLY

Audit Committee Report

- General Fund, Compensation Fund, LibraryCo Inc. and LAWPRO Financial Statements for Period Ending June 30, 2008
- Investment Compliance Reporting
- Long-Term Investment Performance

Report to Convocation
September 25, 2008

Audit Committee

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

Purpose of Report: Information

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

TABLE OF CONTENTS

FOR INFORMATION:

1. General Fund - Financial Statements For The Six Months Ended June 30, 2008
2. Compensation Fund - Financial Statements For The Six Months Ended June 30, 2008
3. LibraryCo Inc. - Financial Statements For The Six Months Ended June 30, 2008
4. LAWPRO - Financial Statements For The Six Months Ended June 30, 2008
5. Investment Compliance Reporting
6. Long-Term Investment

COMMITTEE PROCESS

1. The Audit Committee (“the Committee”) met on September 10, 2008. Committee members in attendance were Beth Symes(c), Ab Chahbar(v-c), (conference), Larry Banack, Seymour Epstein, Glen Hainey and Doug Lewis.
2. Also in attendance were Kathleen Waters, President and CEO and Iveri Vv Boudville, Controller of LAWPRO.

3. Staff in attendance were Wendy Tysall, Fred Grady and Brenda Albuquerque-Boutilier.

FOR INFORMATION

GENERAL FUND - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2008

4. Convocation is requested to receive the financial statements for the General Fund as at the end of the second quarter of 2008 for information.

General Fund Financial Statement Highlights For the six months ended June 30, 2008

Background

5. The Society's General Fund is composed of a number of funds included in these financial statements.
- The Unrestricted Fund is the Society's operating fund representing the bulk of its revenues and expenses relating to the licensing and regulation of lawyers.
 - There are a number of special purpose funds restricted by Convocation. These are the Paralegal, Capital Allocation, Invested in Capital Assets, County Libraries, Repayable Allowance, Endowment, Special Projects and the Working Capital Reserve funds.
 - The Paralegal Fund captures revenues and expenses related to the licensing and regulation of paralegals.
 - The Capital Allocation Fund is the source of funding for the Society's acquisition of major capital assets and the repair and upgrade of Osgoode Hall. The fund is replenished by a dedicated annual levy, currently \$75, on all lawyers and paralegals.
 - The Invested in Capital Assets Fund represents the net book value of the Society's physical assets. Additions, to the fund are made by the capitalization of assets acquired through the capital allocation fund. Additions are recorded annually by means of an inter-fund transfer on the Statement of Changes in Fund Balances. Amortization is reported as an expense of the fund.
 - The County Libraries Fund reports the transactions between LibraryCo Inc. and the Law Society. The Law Society levies an amount on lawyers as approved by Convocation in the annual budget, currently \$235 per lawyer. This levy is reported as income of the fund and transfers to LibraryCo Inc. are reported as an expense of the fund.
 - The Repayable Allowance Fund is used to provide financial assistance to those enrolled in the Society's Licensing Process. The fund is replenished annually through the budget process by a \$100,000 annual contribution.
 - The Society's Endowment Fund is the J. Shirley Denison Fund, administered under the terms of the will by Convocation for the relief of poverty for lawyers, former lawyers, their spouses and licensing process student lawyers.

- The Special Projects Fund is used to carry forward funding to a future fiscal period for a program or activity for which funding is not provided in the current year budget. For 2008 the fund is comprised primarily of funding for the McMurtry Gardens of Justice and start-up of the Retention of Women Task Force.
- The Working Capital Reserve is maintained by policy of Convocation to ensure cash is available to meet the operating needs of the Society. By policy, the fund is maintained at a balance of up two months operating expenses.

In addition to the General Fund, separate financial statements are prepared for the Compensation Fund, LibraryCo Inc., LawPro, the Combined Errors and Omissions Insurance (E&O) Fund and the stand alone E&O Fund.

Financial Statements

6. The General Fund Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit corporations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.
7. Unless specifically related to a particular restricted fund, all revenue, including investment income, is recognized as revenue of the Unrestricted Fund.
8. The General Fund Financial Statements for the six months ended June 30, 2008 comprise the following statements with comparative numbers for June 30, 2007:
 - Balance Sheet
 - Statement of Revenues and Expenses
 - Statement of Changes in Fund Balances
9. Supplemental schedules include Schedules of Revenues and Expenses for both the Unrestricted Fund and the Paralegal Fund comparing the results of operations for the six months to the year-to-date budget for these funds.

Balance Sheet

10. Cash and short-term investments, accounts receivable, prepaid expenses and accounts payable and accrued liabilities comprise the working capital of the General Fund and total \$37.2 million (2007: \$33.3 million). Accounts receivable are for the most part lawyers' annual fees that are paid as part of the monthly installment plan and paralegals' annual fees. Accounts payable and accrued liabilities have increased to \$6.1 million from \$3.6 million largely related to amounts due but not yet paid for the Federation of Law Societies, the Law Commission of Ontario, accrued payroll charges and licensing process exam administration.
11. Portfolio investments are shown at market value of \$11.5 million compared to market value of \$11.2 million in 2007.
12. Deferred revenue of \$28.7 million is comprised largely of lawyers' and paralegals' fees billed but not yet earned and licensing process fees billed but not yet earned.

13. Unclaimed trust funds continue to increase, now totaling \$1.8 million compared to \$1.6 million at June 30, 2007.
14. The total general fund balances remain consistent at \$38.3 million compared to \$38.1 million in 2007.

Revenues and Expenses

15. Annual fee revenue is recognized on a monthly basis. Annual fees have increased from \$22.2 million in 2007 to \$22.8 million in 2008, with an increase of approximately 750 lawyers and a fee increase of \$92 per lawyer, and revenue from the first billing of annual fees for paralegals.
16. Professional development and competence revenues have increased to \$9.5 million from \$5.1 million in 2007. This is largely due to the recognition in licensing examination fees for grand-parented paralegal entrants, received in 2007 and recognized in 2008 when the examinations were given.
17. Other income has decreased by \$804,000 compared to 2007, primarily attributable to the \$1.2 million in one-time funding for CanLII expenses received from the Law Foundation in 2007.
18. As analyzed below, overall, expenses are up over 2007, both in the unrestricted fund and restricted funds.
19. Professional development and competence expenses are \$683,000 more than for the same period in 2007 (\$7.8 million versus \$7.2 million) primarily as a result of increased spending to date on the Licensing Process for lawyers.
20. Regulatory expenses of \$7.8 million are higher than the same period in 2007 by just under \$400,000. The increase is mainly due to increased budgeted expenditures across the regulatory division offset by a decline in actual spending on counsel fees from \$978,000 in 2007 to \$663,000 in 2008.
21. Administrative expenses are \$209,000 more than the same period in 2007, consistent with budgeted increases.
22. Other expenses have increased by \$1.3 million with increased spending on the Federation of Law Societies, insurance and professional fees and a general provision for payroll costs.
23. Capital allocation fund expenses have decreased from \$1.9 million in 2007 to \$1.1 million in 2007, reflecting the repayment of the LFO grant for the Ottawa building that occurred in 2007.
24. Paralegal fund expenses have increased from \$301,000 to \$1.2 million in 2008 with paralegal spending in 2008 being for the full two quarters compared to only one quarter of start-up activities at the same period in 2007.

Changes in Fund Balances

25. The unrestricted fund balance has been reduced by \$2.8 million with the transfer of \$2.7 million to the working capital reserve fund, as approved by Convocation, and \$100,000 to the repayable allowance fund approved in the 2008 annual budget. The transfer of \$2.7 million to the working capital reserve brings the balance in that fund to approximately the equivalent of two months operating expenses. This is the maximum permitted by policy.
26. The county library fund holds funds collected from lawyers' annual fees for transfer to LibraryCo for county library purposes. The fund deficit of \$511,000 is the result of funds advanced to LibraryCo to pay for the cost of electronic products in the first quarter of 2008. Subsequent quarterly payments for county grants have been reduced to offset the \$1.0 million advance. The deficit will be eliminated by year-end.
27. The repayable allowance fund has made loans to students based on need in the total amount of \$45,000 to 15 students (2006: \$57,000 to 21 students).
28. The endowment fund reflects interest earned on the fund's cash reserves and payments made from the J. Shirley Denison Fund.
29. Payments from the special projects fund relate primarily to the McMurtry Gardens of Justice.

FOR INFORMATION

COMPENSATION FUND - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2008

30. Convocation is requested to receive the financial statements for the Compensation Fund at the end of the second quarter of 2008 for information.

Compensation Fund Financial Statement Highlights For the six months ended June 30, 2008

Background

31. By statute, the Law Society maintains a compensation fund to mitigate losses sustained by clients as a result of the dishonesty of a member of the Law Society of Upper Canada. Prior to 2008, the fund was known as the Lawyers Fund for Client Compensation. With paralegal regulation added to the Society's mandate, the fund was renamed the Compensation Fund and now permits members of the public to seek compensation from the Society as a result of dishonesty by paralegals licensed by the Law Society of Upper Canada, as well as by lawyers.
32. The annual Compensation Fund levy for lawyers was set at \$200 for the 2008 fiscal year with the adoption of the annual budget for lawyers in October 2007. The annual Compensation Fund levy for paralegals was set at \$145 for the 2008 fiscal year with the adoption of the annual budget for paralegals in February 2008. The first actual licences

for paralegals were issued with an effective date of March 31, 2008, resulting in a pro rated levy of \$109 for 2008 for these newly licensed paralegals.

One Compensation Fund, Two Pools

33. Beginning with the second quarter of 2008, it is necessary to segregate the revenues and expenses related to paralegals from those of lawyers in order to maintain separate funding pools to satisfy claims arising from each group without using the funds provided by each to satisfy claims and expenses of the other.
34. This is accomplished by segregating the Fund Balance between lawyers and paralegals on the Balance Sheet and by segregating revenues and expenses on the Statement of Revenues and Expenses and Change in Fund Balances.

Sources of Funding

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

Expenses of the Fund

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

Financial Statements

38. The Compensation Fund Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not for profit corporations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.
39. The Compensation Fund Financial Statements for the six months ended June 30, 2008 comprise the following statements with comparative numbers for June 30, 2007:
 - o Balance Sheet
 - o Statement of Revenues and Expenses and Change in Fund Balances

The Paralegal Pool

40. This is the first quarter that the fund's financial statements reflect the inclusion of paralegals. At this time, the revenue and expenses associated with paralegals are relatively small, given the small number of those licensed in the second quarter. To date, no claims have been made against the Fund regarding the actions of licensed paralegals.

The Lawyer Pool

41. The first half of 2008 has been completed and the financial position of the Lawyer Pool remains strong.
42. The pool's balance of \$21.2 million has increased from what was reported in June 2007 in the amount of \$21.1 million. The Fund's Financial Statements for the six months ended June 30, 2008 identify a deficit of \$190,000 compared to a surplus of \$601,000 million for the first half of 2007.
43. An actuarial valuation of the reserve for unpaid grants was not prepared as at June 30, 2008. The services of an actuary to undertake a valuation are currently being negotiated. One significant action has led to claims against the fund estimated at \$1.0 million by staff of the fund. This estimate is reflected in the reserve on the Balance Sheet and the increase in reserve for unpaid grants on the Statement of Revenues and Expenses and Change in Fund Balances.

Second Quarter Balance Sheet

44. The only variances of any significance in the Balance Sheet from June 2008 to June 2007 are the increase in cash and short-term investments of \$1.0 million to \$9.6 million and the increase in the market value of the portfolio investments of \$642,000 to \$25.6 million.

Second Quarter Revenues and Expenses and Change in Fund Balances

45. Annual fee revenues of \$3.3 million have increased by \$149,000 from the first half of 2007. The increase is attributable to the inclusion of paralegals for the first quarter and the increase in the number of lawyers.
46. Investment income has increased from \$311,000 to \$581,000.
47. Grants paid of \$522 million have decreased by \$234,000 compared to the first half of 2007. These payments relate largely to claims previously reserved.
48. Recoveries of claims paid have decreased from \$372,000 in the first half of 2007 to \$24,000 this year.
49. Investigations and discipline costs allocated from the unrestricted fund are up \$32,000 as budgeted costs for investigations have increased over 2007.

FOR INFORMATION

LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED
JUNE 30, 2008

50. Convocation is requested to receive the financial statements for LibraryCo Inc. for information.

LIBRARYCO INC.

FINANCIAL REPORT
For the 6 months ended JUNE 30, 2008

KEY POINT SUMMARY

Statement of Operating Revenues and Expenses - LibraryCo only
Comparison of Actual to Budget

Revenues

- Law Society grant (line 1) is the lawyer-based fee that is transferred to LibraryCo. This transfer includes amounts for central administration, quarterly transfers to the 48 libraries, and funding for electronic products.
- The Law Foundation of Ontario grant (line 2) – The full grant of \$850,000 for purchases of electronic resources has been received (\$212,500 in December 2007 and \$637,500 in March 2008) and is included to match expenditures incurred. As payment for computer expenditures, LibraryCo received LFO funding of \$153,000 (\$51,000 in 2007 plus \$102,000 in 2008). Expenses for computer rejuvenation totaled \$186,209, of which \$86,020 was incurred in 2007 and \$100,189 to June 2008. At June 30, the balance owing to LibraryCo was \$33,209 (amount expensed to date of \$186,209 less amount received to date of \$153,000). No amount was budgeted in 2008 for computer upgrades as it was anticipated that all upgrades would be completed by the end of the 2007 fiscal year. However, this was not the case and the computer upgrade program was extended to June 30, 2008.

Expenses

- Salaries & administration expense (line 5) is in line with budgeted amounts and includes salaries, benefits and costs per the Administrative Services Agreement with the Law Society.
- Professional fees (line 6) consist of audit, consulting, and counsel fees. The year to date professional fees expense is lower than budget by \$6,500 as consulting and counsel fees are expected to increase later in the year.
- Other expenses (line 7) – these expenses are lower than budget for the six-month period by \$22,000 because of decreased costs for courier service/postage, board of directors, and promotion and public relations, which may occur later in the year.

- Electronic products and services (line 9) expenditures have been fully incurred for the year and are \$15,000 higher than amounts originally budgeted due to increases in publishing costs.
- Group benefits (line 10) of \$123,000 is lower than budget by \$27,000. Benefit plans for the counties will be renewed in the year when new rates will come into effect. LTD costs for the benefit plans are being recovered from the individual libraries resulting in lower costs to LibraryCo.
- Computer expenses (line 11) relate to grants to assist libraries with replacing and upgrading of aging computers and related accessories. Expenses of \$104,000 are funded by grants from LFO as noted above.
- Other – law libraries (line 12) include expenses related to staff travel, COLAL and CDLPA Library Committee meetings, COLAL continuing education and bulk purchases of publications for the library system. Many of these expenses are incurred in later months based on the timing of various meetings and billings from the Law Society.
- Law Libraries – grants (line 14) is greater than the budget for the period because of a 2% salary increase related to the LTD benefits (One-half of the 2% expensed for the six month period ended June 30), a special grant to Carleton Law Library of \$106,064 for severance costs, and a \$3,000 grant to Peterborough for staffing costs.
- Capital and special needs grants (line 15) are provided to assist the libraries with replacing and upgrading of aging furniture and equipment, library renovations and/or library relocations, and items that were not part of the budgeted expenditures. Lambton received \$3,210 for increase in the number of hours and pay rate and Durham received \$3,520 for computer upgrades as they had exhausted the allowable limit of \$6,000 the previous year.
- The overall excess of expenses over revenues (line 18) was \$60,243 compared to a budgeted surplus for the quarter of \$1,441. This is primarily a result of the special grant payments to CCLA (\$106,064), staffing costs of \$3,000 to Peterborough and \$3,210 to Lambton, and the 2% staffing costs partially offset by lower expenditures for the period.

Balance Sheet - LibraryCo only

- Cash and short-term investments (line 1) of \$956,315 are higher than the previous year due to the timing of receipts from the Law Society for electronic resources. LibraryCo has invested excess funds in a \$500,000 GIC maturing in September 2008.
- Accounts receivable (line 2) of \$47,766 relate to receivables from LFO of \$33,209, receivables from associations for LTD of \$12,622, GST receivables of \$1,097 and other receivables of \$820. The amount is higher than the previous year as some of the expenditures for computer upgrades were minimal for the corresponding period last year.
- Prepays (line 3) consist of ten months of prepaid insurance for the counties and six months of the staffing costs paid to the county libraries for LTD.

- There are no Capital Assets (Line 5) as they were written off during the 2007 year with the closure of LibraryCo's Burlington head office
- Accounts payable and accrued liabilities (line 7) consist of amounts payable for goods and services and amounts due to the Law Society for payroll, administrative services fee, and publications. The total of \$123,171 is lower than the previous year as some of the payables to the Law Society for administration fees, payroll, and publications have been offset against installments receivable from the Law Society.
- Deferred revenue (line 8) pertains to LFO funding for computer upgrades and replacement of aging computers. The amount is nil as the program ended June 30 and there is a receivable for outstanding amounts to be claimed.

Statement of Changes in Fund Balances – LibraryCo

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

Schedule of Revenues and Expenses - LibraryCo and County Law Libraries

Comparison of 2008 to 2007 Actuals Year-to-Date

- Law Society grant (line 1) shows an increase over the prior year because the entire cost for electronic products was paid and expensed in the first part of the year while LibraryCo's portion was amortized over the 2007 year. In addition, the 2008 budget provided for an increase of 5% for contents and 3% for other expenses.
- Law Foundation of Ontario Grant (line 2) increased by \$54,000 from the 2007 period as a result of the computer rejuvenation program.
- Other income (line 3) (See note 1 below) is about \$294,936 after taking into account one additional quarter of grant to CCLA and grants for 2 quarters to Essex, Prescott & Russell and Rainy River. This amount is marginally higher than the previous year's other income and represents income from local members' dues, photocopying, faxing, printing charges, and fees charged for specific research services.
- Salaries and administration expenses (line 5) of \$254,282 at the LibraryCo level are lower than the previous year because of the reasons set out in Note 1 below.
- Professional fees (line 6) consist of audit, legal, and consulting fees and can fluctuate from one period to the next depending on the timing of the use of the services.
- Electronic products and services (line 8) expenditures have been fully incurred in the first half of the year. Costs are higher by about 5% as publishing costs increase year over year.
- Collections (line 9). Collections of \$1,001,260 are slightly lower than the previous period because of the reasons set out in Note 1 below.
- Group benefits (line 10) of \$122,954 are lower than the previous year by \$9,032 as LTD premiums paid on behalf of library employees are being recovered.

- Law Library grants (line 14) of \$2,934,967 at LibraryCo level are higher than the previous year as grants were increased by about three percent over the previous year. There was also a special payment of 2% staffing costs paid to offset the costs of LTD and this is being amortized over the four quarters. Also, there was a special payment for severance in the amount of \$106,064. At the Law Library level, the association to which the grant was paid recorded the transaction in the 4th quarter of the previous year resulting in a timing difference of \$106,064.

Other Items of Note

- Although not presented in these statements, total Cash balances at all 45 law libraries amounted to approximately \$693,980. This represents an average balance per library of approximately \$15,400.
- The total Accounts payable at all 45 law libraries amounted to approximately \$605,067. This represents an average balance per library of approximately \$13,500.

FOR INFORMATION

LAWPRO AND ERRORS & OMISSIONS INSURANCE FINANCIAL STATEMENTS

51. Convocation is requested to receive the financial statements for the Errors & Omissions Insurance Fund Financial Statements and for the LAWPRO Combined Financial Statements for the second quarter of 2008 for information.

FOR INFORMATION INVESTMENT COMPLIANCE REPORTING

52. Convocation is requested to receive the Compliance Statements for the General Fund and Compensation Fund portfolios as at June 30, 2008 for information.

FOR INFORMATION INVESTMENT MANAGER, LONG-TERM PORTFOLIO

53. The Audit Committee reviewed the performance of the Law Society's investment manager, Foyston, Gordon and Payne.

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

- (1) Copy of Law Society's General Fund Financial Statements for six months ending June 30, 2008. (pages 14 – 16)
- (2) Copy of Law Society's Compensation Fund Financial Statements for six months ending June 30, 2008. (pages 24 – 25)

- (3) Copy of LibraryCo Inc. Financial Statements for six months ending June 30, 2008.
(pages 32 – 35)
- (4) Copy of LAWPRO's Financial Statements for six months ending June 30, 2008.
(pages 37 – 54)
- (5) Copy of Compliance Statements for the General Fund and Compensation Fund portfolios as at June 30, 2008.
(pages 56 – 59)

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

Compensation Fund Committee Report

- Fund Status and Levy Issues
- Orientation to the Fund

- Issues Identified for Future Consideration
- Review Sub-Committee of the Fund
- Grants Paid

Report to Convocation
September 25, 2008

Compensation Fund Committee

Committee Members

Thomas Heintzman, Chair
Marshall Crowe
Dr. S.M. Aslam Daud
Michelle Haigh
Susan McGrath
Stephen Parker
Nicholas Pustina
Baljit Sikand
Gerald Swaye

Purpose of Report: Information

Prepared by the Compensation Fund Department
(416 947-3343)

TABLE OF CONTENTS

For Information:

Fund Status and Levy Issues

Orientation to the Fund

Issues Identified for Future Consideration

Review Sub-Committee of the Fund

Grants Paid by the Fund

COMMITTEE PROCESS

1. The Committee met on September 8, 2008. Members in attendance were Committee Chair Thomas Heintzman, Marshall Crowe (by telephone), Dr. Aslam Daud (by telephone), Michelle Haigh, Susan McGrath (by telephone), Stephen Parker, Nicholas Pustina (by telephone) and Baljit Sikand. Staff in attendance were Zeynep Onen, Dan Abrahams, Fred Grady and Maria Loukidelis.

FOR INFORMATION

CURRENT FUND STATUS AND LEVY ISSUES FOR 2009

2. The Committee was provided with general information (historical and as at July 31, 2008) about the budgeted operations, staffing and performance of the Fund. The Committee reviewed a copy of the draft 2009 budget and discussed various budget and levy issues.

ORIENTATION TO THE FUND

3. The Committee was provided with a general orientation to the Fund, including the history, statutory authority, funding and recent performance of the Compensation Fund. The roles and responsibilities of the Committee, including annual budget and levy setting, were outlined.

ISSUES IDENTIFIED FOR FURTHER DISCUSSION

4. The following issues were discussed and have been identified for further research and discussion:
 - Authority and operations of the Review Sub-Committee (reviewing all Referee reports and staff memoranda for grants over \$5,000).
 - Update of the operational review of the Fund (outlining program expenses, processes, allocation of costs to the Fund budget etc.) to inform new members of the Committee.
 - General review and consideration of the current Guidelines for the Payment of Grants from the Fund.
 - Subrogation and Recovery Issues (information/report from Monitoring and Enforcement).

REVIEW SUB-COMMITTEE

5. The Review Sub-Committee of the Compensation Fund Committee receives the recommendations of staff for all grants in excess of \$5,000 as well as all reports of Referees following a hearing and makes the determination as to whether the recommendation will be followed.

Report to Convocation
September 25, 2008

Professional Development & Competence Committee

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

Purpose of Report: Information

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

TABLE OF CONTENTS

For Information

- Update on University Proposals for Law Faculties
- Professional Development & Competence Department Quarterly Report

COMMITTEE PROCESS

1. The Committee met on September 11, 2008. Committee members Laurie Pawlitz (Chair), Constance Backhouse (Vice Chair), Mary Louise Dickson (Vice Chair) Alan Silverstein (Vice Chair), Jack Braithwaite, Jennifer Halajian, Susan Hare, Paul Henderson, Laura Legge, Dow Marmur, Judith Potter, Nicholas Pustina, Heather Ross,

Catherine Strosberg and Gerald Swaye attended. Staff members Lisa Mallia, Diana Miles, and Sophia Sperdakos also attended.

INFORMATION
UPDATE ON UNIVERSITY PROPOSALS FOR LAW FACULTIES

2. In April 2008 Convocation approved the Committee's recommendation that the Lakehead University proposal for a Law Faculty be provided to the National Committee on Accreditation ("NCA") (a standing committee of the Federation of Law Societies of Canada) for its consideration. It noted that the Lakehead proposal was "an important initiative, with sound and persuasive objectives that appeared worthy of careful consideration."
3. In addition to the Lakehead University proposal, Wilfrid Laurier University submitted a proposal to the Ministry of Training, Colleges and Universities. Sudbury's Laurentian University and other universities have also begun investigating the feasibility of law faculties.
4. On July 25, 2008 Philip Steenkamp, Deputy Minister, Ministry of Training, Colleges and Universities sent a memorandum to provincially assisted universities advising that the Ministry would not be approving any funding for new law schools in Ontario. The Memorandum is set out at Appendix 1.
5. On August 12, 2009 the Chair of the NCA, Daphne J. MacKenzie, wrote to the Treasurer advising him that until such time as the Federation Task Force on the Approved Law Degree completes its work it is premature for the NCA to consider the Lakehead application. A copy of the letter is set out at Appendix 2.

PROFESSIONAL DEVELOPMENT & COMPETENCE DEPARTMENT QUARTERLY REPORT

6. The Professional Development & Competence department's quarterly statistics, as at June 30, 2008 are set out at Appendix 3.

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

- (1) Copy of a memorandum from Philip Steenkamp, Deputy Minister to Provincially-Assisted Universities dated July 25, 2008 re: Proposals for New Law Schools in Ontario.
(Appendix 1, page 5)
- (2) Copy of a letter to W. A. Derry Millar, Treasurer from Daphne J. MacKenzie, Chair, National Committee on Accreditation dated August 12, 2008 re: Lakehead University – Proposal for Creation of a Faculty of Law.
(Appendix 2, pages 6 – 7)
- (3) Copy of the Professional Development & Competence Department Quarterly Report as at June 30, 2008.
(Appendix 3, pages 8 – 23)

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

- Discrimination and Harassment Counsel Semi-Annual Report

Report to Convocation
September 25, 2008

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

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

Purpose of Report: Information

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

TABLE OF CONTENTS

For Information

Report of the Activities of the Discrimination and Harassment Counsel - January 1, 2008 to June 30, 2008

Public Education Events 2008 – 2009

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on September 11, 2008. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson, Avvy Go, Susan Hare, Doug Lewis, Dow Marmur, Linda Rothstein, Judith Potter and Beth Symes participated. Milé Komlen, Chair of the Equity Advisory Group (the "EAG"), and Nathalie Boutet, representative of the Association des juristes d'expression française de l'Ontario, also participated. Cynthia Petersen, Discrimination and Harassment Counsel (DHC), attended to present her report. Staff members Jewel Amoah, Josée Bouchard, Marisha Roman and Mark Wells attended.

FOR INFORMATION

REPORT OF THE ACTIVITIES OF THE
DISCRIMINATION AND HARASSMENT COUNSEL - JANUARY 1, 2008
TO JUNE 30, 2008

BACKGROUND

2. Subsection 20 (1) (b) of By-law 11 – *Regulation of Conduct, Capacity and Professional Competence* provides that, unless the Committee directs otherwise, the Discrimination and Harassment Counsel (the DHC) shall make a report to the Committee not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.
3. Subsection 20(2) of By-law 11 provides “The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting”.
4. The DHC Program presents to the Committee, pursuant to Subsection 20(1)(b) of By-law 11, the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period January 1, 2007 to June 30, 2007 (Appendix 1).

SUMMARY OF REPORT

5. During the report period, 79 individuals contacted the DHC with new matters. During the reporting period, all new contacts with the Program were made by Anglophones and the DHC services were provided to them in English.
6. Twenty-two (22) individuals raised specific complaints of discrimination or harassment by a lawyer, paralegal or law firm in Ontario. Of those complaints, one was made against a paralegal. Of the 22 new discrimination and harassment complaints against lawyers, paralegals or law firms, 15 were from the public and 6 were from members or student members of the bar.
7. Of the 6 complaints made by the legal profession, two were made by a law students. All other complaints were from lawyers. Three complaints were made by women, including two students. Five of the complaints arose in the context of the complainant’s employment. The complaints were based on the following prohibited grounds of discrimination: sex (3 complaints), race (2 complaints), disability (1 complaint) and family status (1 complaint).
8. Of the 15 lay individuals who made complaints, 11 were women. The number of public complaints can be summarized under the following grounds: sex (9 complaints), disability (5 complaints), sexual orientation (1 complaint), national origin (1 complaint) and race (1 complaint).
9. One formal mediation session was conducted during this reporting period. The parties reached an agreement in principle to resolve the complaint. A number of informal interventions were also conducted by the DHC, upon complainants’ request, to assist parties in resolving their disputes.

EQUITY PUBLIC EDUCATION SERIES CALENDAR
2008 - 2009

Black History Month

In partnership with the Canadian Association of Black Lawyers

Date: February 5, 2009

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

Reception: 6 p.m.

International Women's Day

In partnership with the Women's Law Association of Ontario, the Feminist Legal Analysis Section of the OBA, the Barbra Schlifer Clinic

Date: March 5, 2008

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

Reception: 6 p.m.

International Day for the Elimination of Racial Discrimination

Date: March 19, 2009

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

Reception: 6 p.m.

National Holocaust Memorial Day

In partnership with B'nai Brith Canada

Date: April 21, 2009

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

Reception: 6 p.m.

Asian Heritage Month

In partnership with the South Asian Legal Clinic of Ontario, South Asian Bar Association

Date: May 5, 2009

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

Reception: 6 p.m.

National Access Awareness

In partnership with ARCH Disability Law Centre

Date: May 25, 2009

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

Reception: 6 p.m.

National Aboriginal Day

Date: June 16, 2009

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

Reception: 6 p.m.

Pride Week

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

Date: June 25, 2009

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

Reception: 6 p.m.

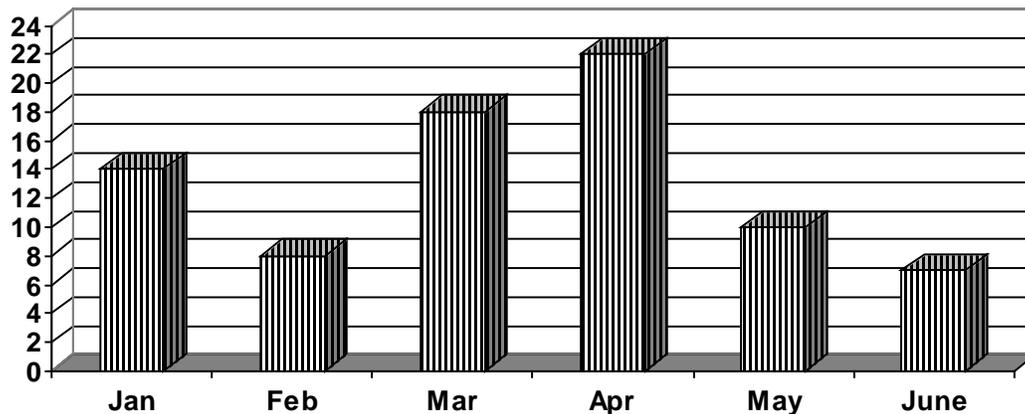
REPORT OF THE ACTIVITIES OF
THE DISCRIMINATION AND HARASSMENT COUNSEL
FOR THE LAW SOCIETY OF UPPER CANADA

For the period from January 1, 2008 to June 30, 2008

Prepared By Cynthia Petersen
Discrimination and Harassment Counsel

OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

1. During this reporting period (January 1 to June 30, 2008), 79 individuals contacted the DHC Program with a new matter.¹
2. The volume of new contacts was distributed as follows:



3. Of the 79 individuals who contacted the DHC, 60 (76%) used the telephone to make their initial contact, 16 (20%) used email, 2 used a fax communication, and one walked in to the DHC office in person.
4. During this reporting period, all of the new contacts with the Program were made by Anglophones and the DHC services were provided to them in English. (DHC services are also available in French.)

SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

¹ Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same matter are not counted in this number.

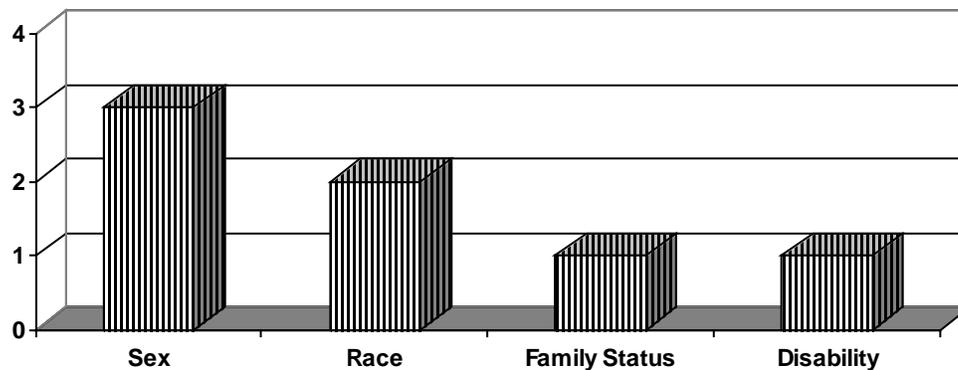
5. Of the 79 new contacts with the Program, 22 individuals raised specific complaints of discrimination or harassment by a lawyer, paralegal, or law firm in Ontario.
6. One complaint was made against a paralegal. The remaining 21 complaints were made against lawyers.
7. Of the 21 discrimination and harassment complaints against lawyers, 15 were made by members of the public and 6 were made by members (or student members) of the bar

COMPLAINTS AGAINST LAWYERS FROM MEMBERS OF THE BAR

8. In this reporting period, there were a total of 6 complaints against lawyers made by members of the bar.
9. Two (2) of the complaints were made by law students.
10. Three (3) of the complaints were made by women (including the 2 student complaints).
11. Three (3) of the complaints were made by male lawyers, but 2 of those involved men who contacted the DHC on behalf of female lawyers.
12. Five (5) of the complaints arose in the context of the complainant's employment.
13. One complaint was regarding the conduct of opposing counsel in litigation.
14. The following grounds of discrimination were raised in the complaints from members of the bar: sex, disability, race, and family status.
15. Three (3) complaints were based (in whole or in part) on sex:
 - a. a female articling student complained about sex discrimination by her employer;
 - b. a male partner in a law firm complained about male opposing counsel, who had behaved in a sexist manner toward a female associate in his firm; and
 - c. a male lawyer contacted the DHC on behalf of his client, who was a pregnant female associate terminated from her employment with a private law firm just prior to taking a maternity leave. The lawyer believed that his client was discriminated against because of her pregnancy.
16. Two (2) complaints were based (in whole or in part) on race:
 - a. a male Asian lawyer complained about race discrimination within his law firm; and
 - b. a Black female lawyer complained about race discrimination by her law firm after her employment was terminated. (She also complained about discrimination based on family status while she was working for the firm.)
17. One complaint was based on disability:
 - a. a female articling student complained that her principal was discriminating against her on the basis of her disability

18. In summary, the number of complaints² in which each of the following prohibited grounds of discrimination was raised are:
- a. disability 1
 - b. sex 3 (1 involving pregnancy-related discrimination)
 - c. race 2
 - d. family status 1

Grounds Raised in Complaints by Members of the Profession



PUBLIC COMPLAINTS AGAINST LAWYERS

19. During this reporting period, there was a total of 15 complaints against lawyers made by members of the public.
20. Eleven (11) of the public complaints were made by women and 4 were made by men.
21. Of the 15 public complaints:
- a. Eleven (11) involved clients complaining about their own lawyer or a lawyer retained by their union to represent their interests;³
 - b. 1 involved a legal secretary complaining about discrimination by her employer;
 - c. 2 involved litigants who were complaining about the conduct of opposing counsel in their case; and
 - d. 1 involved a person complaining about a lawyer who was practising law in his community.

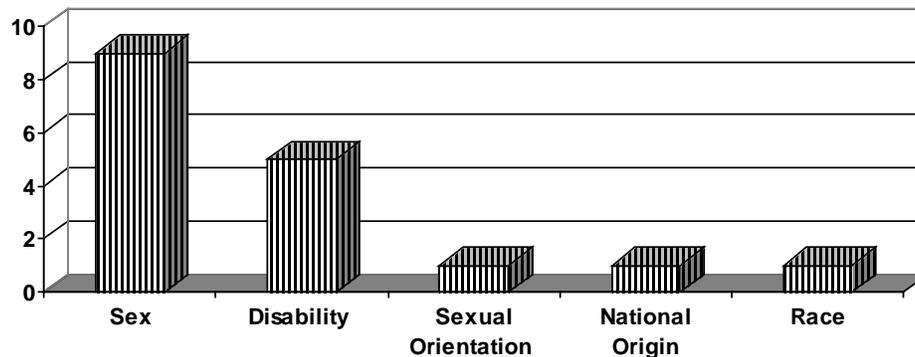
² The total exceeds 6 because some complaints involved multiple grounds of discrimination.

³ Two of these client complaints were made by individuals on behalf of a relative or friend (i.e., the client did not call himself to make the complaint, but rather had a relative or friend contact the DHC on his behalf).

22. The following grounds of discrimination were raised in one or more of the public complaints: sex, race, national origin, disability and sexual orientation.
23. Nine (9) of the public complaints were based (in whole or in part) on sex as a ground of discrimination:
- a. six (6) women complained about sexual harassment by their own male lawyer;
 - b. one woman complained that her own male lawyer was harassing, intimidating and bullying her based on her sex;
 - c. one woman involved in litigation complained about offensive sexist remarks made by the opposing male counsel in her case; and
 - d. one woman who worked as a legal secretary complained about discrimination and harassment in her employment based on her pregnancy.
24. Five (5) complaints were based (in whole or in part) on disability:
- a. a disabled man involved in class action litigation asserted that his own lawyer was failing to accommodate his disability;
 - b. a man complained on behalf of a disabled friend that the disabled man's lawyer was failing to accommodate his disability;
 - c. a woman complained on behalf of her disabled husband, asserting that union counsel had discriminated against him in a grievance arbitration/mediation proceeding;
 - d. a disabled male client complained about harassment by his own lawyer based on his disability (he also complained about racial harassment by his lawyer); and
 - e. a disabled female client complained about harassment by her own lawyer based on her disability.
25. One complaint was based on sexual orientation and national origin. A man complained that an immigration lawyer in his community was exploiting and discriminating against Mexican gay refugees based on their sexual orientation and national origin.
26. One complaint was based in part on race. A man complained that his own lawyer was harassing him based on his disability and race.
27. In summary, the number of complaints⁴ in which each of the following grounds of discrimination was raised are as follows:
- | | | | |
|----|--------------------|---|---|
| a. | sex | 9 | (6 sexual harassment and 1 pregnancy-related) |
| b. | disability | 5 | |
| c. | sexual orientation | 1 | |
| d. | national origin | 1 | |
| e. | race | 1 | |

⁴ The total exceeds 15 because some complaints were based on multiple grounds of discrimination.

Grounds Raised in Public Complaints



COMPLAINTS AGAINST PARALEGALS

28. In this reporting period, the DHC received one complaint against a paralegal. The complaint was made by a female Asian paralegal who felt that her (white female) boss, who was also a paralegal, was discriminating against her on the basis of her race.

EXAMPLES OF COMPLAINTS

29. The following are random examples of the complaints received by the DHC Program during this reporting period:
- a. A female client complained that her family law lawyer constantly flirted with her, gave her his home phone number, called her at home late at night, referred to her as “pretty”, and pressed his leg against her leg under a table during a meeting. When she began bringing a friend to her meetings with him, he resigned from the file, stating that he could no longer represent her because of a “communication breakdown”.
 - b. A woman involved in civil litigation complained that her male lawyer set up a meeting with her in his home on the eve of her trial, then sexually assaulted her during the meeting by “putting his hands all over” her and attempting to rape her.
 - c. A male Vietnamese lawyer complained that he was being discriminated against on the basis of his race within the firm where he was working. He felt that he was not given the same quality of work and opportunities for advancement as other non-Asian lawyers in the firm and that his work was held to a higher standard than other lawyers in the firm.
 - d. A woman called on behalf of her husband who is disabled from a brain injury. She complained that the lawyer retained by her husband’s union to represent her husband’s interests in a grievance arbitration hearing had exploited her husband’s vulnerability as a disabled person.
 - e. An advocate called on behalf of a disabled acquaintance who was involved in litigation. The disabled litigant has difficulty processing information, organizing his thoughts and communicating. The caller felt that this man’s lawyer was not accommodating his intellectual disability and sought advice on how best to address the issue with the lawyer.

- f. A legal secretary complained that, shortly after her return to work from a maternity leave, when she advised her employer that she is pregnant again, her employer told her that she would be better off working in government since she plans on having more children. Her employer strongly suggested that she start looking for other employment. Her employer then began criticizing her work unfairly and treating her poorly (eg. refusing to greet or acknowledge her). She was concerned that her employer was attempting to make her look incompetent in order to fire her. She felt harassed and discriminated against because of her pregnancy.
- g. A male lawyer contacted the DHC on behalf of his client, who is a female associate in a private law firm. Her employment was terminated shortly before she commenced a maternity leave and she felt that the termination was because of her pregnancy.
- h. An Asian paralegal complained that her boss (another paralegal) was discriminating against her in the workplace on the basis of her race. She said her boss denied her advancement opportunities available to other non-Asian colleagues (eg. attendance at professional development conferences). Her boss also often spoke to her in a confrontational or demeaning manner, whereas she was friendly and respectful toward non-Asian colleagues. The complainant also observed her boss making belittling comments about Asian clients.
- i. A Black female lawyer, who is a single mother, complained that her firm was discriminating against her on the basis of her race and family status. She was told that her employment was terminated because she did not meet the firm's billing and docketing targets, but she felt that the firm had resiled from an earlier agreement with her, which accommodated her childcare needs (by permitting her to leave work early and bill fewer hours). She also felt that she was mistreated in various ways after being given notice of her termination (eg. the firm refused her access to its premises on the basis that she might steal furniture from the offices). She felt that she was treated unfairly on the basis of her race.
- j. A male partner in a law firm called to complain about the conduct of another male lawyer, who was opposing counsel in a case argued by one of the female associates in his firm. The lawyer in question had an angry outburst during discoveries, shouted at the female associate and called her "little missy".

SERVICES PROVIDED TO COMPLAINANTS

- 30. Complainants who contacted the DHC were advised of various avenues of redress open to them, including:
 - a. filing an internal complaint within their workplace;
 - b. filing a complaint with the Ontario Human Rights Commission;
 - c. filing a complaint with the Law Society; and
 - d. contacting a lawyer for advice regarding other possible legal actions.
- 31. Complainants were also provided with information about each of these options, including:
 - a. what (if any) costs might be involved in pursuing an option;
 - b. whether legal representation is required in order to pursue an option;
 - c. how to file a complaint or make a report (eg. whether it can be done electronically, whether particular forms are required, etc.)

- d. the processes involved in each option (eg. investigation, conciliation, hearing, etc.);
 - e. what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.); and
 - f. the existence of time limits for each avenue of redress.
32. Complainants were told that the options available to them are not mutually exclusive.
 33. Complainants were given information about who to contact in the event that they decided to pursue any of their options.
 34. In some cases, upon request, strategic tips were provided to complainants about how to handle a situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).
 35. Some complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.
 36. In addition to being advised about the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program. Where mediation was offered, the nature and purpose of mediation were explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in reaching a mutually satisfactory resolution of the complaint.
 37. One formal mediation session was conducted during this reporting period. The complainant (an articling student) was represented by counsel during the mediation. The parties reached an agreement in principle to resolve the complaint at the end of the mediation session.
 38. A number of informal interventions were also conducted by the DHC, upon complainants' request, to assist parties in resolving their disputes.

SUMMARY OF GENERAL INQUIRIES

39. Of the 79 new contacts with the DHC during this reporting period, 25 involved general inquiries relating to equity issues within the Program's mandate. These inquiries included:
 - a. questions about the scope of the DHC Program's mandate;
 - b. questions about the services offered by the DHC;
 - c. requests from the public for promotional materials about the DHC Program;
 - d. inquiries about the data collected by the DHC; and
 - e. inquiries about the Rules of Professional Conduct and human rights legislation as they apply to lawyers in practice in Ontario.

MATTERS OUTSIDE THE DHC MANDATE

40. During this reporting period, the DHC received a number of calls and emails relating to matters outside the Program's mandate.

41. These contacts included complaints about workplace harassment or discrimination that did not involve lawyers or paralegals (eg. complaints against the police) and complaints against lawyers that did not involve any human rights issues (eg. allegations of breach of confidentiality, client billing disputes, etc.) In addition, several individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.
42. All of these individuals were referred to other agencies, including the LSUC's Lawyer Referral Service. An explanation of the scope of the Program's mandate was provided to each person.
43. Although there is a relatively high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

PROMOTIONAL ACTIVITIES

44. The LSUC maintains a bilingual website for the DHC Program.
45. Throughout this reporting period, periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program.
46. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.
47. The DHC, Alternate DHC and Director of Equity Initiatives at the LSUC will be meeting in September 2008 to discuss a number of matters relating to the Program, including how best to promote the expanded mandate of the Program in relation to complaints against paralegals.

CONVOCATION ROSE AT 1:35 P.M.

Confirmed in Convocation this 30th day of October, 2008.

Treasurer