

MINUTES OF CONVOCATION

Friday, 29th October, 1999

9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Arnup, Backhouse, Banack, Bindman, Bobesich, Boyd, Braithwaite, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cherniak, Copeland, Cronk, Crowe, Curtis, Diamond, DiGiuseppe, E. Ducharme, T. Ducharme, Elliott, Epstein, Farquharson, Feinstein, Gottlieb, Harnick, Hunter, Krishna, Lamont, Laskin, Lawrence, Legge, MacKenzie, Marrocco, Millar, Mulligan, Murphy, Murray, O'Brien, Ortved, Pilkington, Porter, Potter, Puccini, Ross, Ruby, Simpson, Swaye, Topp, Wardlaw, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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REPORT OF THE ACTING DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Acting Director of Education asks leave to report:

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, October 29th, 1999:

Alana Maria Barnes	Bar Admission Course
Phillip Randall Cass	Bar Admission Course
Fariborz Davoudi	Bar Admission Course
Anita Lorraine de Vries-Bonneau	Bar Admission Course
Julia Kathleen Johnston	Bar Admission Course
Sonya Maestre	Bar Admission Course

B.1.3. (b) Transfer from another Province - Section 4

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, October 29th, 1999:

Patricia Bood	Province of Saskatchewan
Andrew Fleming	Province of Quebec
Ian Jeffrey Gamble	Province of British Columbia
Minal Upadhyaya	Province of Nova Scotia

B.2. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.2.1. The following applies to be certified as a foreign legal consultant in Ontario:

Cheung Fuk Cheng	Law Society of Hong Kong
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B.2.2. The applicant's request goes forward for approval on condition that he file documentation from the Law Society of Hong Kong showing him to be a member in good standing.

B.2.3. Mr. Cheng's application is otherwise complete and he has filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 29th day of October, 1999

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It was moved by Ms. Backhouse, seconded by Mr. Ruby that the Report of the Acting Director of Education be adopted.

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Acting Director of Education were presented to the Treasurer and called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Mr. Lamont to Mr. Justice John C. Wilkins to sign the Rolls and take the necessary oaths.

Alana Maria Barnes	Bar Admission Course
Phillip Randall Cass	Bar Admission Course
Fariborz Davoudi	Bar Admission Course
Anita Lorraine de Vries-Bonneau	Bar Admission Course
Julia Kathleen Johnston	Bar Admission Course
Sonya Maestre	Bar Admission Course
Patricia Bood	Transfer, Province of Saskatchewan
Andrew Fleming	Transfer, Province of Quebec
Ian Jeffrey Gamble	Transfer, Province of British Columbia
Minal Upadhyaya	Transfer, Province of Nova Scotia

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IN CAMERA

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer reported on a matter discussed in camera regarding courthouse facilities and security. He advised that the matter has been brought to the attention of the Attorney General.

It was moved by Mr. Feinstein, seconded by Mr. Bindman that the Law Society take leadership on this issue and establish a task force composed of members of the legal profession and public stakeholders to look into the inadequate space and security of the Court Houses.

Carried

The Treasurer reported on his meeting with the Chairs of the Standing Committees and that administrative matters and the budget process were discussed.

MOTIONS - COMMITTEES AND TASK FORCES APPOINTMENTS

It was moved by Ms. Ross, seconded by Mr. Ruby that the following members of the Law Society of Upper Canada be appointed to the following committees and task forces:

1. Josee Forest-Niesing of Sudbury to the Legal Aid Services Committee.
2. Heather McGee of Unionville to the Paralegal Task Force.
3. Susan Opler of Toronto to the Admissions and Equity Committee.

4. Margaret Ross, LSM of Ottawa to the Professional Development and Competence. Committee.
5. Stephanie Willson of Toronto to the Admissions and Equity Committee.

Carried

It was moved by Ms. Ross, seconded by Mr. Ruby that a Strategic Planning Committee be established with a mandate to review and consider the work done at the Benchers Planning Retreat on October 14 and 15, 1999 and develop, for Convocation's consideration on January 28, 2000, a strategic plan for the direction of the Law Society of Upper Canada for the benchers term ending May 2003.

AND FURTHER THAT the following benchers be appointed to that committee:

Gavin MacKenzie (co-chair)
Ron Manes (co-chair)
Eleanore Cronk
Dino DiGiuseppe
Susan Elliott
Abe Feinstein
Vern Krishna
Barbara Laskin
Marilyn Pilkington

It was moved by Mr. Banack, seconded by Mr. Simpson that the Ross/Ruby motion be amended by putting a period after the word Canada and deleting the words "for the benchers term ending May 2003".

Carried

The Ross/Ruby motion as amended was voted on and adopted.

Mr. Gottlieb requested that his opposition be noted.

DRAFT MINUTES OF CONVOCATION

It was moved by Ms. Ross, seconded by Mr. Ruby that the Draft Minutes of June 24th, 1999 as amended, the Draft Minutes of June 25th and September 23rd and 24th, 1999 be adopted.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE

Ms. Cronk presented the Report of the Professional Development & Competence Committee for Convocation's consideration.

Professional Development & Competence Committee
October 29, 1999

Report to Convocation

Purpose of Report: Decision Making
 Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on October 13, 1999. Committee members in attendance were Eleanore Cronk (Chair), Earl Cherniak (Vice-Chair), Ron Manes (Vice-Chair), Kim Carpenter-Gunn, Dino DiGiuseppe, Seymour Epstein, Greg Mulligan, Marilyn Pilkington, Judith Potter, Bill Simpson, and Jim Wardlaw. Susan Elliott attended a portion of the meeting. Staff in attendance were Bob Bernhardt, Janet Brooks, Scott Kerr, Janine Miller, Elliot Spears, Sophia Sperdakos, Ursula Stojanowich, and Paul Truster.
2. The Committee is reporting on the following matters:
 - Policy - For Decision
 - Requalification Program By-Law
 - Specialist Certification Fees
 - Extension of the ADR Pilot Project
 - Information
 - Appointment of Members to the Certification Working Group that considers Specialist Certification Applications and Re-certifications
 - Approval of Terms of Reference and Appointment of Members to the Working Group Reviewing Referral/Certification Processes

POLICY - FOR DECISION

REQUALIFICATION PROGRAM BY-LAW

Background

1. The requalification program is scheduled to become operational on January 1, 2000. Appendix 1 contains a copy of the original requalification policy, approved by Convocation in 1994, upon which the program is based. Originally the program was scheduled to become operational in July 1999, but in April 1999 Convocation extended the date. Appendix 2 sets out the requalification provisions contained in the *Law Society Act*. Appendix 3 sets out the qualification status provisions in the Membership Information Form (MIF), which members complete annually and upon which the Society determines whether a member is making substantial use of legal skills on a regular basis. In June 1999 Convocation approved the criteria that should be used to determine whether members who do not come within one of the profiles specified in the MIF are making substantial use of their legal skills on a regular basis.
2. Approximately 291 members were sent correspondence from the Law Society in September 1999. They were informed, based on the information gathered since 1994 concerning their qualification status, that it appears that by January 1, 2000, they may not have made substantial use of legal skills on a regular basis for five continuous years. If their 1999 MIF (not yet sent out) confirms that for five continuous years they have not made substantial use of their legal skills on a regular basis they will have to meet requalification requirements before being entitled to engage in private practice. Because the 1999 MIF has not yet been filed, the letters sent did not constitute formal notice to the members, but rather preliminary advice and an invitation to the members to contact the Law Society for further information should they wish to do so.

3. Of the 291 members to whom correspondence was sent, 169 indicated that they had not made substantial use of their legal skills during the entire period in question. For at least some of the relevant years 122 of these members have answered that they were making substantial use of their legal skills, but not in one of the profiles specified in the MIF. These members have provided explanations of how they are making substantial use of their legal skills. Staff are in the course of reviewing those 122 responses to determine whether the activities meet the test of making substantial use of legal skills. Once that determination is made, and if the Society receives the members' 1999 Membership Information Form indicating that for that year as well the member has not been making substantial use of legal skills on a regular basis (for the fifth continuous year), members will receive formal notices concerning their requalification requirements. The notice will advise members, in accordance with section 49.1(1) of the *Law Society Act*, that an order prohibiting them from engaging in private practice until they meet requalification requirements may be made.
4. The records of additional members are currently being examined to determine whether they have made substantial use of their legal skills on a regular basis for the period 1995-1998.
5. It is not known how many of the affected members, if any, will be seeking to engage in private practice in 2000, such that they will have to meet requalification requirements.
6. Prior to January 1, 2000 Convocation must approve the by-law required under the legislation to operate the program and to implement the policy passed by Convocation in 1994 and elaborated upon by Convocation in June 1999.

Course Requirements

7. The proposed requalification course requirements, on a transitional basis, are set out at Appendix 4. The course requirements have been developed taking into consideration the following factors:
 - i. The course, as designed, brings together materials already in existence that address subjects important for those who have not made substantial use of legal skills on a regular basis for 5 years or more. The course is a work in progress whose content will evolve over the coming years. Its current structure addresses the immediate need for a course for the early period of operation. A working group of the Professional Development and Competence Committee will continue to work on the longer term development of requalification course requirements.
 - ii. The Law Society's goal in the requalification process is not to replace individual members' responsibility to ensure their own competence upon engaging in private practice following a period of not making substantial use of their legal skills. Rather, in its role as regulator of the profession, the Law Society seeks to provide a baseline against which those particular lawyers can *begin* to address their pursuit of competence. The requalification course reflects this approach.
 - iii. The focus of the course is on practice management and ethics, with a substantive law requirement being satisfied by participants through a CLE component. As it is largely left to the discretion of the member to choose which CLE program is most helpful to him or her, this is the most individualized aspect of the course design.

- iv. An assessment feature has been incorporated into the design, to be administered under formal assessment conditions. Since the Secretary must be satisfied that the member has met requalification requirements before the order prohibiting the member from engaging in private practice can be vacated, the formal assessment provides a measurement tool by which the Secretary can make decisions. From an administrative perspective, if the member is unable to attend at one of the Law Society's offices for the assessment the invigilation can take place in a lawyer's offices or other location approved by the Law Society.
- v. Additional requirements must be met by members who come within any of the following categories:
 - a. 0-3 years in practice before ceasing to make substantial use of legal skills on a regular basis;
 - b. more than 3 years but fewer than 10 where the member was an employee for 3/4 or more of the time period before ceasing to make substantial use of legal skills on a regular basis;
 - c. not making substantial use of legal skills for more 10 years before seeking to engage in private practice; or
 - d. in practice review in the 5 year period before ceasing to make substantial use of legal skills on a regular basis.

The additional requirements are directed at practice management issues.

- vi. Where a component feature of the course is on-line, written material will be provided to those without access to computers.

Proposed Requalification By-law

8. The proposed requalification By-law is contained at Appendix 5. Among other things the draft By-law:

- i. defines "substantial use of legal skills on a regular basis" and the process by which a member's use will be determined (approved by Convocation in June 1999);
- ii. sets out the process for making this determination for the years 1995, 1996, 1997, and 1998, including review by an elected bench;
- iii. sets out the nature of the requalification requirements, including assessment provisions (as described above);
- iv. provides for certifying completion of the requalification requirements;
- v. provides for rights of review from determinations under the By-law for 1999 forward;
- vi. provides for terms and conditions that may be imposed by the Secretary following the completion of the requalification requirements; and
- vii. provides for dealing with suspended members.

9. The Committee has considered the proposed by-law and recommends its approval to Convocation.

Request to Convocation

- 10. Convocation is requested to consider whether to approve the by-law as drafted, or amended as it deems appropriate, in accordance with the motion included with the proposed by-law at Appendix 5.

SPECIALIST CERTIFICATION FEES

1. When the Specialist Certification program was approved in 1986 Convocation determined that the program should be self-funding. Until recently, the Law Society's definition of self-funding did not include the attribution to each program of a share of all operational costs, including such items as human resources, bench expenses, and information systems. In recent years, however, budgets have aimed to include full allocation of overhead.
2. Certification fees were raised in 1998, however, this increase did not reflect the new accounting procedures that produce a full allocation of overhead to all programs. As a result, the fees were not set high enough to cover the additional allocation of expense that occurs as a result of the Law Society's current accounting method. The Committee understands that as part of the 2000 fiscal year budget process, some have proposed that certification fees be raised again to reflect full allocation.
3. A policy review of the certification and lawyer referral process was approved by Convocation in April 1999 as part of the recommendations of the Competence Task Force.
4. A discussion of the issues relating to certification fees, prepared by the Department of Education, is set out at Appendix 6. The Committee has reviewed the issue and is recommending that implementation of the policy of full cost recovery for Specialist Certification be deferred pending completion of the review of the program.

Request to Convocation

5. Convocation is requested to consider whether it wishes to recommend that implementation of the policy of full cost recovery for Specialist Certification be deferred pending completion of the review of the program.

EXTENSION OF ADR PILOT PROJECT

1. The ADR pilot project was approved by Convocation in September 1998 and has been operating since January 1999. The pilot project was originally scheduled to run for one year, until the end of 1999. Through the pilot project, mediation and negotiation are offered on audit and complaints files. Mediation only is offered on discipline files. It was agreed that the pilot project would measure only new files assigned commencing January 1999.
2. Both the Professional Development and Competence Committee and the Professional Regulation Committee received reports in September and October 1999 from Felecia Smith, Senior Counsel - Advisory Services, on the status of the ADR pilot project. Details of the status of the project and a summary of a report from Ms. Smith are contained in the Professional Regulation Committee's October report to Convocation.
3. The Professional Regulation Committee is requesting that Convocation extend the term of the ADR pilot project for one year to December 31, 2000, for the reasons set out in its report to Convocation. The Professional Development and Competence Committee unanimously supports the request for such an extension.

FOR INFORMATION

SPECIALIST CERTIFICATION WORKING GROUPS

Membership on the working group that considers applications for certification and re-certification

1. The Committee approved the members of the Certification Working Group whose role is to consider applications for certification and re-certification. The Chair of the Working Group is Marilyn Pilkington. The members, effective October 1, 1999, are:
Larry Banack
Kim Carpenter-Gunn
Seymour Epstein
Judith Potter
Bill Simpson
Gerald Swaye

Working group reviewing referral /certification processes

- Terms of Reference
2. In April 1999 Convocation approved the recommendation of the Competence Task Force that there be a working group of the Professional Development and Competence Committee to analyse the role and scope of referral/certification processes.
3. In 1997 and through the early part of 1998 the Professional Development and Competence Committee reviewed the specialist certification program and began considering options for the future. That work, although not completed, has provided much background for the larger analysis to be undertaken by the recently established working group.
4. The Committee approved the following terms of reference for the working group:
A working group of the Professional Development and Competence Committee will be established to inquire into the issue of legal referral services for the public, including specialist certification and limited licenses and to provide background information and research, as well as broad policy perspective to the Committee in its development of policy options. In particular the working group will consider how these services should relate to the overall competence mandate of the Law Society.

In keeping with the recommendations of the April 1999 Competence Task Force report, the working group should consider the following questions:

- i. *What is the level of understanding of the term "practice restricted to" or specialist certification?*
- ii. *Does the public rely on these designations?*
- iii. *When members of the public seek a lawyer through the lawyer referral service do they think the Law Society is providing any assertion as to quality of representation?*
- iv. *Does the public really need a lawyer referral service or are the Yellow Pages sufficient?*
- v. *What should the role of the Law Society be with respect to referral programs? Should the Society be most concerned with assisting the public to find high-end referrals (certification), middle-range (practice restricted to) or basic (lawyer referral)?*
- vi. *Are they consumer protection measures or a means for lawyer advertising?*
- vii. *Who is the market for the service and is the market being reached?*
- viii. *How should the Law Society assess the success or failure of such programs?*

The working group will report to the Committee following its first meeting.

Members

5. The Committee approved the following as members of the working group:
- Marilyn Pilkington (Chair)
 - Kim Carpenter-Gunn (after December)
 - Seymour Epstein
 - George Hunter
 - Ron Manes
 - Judith Potter
 - Nancy Spies

APPENDIX 1 - REQUALIFICATION POLICY, 1994

APPENDIX 2 - SECTION 49.1 - *LAW SOCIETY ACT*

49.1 (1) An elected benchler appointed for the purpose by Convocation may make an order prohibiting a member from engaging in the private practice of law if it has been determined in accordance with the by-laws that the member has not made substantial use of legal skills on a regular basis for such continuous period of time as is specified by the by-laws.

(2) An order shall not be made under subsection (1) more than 12 months after the end of the continuous period of time during which the member did not make substantial use of legal skills on a regular basis.

(3) The Secretary may certify that a member who is the subject of an order under subsection (1) has met the requalification requirements specified by the by-laws, and the order thereupon ceases to have effect, subject to such terms and conditions authorized by the by-laws as may be imposed by the Secretary.

(4) If the Secretary refuses to certify that a member has met the requalification requirements or imposes terms and conditions under subsection (3), the member may apply to the Hearing Panel for a determination of whether the requalification requirements have been met or of whether the terms and conditions are appropriate.

(5) The parties to an application under subsection (4) are the applicant, the Society and any other person added as a party by the Hearing Panel.

(6) The Hearing Panel shall,

1. if it determines that the requalification requirements have been met, order that the order made under subsection (1) cease to have effect, subject to such terms and conditions authorized by the by-laws as may be imposed by the Panel; or
 2. if it determines that the requalification requirements have not been met, order that the order made under subsection (1) continue in effect.
- 49.32 (3) A person who is subject to an order under section 46,47,48,49 or 49.1 may appeal the order to the Appeal Panel.

APPENDIX 3 - EXCERPT FROM MEMBERSHIP INFORMATION FORM (1998)

APPENDIX 4 - PROPOSED REQUALIFICATION COURSE REQUIREMENTS - 2000

Self-study Course (all participants)	Assessment
<p>Part I: Regulatory Issues</p> <p>Materials:</p> <ul style="list-style-type: none"> • <i>Law Society Act, Barristers Act, Solicitors Act</i> • <i>By-Laws and Regulations</i> • Rules of Professional Conduct • LPIC video - introduction to LPIC Malcolm Heins gives BAC students • Reference Material on Professional Responsibility provided to BAC students 	<p>Formal written assessment - a number of ethical problems for analysis (short essay questions)</p>
<p>Part II. Practice Management/File Management</p> <p>Materials:</p> <ul style="list-style-type: none"> • Risk Management Video (LPIC) • ILA checklist from Phil Epstein (used by LPIC on <i>practicePro</i> website) • <i>PracticePro</i> materials on client relations and conflict of interest • Selection of practice and file management articles from LSUC advisory services • article from the Great Library on research techniques and methodology 	<p>Formal written assessment - short answer or multiple choice - to be prepared by the Department of Education</p> <p>(Both assessments will be contained in one test. "Successful completion" of the assessment will mean demonstrating sufficient knowledge of the subject matter of the assessment. See the By-law.)</p>
<p>Part III: Law Office Accounting</p> <p>Materials:</p> <ul style="list-style-type: none"> • LSUC Accounting materials (on-line or in print) 	<p>Computerized Accounting Exam (available on-line or in print)</p> <p>Passing Grade is 50%.</p>
CLE (all participants)	Assessment
<p>10 hours of continuing legal education in the substantive practice area or related to the practice area in which the participant proposes to spend 25% or more of practice time, at least one-half of which is in the form of live programming or video replay.</p>	<p>No formal assessment - the member will verify completion of the hours.</p>

The member will also be required to choose 2 substantive law areas from a list of possible choices and will be required to read the contents of binders provided to them.

Additional requirements will be met by members who fit into any of the following categories:

- 1) 0-3 years in practice before ceasing to make substantial use of legal skills on a regular basis
- 2) >3 years but < than 10 where the member was an employee for 3/4 or more of the time period before ceasing to make substantial use of legal skills on a regular basis
- 3) not making substantial use of legal skills for > 10 years before seeking to engage in private practice

- 4) in practice review in the 5 year period before ceasing to make substantial use of legal skills on a regular basis.

Additional Requirements	Assessment
<p>Part IV: Start- up Workshop</p> <p>Materials: those provided to all start-up workshop registrants</p>	<p>Attendance at the workshop. (It is anticipated that these will be offered at locations around the province.)</p> <p>If live attendance is impossible the member will be required to read the materials and complete a self-administered test to be submitted to the Law Society.</p>
Additional CLE Requirement	Assessment
<p>10 hours of continuing legal education practice management/file management related topics, at least one-half of which is in the form of live programming or video replay.</p>	<p>No formal assessment - the member will verify completion of the hours.</p>

APPENDIX 5 - REQUALIFICATION BY-LAW

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS made under the *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 29, 1999

MOVED BY

SECONDED BY

THAT By-Law 28 [Requalification] be made as follows:

BY-LAW 28

REQUALIFICATION

Definitions

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

Delegation of powers and duties of Secretary

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

Length of continuous period of time

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

Requirement to report on use of legal skills

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

Member's Annual Report

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

[Subsection (2) depends on the adoption by Convocation of the Member's Annual Report. If the Member's Annual Report is not adopted by Convocation, subsection (2) will read:

Membership Information Form

(2) The report required under subsection (1) shall be included in Form 17A [Membership Information Form].]

Substantial use of legal skills on regular basis

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

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

Legal secretaries, law clerks and paralegals

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

Other activity: factors to be considered

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

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

Time

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

Secretary's consideration of report

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

Notice to member

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

Method of giving notice

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

- (c) it is faxed to the member at the latest fax number for the member appearing on the records of the Society.

Same

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

Application to elected benchers

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

Time for application

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

Parties

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

Procedure

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

Same

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

Decision on application

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

Decision final

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

Right to make application suspended

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

Time for application where right to make application suspended

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

Application of s. 6

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

Determination of use of legal skills: 1995 to 1998

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

Application of s. 5

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

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

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

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

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

Notice deferred

(5) If an order against a member under clause 47 (1) (a) of the Act is in effect on December 22, 1999, the Secretary need not give notice to the member under subsection (3) or (4) by the time specified therein, but, subject to subsection (6), shall give notice to the member under subsection (3) or (4) within a reasonable period of time, but not later than 60 days, after the day on which the member's rights and privileges are reinstated.

Notice not required

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

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

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

Application to elected benchers

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

Time for application

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

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

Same

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

Application of certain ss.

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

Requalification requirements

9. (1) The requalification requirements that must be met for the purpose of section 49.1 of the Act are,
- (a) work for a corporation, government or government agency in the capacity of a barrister and solicitor for a continuous period of one year; or
 - (b) (i) completion of a self-study course prepared by the Society that covers each of the following areas,
 - (A) regulatory issues in the practice of law,
 - (B) management of a law practice, including file management,
 - (C) accounting,

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

Categories of members

- (2) For the purpose of subclause 9 (1) (b) (v), the categories of members are as follows:
 - 1. A member who, immediately before the continuous period of time during which the member did not make substantial use of legal skills on a regular basis, engaged in the private practice of law for not more than three years.
 - 2. A member who, immediately before the continuous period of time during which the member did not make substantial use of legal skills on a regular basis, engaged in the private practice of law for more than three years but not more than ten years and during 3/4 or more of those years engaged in the private practice of law as an employee.
 - 3. A member who did not make substantial use of legal skills for a continuous period of ten years or more.
 - 4. A member whose practice during the five year period immediately before the continuous period of time during which the member did not make substantial use of legal skills on a regular basis was the subject of a review conducted by the Society under the Society's Practice Review Programme or under section 42 of the Act.

Time for meeting requalification requirements

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

Interpretation: "successful completion"

- (4) In subsection (1), "successful completion" means,

- (a) in the case of the accounting examination, answering correctly 50 percent of the questions on the examination; and
- (b) in all other cases, in the opinion of the Secretary, demonstrating sufficient knowledge of the subject matter of the examination.

Request for certification of completion of requalification requirements

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

- (a) in the case of a request for certification of completion of the requalification requirement set out in clause 9 (1) (a), written proof of work for a corporation, government or government agency in the capacity of a barrister and solicitor for a continuous period of one year as required under clause 9 (1) (a); and
- (b) in the case of a request for certification of completion of the requalification requirements set out in clause 9 (1) (b),
 - (i) written proof of completion of the 10 hours of continuing legal education required under subclause 9 (1) (b) (iii),
 - (ii) a certificate of completion of the reading materials required to be completed under subclause 9 (1) (b) (iv),
 - (iii) written proof of attendance at the workshop on starting a practice, if the member is required to complete the requalification requirement set out in sub-subclause (A) of subclause 9 (1) (b) (v) and elects to attend the workshop, and
 - (iv) written proof of completion of the 10 hours of continuing legal education required under sub-subclause (B) of subclause 9 (1) (b) (v), if the member is required to complete the requalification requirement set out in sub-subclause (B) of subclause 9 (1) (b) (v).

Requalification requirements set out in clause 9 (1) (a)

(2) When the Secretary receives a request under subsection (1) for certification of completion of the requalification requirement set out in clause 9 (1) (a), the Secretary shall confirm independently the member's work for a corporation, government or government agency in the capacity of a barrister and solicitor for a continuous period of one year as required under clause 9 (1) (a).

Requalification requirements set out in clause 9 (1) (b)

(3) When the Secretary receives a request under subsection (1) for certification of completion of the requalification requirements set out in clause 9 (1) (b), the Secretary shall review the examinations completed by the member under subclause 9 (1) (b) (ii) and, if applicable, the examination completed by the member under sub-subclause (A) of subclause 9 (1) (b) (v) and may confirm independently the member's completion of the continuing legal education required under subclause 9 (1) (b) (iii) and, if applicable, the member's completion of the continuing legal education required under sub-subclause (B) of subclause 9 (1) (b) (v).

Determination of whether requalification requirements have been met

(4) When the Secretary receives a request under subsection (1) for certification of completion of the requalification requirement set out in clause 9 (1) (a), after complying with subsection (2), the Secretary shall,

- (a) if he or she is satisfied that the member has completed the requalification requirement set out in clause 9 (1) (a) and has met the time requirement set out in subsection 9 (3) for completing the requalification requirement, certify that the member has met the requalification requirement; or
- (b) if he or she is not satisfied that the member has completed the requalification requirement set out in clause 9 (1) (a) or has not met the time requirement set out in subsection 9 (3) for completing the requalification requirement, refuse to certify that the member has met the requalification requirement.

Same

(5) When the Secretary receives a request under subsection (1) for certification of completion of the requalification requirements set out in clause 9 (1) (b), after complying with subsection (3), the Secretary shall,

- (a) if he or she determines that the member has completed the applicable requalification requirements set out in clause 9 (1) (b) and has met the time requirement set out in subsection 9 (3) for completing the requalification requirements, certify that the member has met the requalification requirements; or
- (b) if he or she determines that the member has not completed the applicable requalification requirements set out in clause 9 (1) (b) or has not met the time requirement set out in subsection 9 (3) for completing the requalification requirements, refuse to certify that the member has met the requalification requirements.

Same

(6) Despite clauses (4) (b) and (5) (b), the Secretary may certify that the member has met requalification requirements if the Secretary determines that the member has met the requalification requirement set out in clause 9 (1) (a) or the applicable requalification requirements set out in clause 9 (1) (b) but has not met the time requirement set out in subsection 9 (3) for completing the requalification requirements.

Determination by Hearing Panel of whether requalification requirements have been met

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

- 1. If the member applies for a determination of whether the requalification requirements set out in clause 9 (1) (a) have been met, the amount and type of work that the member has done for a corporation, government or government agency and the requirement set out in clause 9 (1) (a).
- 2. If the member applies for a determination of whether the requalification requirements set out in clause 9 (1) (b) have been met,
 - i. the member's knowledge of each of the areas mentioned in sub-subclauses (A) to (C) of subclause 9 (1) (b) (i), and
 - ii. the amount and type of continuing legal education that the member has completed and the requalification requirement set out in subclause 9 (1) (b) (iii) and in sub-subclause (B) of subclause 9 (1) (b) (v), if applicable.

Terms and conditions

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

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

SCHEDULE 1

WORK FOR A CLINIC PROVIDING LEGAL SERVICES

[PARAGRAPH 3 OF SUBSECTION 5 (1)]

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

SCHEDULE 2

WORK FOR A GOVERNMENT OR GOVERNMENT AGENCY

[PARAGRAPH 4 OF SUBSECTION 5 (1)]

1. Work in one of the following capacities is included in paragraph 4 of subsection 5 (1):
 1. Arbitrator.
 2. Mediator.
 3. Conciliator.
 4. Justice of the Peace.
 5. Member of a tribunal that has a judicial or quasi-judicial function.

6. Judge's law clerk.
7. Policy analyst or advisor.
8. Legislative draftsman.
9. Judge of any federal, provincial or territorial court.

SCHEDULE 3

WORK IN AN EDUCATIONAL CAPACITY

[PARAGRAPH 6 OF SUBSECTION 5 (1)]

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

SCHEDULE 4

WORK FOR AN ENTITY IN A SPECIFIED CAPACITY

[PARAGRAPH 8 OF SUBSECTION 5 (1)]

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

APPENDIX 6 - SPECIALIST CERTIFICATION FEES

Prepared by the Department of Education

BACKGROUND

1. The Specialist Certification program collects fees from Certified Specialists to support the ongoing operation of the program. These fees are of two types: initial, upon application for certification or recertification, and annual.
2. When the Certification Program was originally approved on March 27, 1986, Convocation determined that as a matter of policy the Specialist Certification program should operate on a break-even basis. Program fees remained the same between 1991 and 1998.
3. Specialist certification fees were changed effective July 1, 1998. The old and new fees as of July 1998 are depicted in the chart below:

ITEM	OLD FEES	NEW FEES
Application fee	\$150	\$300
Administrative fee (one time)	\$250	
Annual fee	\$100	\$200
Total five year cost:	$\$150 + \$250 + (5 \times \$100)$ =\$900	$\$300 + (5 \times \$200)$ =\$1300

4. However, this increase did not reflect new Law Society accounting procedures that produce a full allocation of overhead to all programs. As a result, the fees were not set high enough to cover the additional allocation of expense that occurs as a result of the current accounting method.
5. In addition, the new annual fee was phased in so that individuals only paid the increased rates after they had renewed.

REVENUE ANALYSIS

6. As a result of the phase-in, each year one more set of renewals gets covered by the higher fee. For 1999 the projected revenue is:

120 applicants X \$300	= \$36,000
180 X \$200	= \$36,000
410 X \$100	= \$41,000
TOTAL	= \$113,000
7. For 2000, if fees do not change the projected revenue will be:

120 applicants X \$300	= \$36,000
300 X \$200	= \$60,000
290 X \$100	= \$29,000
TOTAL	= \$125,000

8. The direct costs associated with this program are approximately \$125,000 and the indirect costs assigned to it are approximately \$80,000, for a total cost of \$205,000. To meet these costs would require changing the fees to \$500 on application plus \$250 annually (or some other equivalent formula changing the balance between application and annual fees).
9. In order to balance the current cost figure it is proposed that these fees would have to be implemented for all specialists in 2000, not phased in. The revenue would therefore be projected as:
- | | |
|------------------------|-------------|
| 120 applicants X \$500 | = \$ 60,000 |
| 590 X \$250 | = \$147,500 |
| TOTAL = \$207,500 | |

10. The comparison to past fees is presented below:

ITEM	PRE-1998 FEES	CURRENT FEES	PROPOSED FEES
Application fee	\$150	\$300	\$500
Administrative fee (one time)	\$250		
Annual fee	\$100	\$200	\$250
Total five year cost:	\$150 + \$250 + (5 X \$100) =\$900	\$300 + (5 X \$200) =\$1300	\$500 + (5 X \$250) =\$1750

CURRENT PROGRAM STATUS

11. Over the coming year the Lawyer Referral Service and Specialist Certification Program will both be reviewed by a working group of the Professional Development and Competence Committee, as approved by Convocation in April, 1999 in its acceptance of the report of the Competence Task Force. The Report of the Task Force states:
- The purpose of the working group would be to consider first principles along the lines generally outlined in this report, to assess what the appropriate role of referral/specialist programs should be, and to consider what role the current programs should play in the analysis.*

12. In addition, the Specialist Certification program will be examined with respect to the possible linkages to CLE such as:
- CLE paths to aid in the development of specialists,
 - Specialist forums and roundtables, and
 - the contribution of Specialists to CLE delivery.

The enhancements anticipated could all contribute towards the growth and enhancement of competence within the profession.

13. Furthermore, there is a view that improvements to the program could result in significantly greater benefits to the Specialists that would lead to a much greater willingness on the part of Specialists to pay a higher fee. These should be explored before further increases are sought.

Attached to the original Report in Convocation file:

- | | | |
|-----|--|-----------------------------|
| (1) | Copy of the Requalification Report, 1994. | Appendix 1 (pages 11 - 21) |
| (2) | Copy of Section 49.1 - Law Society Act. | Appendix 2 (page 22) |
| (3) | Copy of an Excerpt from Membership Information Form (1998). | Appendix 3 (pages 23 - 25) |
| (4) | Copy of the Proposed Requalification Course Requirements - 2000) | Appendix 4 (pages 26 - 27) |
| (5) | Copy of the Requalification By-Law. | Appendix 5 (pages 28 - 43) |
| (6) | Copy of the Specialist Certification Fees. | (Appendix 6 (pages 44 - 46) |

Re: Requalification Program By-Law

Ms. Cronk thanked Ms. Carpenter-Gunn and Mr. Mulligan for their assistance as well as Sophia Sperdakos, Elliot Spears and Janet Brooks of the Law Society staff.

Ms. Cronk asked that an amendment be made to the proposed By-Law 28 by adding the following to subsection 7 (5) "If a member has not provided to the Law Society before December 22nd, 1999, information relating to his or her use of legal skills in the year 1995, 1996, 1997 or 1998," and after the words "60 days" add - "after the day on which the member provides such information."

An amendment was proposed to subsection 5 (1) 5 to change the word "government" to "legislature" to ensure that all levels of government and legislatures are covered -

section 5 (1) 5. Service as an elected member of a legislature.

It was moved by Mr. Cherniak that the amendment be tabled.

The Treasurer ruled that the motion to amend should proceed.

Ms. Cronk agreed to take that issue back to Committee.

It was moved by Ms. Curtis, seconded by Mr. Copeland that (1) Arbitrator (2) Mediator) and (3) Conciliator be removed from Schedule 2.

Not Put

It was moved by Mr. Crowe, seconded by Mr. Aaron that By-Law 28 be tabled.

Lost

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:30 P.M.

The Treasurer and Benchers had as their guests for luncheon, The Hon. John Brooke, The Hon. Gordon Carton, Q.C. and Mr. Barney Apple, Q.C.

CONVOCATION RESUMED AT 2:15 P.M.

Present:

The Treasurer, Aaron, Arnup, Backhouse, Banack, Bindman, Bobesich, Boyd, Braithwaite, Carey, Carpenter-Gunn, R. Cass, Cherniak, Copeland, Cronk, Crowe, Curtis, Diamond, DiGiuseppe, E. Ducharme, T. Ducharme, Epstein, Feinstein, Gottlieb, Hunter, Laskin, Lawrence, MacKenzie, Marrocco, Millar, Mulligan, Murray, Pilkington, Porter, Potter, Ross, Ruby, Simpson, Swaye, Wardlaw, White, Wilson and Wright.

.....

IN PUBLIC

.....

RESUMPTION OF THE REPORT OF THE PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that subsection 5 (1) 5 be amended by adding the words "the Law Society or Bar Association".

Lost

It was moved by Mr. Ruby, seconded by Ms. Curtis that in section 1 under the heading Definitions that the first sentence end after the second "Canada" and that the words "and the government of any city, municipality, town or other similar body in any province or territory of Canada" be deleted.

Carried

It was moved by Ms. Cronk, seconded by Mr. Epstein that in section 1 the definition of the word "government" be revised to read" - "In this By-Law, government means the Parliament of Canada, the legislature of any province in Canada, the legislature of any territory in Canada."

Carried

It was moved by Ms. Cronk, seconded by Mr. Epstein that subsection 5 (2) be amended by inserting the following introductory language "Notwithstanding subsection 5 (1)" a member does not make.....

Carried

Mr. Gottlieb requested that his opposition be noted.

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that subsection 9 (4) be amended by changing "50 percent" to "75 percent".

Lost

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that in subsection 6 (10) and (11) "elected benchers" be changed to "Convocation".

Withdrawn

An amendment was moved by Mr. MacKenzie and accepted by the Chair that in subsection 6 (10) and (11) and all similar sections that the words "elected benchers" be replaced with the words "3 benchers panel".

It was moved by Ms. Cronk, seconded by Mr. Cherniak that By-Law 28 be adopted subject to the amendments.

Carried

Re: Specialist Certification Fees

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that Convocation adopt a policy that the Law Society not subsidize the direct or indirect costs of the program of specialization.

Carried

ROLL-CALL VOTE

Aaron	For
Arnup	Abstain
Backhouse	For
Banack	Abstain
Bindman	Abstain
Bobesich	For
Braithwaite	For
Carey	Abstain
Cherniak	Abstain
Cronk	Abstain
Crowe	For
Curtis	For
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	For
Epstein	Against
Feinstein	For
Gottlieb	For
Hunter	For
Laskin	For
MacKenzie	Abstain
Marrocco	For
Mulligan	For
Murray	For
Pilkington	Against
Porter	Against
Potter	For
Ross	For
Ruby	Against
Simpson	For
Swaye	For
White	For
Wilson	Against
Wright	Abstain

Vote: 21 - For, 5 - Against, 8 Abstentions

It was moved by Ms. Cronk, seconded by Mr. Cherniak that implementation of the policy of full recovery for Specialist Certification be deferred pending completion of the review of the program.

Carried

ROLL-CALL VOTE

Aaron	Against
Arnup	Abstain
Backhouse	For
Banack	Abstain
Bindman	For
Bobesich	Against
Braithwaite	For
Carey	Abstain
Cherniak	For
Cronk	For
Crowe	For
Curtis	Against
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	For
Epstein	For
Feinstein	For
Gottlieb	Against
Hunter	For
Laskin	For
MacKenzie	For
Marrocco	For
Mulligan	For
Murray	For
Pilkington	For
Porter	For
Potter	For
Ross	For
Ruby	For
Simpson	For
Swaye	Against
White	For
Wilson	For
Wright	For

Vote: For - 26, 5 - Against, 3 Abstentions

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. MacKenzie presented the Report of the Professional Regulation Committee.

Report to Convocation

Purpose of Report: Decision

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on October 13, 1999. In attendance were:

From the Committee:

Gavin MacKenzie	(Chair)
Larry Banack	(Vice-Chair)
Todd Ducharme	
Gary Gottlieb	
Julian Porter	

From the Lawyers Fund for Client Compensation Committee:

Clayton Ruby	(Chair)
Ronald Cass	
Abdul Chahbar	
Gillian Diamond	
Barbara Laskin	

From the Lawyers Professional Indemnity Company:

Malcolm Heins

Staff: Lesley Cameron, Margot Devlin, Vivian Kanargelidis, Scott Kerr, David McKillop, Felecia Smith, Richard Tinsley, Jim Varro, and Jim Yakimovich.

2. This report contains the Committee's policy reports on:

- the pilot project for lawyer financial self-reporting, the spot audit program and the focussed audit program;
- professional liability insurance issues respecting non-lawyers under By-Law 25 (Multi-Discipline Practices); and
- extension of the pilot project for ADR in the Law Society's regulatory processes.

I. POLICY

REPORT ON THE PILOT PROJECT RESPECTING
LAWYER FINANCIAL SELF-REPORTING,
THE SPOT AUDIT PROGRAM AND THE FOCUSED AUDIT PROGRAM
Joint Meeting of the Lawyers Fund for Client Compensation Committee
and the Professional Regulation Committee

A. INTRODUCTION

3. In October 1997, Convocation approved a financial reporting model for lawyers in private practice which dispensed with the mandatory requirement that a lawyer retain a public accountant to review the law firm's records for purposes of making a report to the Law Society with respect to compliance with financial record keeping practices.
4. The former public accountant report to the Law Society was replaced with a lawyer "financial self reporting" model which requires the lawyer in private practice to make a financial report to the Law Society with respect to the lawyer's compliance with regulatory provisions respecting financial record keeping. This report is made through the filing of the Private Practitioner's Report ("PPR").

5. Convocation at the same time approved spot audit and focussed audit programs. The mandate of the spot audit program includes measurement of law firm financial filing integrity and on-going compliance with regulatory financial record keeping requirements, identification of serious misconduct with regard to financial matters, and providing on-site guidance to the profession with respect to financial record keeping. The focussed audit program was designed to serve as a proactive compliance measurement and problem detection program with respect to law firms whose area(s) of practice are those which typically give rise to claims made against the Lawyers Fund For Client Compensation, empirical data from which demonstrates that the largest single area of practice that gives rise to claims is the area of "private mortgage investments".
6. Convocation stipulated that these initiatives were subject to reconsideration at the conclusion of a two year period (late 1999) pursuant to a report to be made to Convocation for that purpose.
7. James Yakimovich, Manager of Investigations, prepared the above-described report for the Committees' review and Convocation's consideration. In making the report, a number of recommendations in the nature of continuous improvement to these programs have been made in order to improve program delivery efficiencies and to provide for improved service to the profession.

B. SUMMARY OF RECOMMENDATIONS

8. The text of Mr. Yakimovich's report to the Committees appears at Appendix A and should be read for a full understanding of these initiatives and the bases of the recommendations.
9. The following is a list of the recommendations, with section numbers and page references to the report at Appendix A (page numbers in top right hand corner of each page) for discussion of the recommendations and the recommendations themselves. The list is followed by a summary of the Committees' discussion on some of the recommendations.
10. It is recommended that Convocation:
 - a. Make the lawyer financial self reporting model a permanent model, in conjunction with recommendation c. below (section 4.0, pages 3 through 7; recommendation at page 7 at 4.5);
 - b. Dispense with the separate annual Private Practitioner's Report and provide that core financial information be reported to the Law Society through a single annual form (section 5.0, page 8; recommendation bottom page 8 at 5.1);
 - c. Make the spot audit program and focussed audit program permanent programs (section 6.0, pages 9 through 12, section 7.0 pages 13 through 15; recommendations at page 12 at 6.7 (1) and at page 15 at 7.4);
 - d. Consolidate the spot audit and focussed audit programs into one program (section 8.0, pages 16 and 17, recommendation at page 17 at 8.1);
 - e. Provide that spot audits may also be selected on the basis of conducting an audit on each newly formed law firm to ensure that appropriate record keeping practices are established (section 6.0, page 11 at 6.5; recommendation at page 12 at 6.7(2));
 - f. Provide that a law firm may elect to file a certificate of financial records compliance as an alternative to a mandatory spot audit where the law firm has retained an accounting firm to perform an audit to the satisfaction of the Law Society (section 6.0, page 12 at 6.6; recommendation at page 12 at 6.7(3));
 - g. Provide for the recovery of costs associated with spot and focussed audits in specified circumstances (section 9.0, pages 18 and 19; recommendation at page 19 at 9.3)
 - h. Review the programs and initiatives discussed in the report at the conclusion of a three year period ending in 2002 (section 11.0, page 21; recommendation at page 21 at 11.1).

11. As a matter of general application, the Committees also agreed that the term “chartered accountants” as it relates to provision of services by accountants in the spot audit program be replaced with “public accountants” to express the more universal term for those individuals licensed to perform audits and reviews of financial records. This change is reflected in the report.

Discussion of the Recommendations

The Consolidated Reporting Form

12. The Committees were of the view that a combined form for the lawyer self-reporting scheme and membership information made imminent sense, based on the information in the report. The consolidated form at Appendix 2 of Mr. Yakimovich’s report is entitled “Member’s Annual Report” and is to be filed by a member with the Society by February 28 of the applicable year. Currently, the filing date for the Membership Information Form is January 31 and the Private Practitioner’s Report is due 90 days after the end of the firm’s fiscal year.
13. If the consolidated form is adopted, an amendment to By-Law 17 on Filing Requirements (attached as Appendix B to the Committee’s report) will be required. Appearing later in this report is a motion which includes the necessary amendments to By-Law 17.

The Combined Spot and Focussed Audit Program

14. In discussing the merits of combining the spot and focussed audit programs, it became apparent that the efficacy and efficiency of the programs was best achieved by a combined approach. In particular, a combined program as contemplated in the report, using spot audits conducted by Law Society staff in the Greater Toronto Area (“GTA”) and accounting firms outside of the GTA, would allow for a reduction in the amounts paid to accounting firms and permit more of the programs’ budgeted amount (which as noted in the report is static for the proposed combined programs in 2000) to be allocated for staff and operations costs for audits in the GTA.
15. In the Committees’ view, this is a sound and fiscally responsible approach.

Recovery of Audit Costs

16. The recommendation appearing in the report at page 19 at 9.3 reflects discussion by the Committees on the appropriate means to determine cost recoveries.
17. The first issue discussed was jurisdictional, which was resolved by an acknowledgement that in the *Law Society Act*, paragraph 62(0.1)16 permits the Society to make by-laws “providing for the payment to the Society by a member or student member of the cost of an audit, investigation review, search or seizure under Part II”.
18. Secondly, there was agreement that as a function of the fact that in the combined program, if approved, the cost of an audit outside of the GTA will largely be that of the accounting firms engaged to do the audits, there should be no inequities between any recoveries that may result between lawyers in the GTA and those outside the GTA.
19. Accordingly, the Committees, in reaching agreement on the principle expressed in the recommendation, suggest that staff in drafting the by-law be mindful of the issue noted above. The draft by-law will be reviewed by the Professional Regulation Committee at a future meeting.

Law Firm Certificate of Financial Records Compliance

20. Concern was expressed by some members of the Committees that not only could this option discriminate between sole practitioners or small firms and large firms, because of the expense of a year end financial audit, but it may in effect be no better than the report an accountant provided to the Law Society prior to the self-reporting regime currently in place, which provided no opinion.
21. The majority of the Committees' members agreed that, because the Law Society is designing the program that the accountant must use for the certificate, and that the Law Society must approve the accountant's audit and certificate, sufficient safeguards are in place to make this option workable.
22. In addition, the majority of members of the Committees was of the opinion that firms exercising this option may in fact impact favourably on the program's budget, in that these firms would not be the subject of a spot audit, with its attendant cost.

Additional Suggestion

23. As a matter of direction to appropriate staff, the Committees believe that it would be useful to cross-reference the claims made to the Lawyers Fund for Client Compensation to the lawyers who are or have been the subject of a spot or focussed audit, as a means of determining at the very least whether there are lawyers who having been the subject of an audit are also the subject of a claim to the Fund. The results of the cross-reference should be reported to both Committees.

C. DECISION FOR CONVOCAION

24. Convocation is requested to consider the recommendations set out in paragraph 10 above, as more fully discussed in the report at Appendix A to this report, and decide whether to approve the recommendations, as proposed or amended as Convocation deems appropriate.
25. If the recommendation in respect of the consolidated reporting form is approved, the following motion is placed before Convocation for decision:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 17
[FILING REQUIREMENTS]

made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCAION ON OCTOBER 29, 1999

MOVED BY

SECONDED BY

THAT the English version of By-Law 17 [Filing Requirements], made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999 and May 28, 1999, be further amended as follows:

1. Section 2 of the By-Law is revoked and the following substituted:

Requirement to submit annual report

2. (1) Every member shall submit a report to the Society, by February 28 of each year, in respect of the member's practice of law and other related activities during the preceding year.

Member's Annual Report

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

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

Period of default

3. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file a report required under section 2 of this By-Law is 120 days after the day the report is required to be submitted.

Reinstatement of rights and privileges

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

Same

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

3. Section 5 of the By-Law is revoked and the following substituted:

Period of default

5. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 4 of this By-Law is 60 days after the day the report is required to be submitted.

Reinstatement of rights and privileges

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

4. Forms 17A and 17B are revoked and the following substituted:

Form 17A

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

A. BACKGROUND AND NATURE OF THE ISSUE

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

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

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

Potential for Conflict Between Insurance Providers

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

¹Under section 19 of the by-law, lawyers in partnership with non-lawyers are required to ensure that insurance is in place for the non-lawyer partner(s). It is an obligation on the lawyer, not the non-lawyer, as the Law Society has no jurisdiction over non-lawyers.

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

Vicarious Liability of Lawyers

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

LPIC's Ability to Insure Non-Lawyers

35. LPIC is satisfied that it has the ability, as a matter of jurisdiction, to insure non-lawyer partners in an MDP.
36. The Committee relied on Malcolm Heins' explanation of LPIC's jurisdiction, based on LPIC's corporate charter, its license to sell insurance products, the *Corporations Act* and the *Law Society Act*. In particular, the Committee discussed the Law Society's authority, in light of subsection 5(4)², to hold shares in a company providing professional liability insurance to not only members of the Society but non-members.

²Subsection 5(4) reads: "The Society may own shares of or hold a membership interest in an insurance corporation incorporated for the purpose of providing professional liability insurance to members and to persons qualified to practise law outside Ontario in Canada."

37. The *Law Society Act* incorporates the provisions of sections 23 and 274 of the *Corporations Act*³. The effect of these statutory provisions is to permit the Law Society to hold shares in a company with objects similar or a purpose ancillary to the Law Society's objects or purposes.
38. LPIC is of the view that providing insurance to non-members in MDPs, given the scheme in By-Law 25, would meet this ancillary purpose test. The purpose of the by-law is to permit lawyers and non-lawyers to provide services in a law practice. LPIC is engaged in the business of insurance, and from the Law Society's perspective, because the insurance to non-members would be provided in the context of a law practice, the Law Society in having LPIC provide the coverage would not be stepping outside the boundaries of the ancillary purpose text.
39. Non-lawyer partners would be assessed in the same manner that lawyer partners are assessed for risk, and would be provided with the same coverage as lawyers. Currently, this is \$1,000,000 per occurrence, \$2,000,000 in the aggregate. This would be the extent of LPIC's exposure on any claims brought as a result of the error or omission of a non-lawyer partner in an MDP.
40. In summary, the Committee agreed that for the above reasons, LPIC should be designated as the sole insurer for non-lawyer partners in MDPs.
41. In articulating the member's obligation under section 19 of By-Law 25 to maintain insurance for non-lawyers through LPIC, as proposed, reference was made to By-Law 16 on Professional Liability Insurance Levies (attached at Appendix D). The proposal to make LPIC the sole insurer of non-lawyers in an MDP in paragraph 48 is being framed so as to incorporate the obligation of lawyers under By-Law 16, which requires the payment of insurance premium levies by members for coverage under the Society's insurance plan. The levy is paid for coverage only by LPIC as the insurer of the Law Society's insurance plan. In the same way, the payment of a premium through a member under the scheme in By-Law 16 for non-lawyer coverage would have only LPIC providing coverage for non-lawyer partners.

C. EXCESS COVERAGE

42. As noted above, the amount of insurance set by Convocation on May 28, 1999 was the LPIC level and any excess the lawyer/law firm carried.

³The relevant part of section 23(1) reads as follows:

- s. 23(1) A company possesses, as incidental and ancillary to the objects set out in the letters patent or supplementary letters patent, power,
- ...
- (a) to take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as to benefit the company;
- ...
- (v) to do all such other things as are incidental or conducive to the attainment of the above objects and of the objects set out in the letters patent and supplementary letters patent.

Section 274 reads:

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

43. In the discussions with LPIC after May 28 Convocation, it was noted that on many excess policies, which LPIC and other insurers provide, it is the firm that is named, although some list the partners covered.
44. The primary issue for LPIC with respect to excess insurance is that although LPIC may provide such coverage, it is limited to small firms (10 lawyers or less) and is always the subject of a reinsurance contract with another carrier.
45. If Convocation agrees that LPIC be designated as the sole insurer of non-lawyer partners in MDPs, the Committee's view, which LPIC shares, was that the Law Society should revisit the decision it made in setting the limit for insurance under section 19, which included excess coverage. The reality is that in many cases, LPIC may not be the provider of excess coverage, i.e. where the number of lawyers/non-lawyers in the firm exceeds 10. Furthermore, many firms do not purchase excess coverage.
46. While the question of LPIC's exposure in the primary coverage for non-lawyers is no greater than that for lawyers, its exposure for excess insurance is an entirely different question.
47. The Committee was of the view that if LPIC is to be the sole insurer for primary coverage, it should be understood that it is not the sole insurer for excess coverage, and that lawyers be free to purchase excess coverage for non-lawyers, if they so choose, with the carrier of their choice. This would avoid any inferences that LPIC as the sole insurer is also providing the excess, because there will be situations where it will not.

D. DECISION FOR CONVOCATION

48.
 - a. The Committee requests that Convocation approve the proposal that LPIC be the sole insurer of the primary level of coverage that members are required to maintain for non-lawyer partners in an MDP by directing that a lawyer partner or partners in an MDP partnership be required to purchase insurance for a non-lawyer partner or partners in accordance with By-Law 16;
 - b. The Committee also requests that Convocation determine that the level of insurance that a member or members be required to maintain for a non-lawyer partner or partners in an MDP, pursuant to section 19 of by-Law 25, be the same as that obtained by a member through the payment of the levy required by By-Law 16.

EXTENSION OF THE PILOT PROJECT FOR
ADR IN THE LAW SOCIETY'S REGULATORY PROCESSES

A. NATURE OF THE ISSUE

49. The Committee received a report from Felecia Smith, Senior Counsel - Advisory Services, on the status of the ADR pilot project in the Law Society's regulatory processes, and a request for an extension of the pilot to December 2000, on the basis that it is unlikely that there will be sufficient time to assess the efficacy of the project before the year end 1999.⁴
50. This report includes a summary of Ms. Smith's report and a proposal that the pilot project be extended to December 2000.

⁴A similar request was made to the Professional Development and Competence Committee and was approved.

B. OUTLINE AND STATUS OF THE PROJECT

51. The ADR pilot project commenced in January 1999 as a one-year pilot project based on Convocation's approval in September 1998.
52. Within the program, negotiation and mediation is being offered and measured in both complaints and investigation files. Mediation *only* will be measured in discipline. It is believed that because much of the discipline process itself is already negotiative, there would be little added value in any quantitative or qualitative measurement of negotiation.
53. The pilot project only measures new files assigned in January 1999 onwards. These files are assigned to staff in the normal course ("the pilot project group") and are not preselected simply because they appear to lend themselves to resolution by ADR. The difference between the pilot project group and other files is that the staff who are participating in the ADR project are utilizing negotiation on *all* their files.
54. A representative group of staff from the regulatory area was selected to participate in the pilot project. These participants have attended the Stitt, Feld, Handy training course. Each attendee received a Certificate of Achievement from the University of Windsor for completion of the ADR workshop.
55. An electronic tracking system which meets both the reporting requirements and work processes of the pilot project has been designed. All participants in the pilot project are therefore able to utilize one tracking system to capture the data.
56. The success of the pilot project will be measured both qualitatively and quantitatively. The performance measures were established by a working group that included Larry Banack, Alan Stitt, Kathleen Kelly (mediator), Marv Bernstein (Chief Counsel, CAS and mediator), Fern Sager and Michael Miller (lawyers and Osgoode LL.M. students). The assessment tools include exit surveys, exit interviews and an information form to be completed by pilot project staff.
57. The ADR report contemplates that the role of the Proceedings Authorization Committee ("PAC") will be "expanded and diversified" as a result of the use of ADR. In addition to considering recommendations based on a fairly limited number of options (e.g. conduct application, Invitation to Attend, Letter of Advice, closing the file, etc.), the PAC may also decide in appropriate cases to "divert" matters that would have previously resulted in formal proceedings into alternative procedures designed to correct problems identified during the investigative stage. The use of negotiation and mediation is intended to promote this expanded role for the PAC by producing settlements which supplement the limited range of options previously available. The PAC will be an integral part of the pilot project in terms of setting policy and parameters for the ADR process.
58. A total of 120 applications were received from both lawyers and non lawyer mediators in the spring of 1999. There are 55 mediators on the roster; twelve of these 55 are non lawyers. The mediators attended a one day training/information session in March 1999. Each mediator has subsequently received updates of information as well as the Law Society's new legislation and by-laws.
59. As part of the project, the office of the Discrimination and Harassment Counsel was established. Mary Teresa Devlin was appointed to this position effective September 1, 1999.

C. REASONS IN SUPPORT OF AN EXTENSION OF THE PROJECT

60. There are a total of 900 files in the ADR pilot project, 600 of which remain open. It is the view of the Committee, based on staff's analysis, that it is too early in the process to quantitatively and qualitatively evaluate and draw conclusive results about the success of the ADR project for the following reasons:
- a. given the period of time required to properly investigate the more serious allegations of misconduct, there has not been enough time to evaluate and ensure that these files are part of the pilot project test sample; a significant factor with respect to progress on the files was the transitional issues raised by the redesign of the investigation and advisory departments at the Society through Project 200, which have now largely been resolved;
 - b. the type of cases that have been concluded is too one dimensional, reflecting primarily minor complaints; without a sample of closed files that is reflective of the diversity of cases routinely dealt with in the regulatory area, the proper assessment cannot be conducted;
 - c. no discipline mediations have as yet been conducted; one discipline mediation was initiated at the request of the member, who then failed to attend;
 - d. the open files on the system are not at a point where mediation could be offered;
 - e. the number of cases that have been closed is inadequate for assessment purposes;
 - f. given that the appointment process was only completed in September 1999, it will be impossible to assess the efficacy of the discrimination and harassment counsel by the end of December 1999.

D. REQUEST TO CONVOCATION

1. The Committee proposes that Convocation approve an extension of the ADR pilot project for one year to December 31, 2000. This proposal is presented with the strong support of the Professional Development and Competence Committee.

APPENDIX A

PILOT PROJECT REPORT ON
FINANCIAL SELF-REPORTING,
THE SPOT AUDIT PROGRAM AND
THE FOCUSSED AUDIT PROGRAM

APPENDIX B
BY-LAW 17
FILING REQUIREMENTS

APPENDIX C
BY-LAW 25
MULTI-DISCIPLINE PRACTICES

APPENDIX D
BY-LAW 16
PROFESSIONAL LIABILITY INSURANCE LEVIES
.....

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

- (1) Copy of the Pilot Project Report on Financial Self-Reporting, The Spot Audit Program and the Focussed Audit Program. (Appendix A, pages 31 - 136)
- (2) Copy of By-Law 17 - Filing Requirements. (Appendix B, pages 137 - 146)
- (3) Copy of By-Law 25 - Multi-Discipline Practices. (Appendix C, pages 147 - 164)
- (4) Copy of By-Law 16 - Professional Liability Insurance Levies. (Appendix D, pages 165 - 175)
- (5) Copy of Mr. Jim Varro's Memorandum dated October 29, 1999 re: Addendum to the Professional Regulation Committee Report.

Re: Pilot Project for Lawyer Financial Self Reporting

Mr. MacKenzie asked that the following amendments be made to the revised Member's Annual Report attached to a memorandum from Mr. Jim Varro, Policy Advisor which was distributed to the Benchers:

- (1) Professional Profile (Category C) - 3. (c) Employed Government - that the words "Arbitrator, Mediator and Conciliator" be omitted.
- (2) Category C - 3. (d) Elected Official - that the word "Local" be deleted and another category be added - "Other"
- (3) Category C - 3. (e) Education - typographical error "Shcool" should be law "school"
- (4) The date the Member's Annual Report is to be filed by March 31st.

It was moved by Mr. Banack, seconded by Mr. Gottlieb that recommendation 10(f) on page 4 of the Report be deleted.

- "10.(f) Provide that a law firm may elect to file a certificate of financial records compliance as an alternative to a mandatory spot audit where the law firm has retained an accounting firm to perform an audit to the satisfaction of the Law Society (section 6.0, page 12 at 6.6; recommendation at page 12 at 6.7 (3));"

Lost

It was moved by Mr. Gottlieb, seconded by Mr. Bobesich that recommendation 10(d) on page 4 be deleted.

- "10.(d) Consolidate the spot audit and focussed audit programs into one program (section 8.0, pages 16 and 17, recommendation at page 17 at 8.1);"

Lost

It was moved by Mr. Todd Ducharme, seconded by Mr. Gottlieb that recommendation 10(e) on page 4 be deferred until there is further costing information and alternatives.

“10.(e) Provide that spot audits may also be selected on the basis of conducting an audit on each newly formed law firm to ensure that appropriate record keeping practices are established (section 6.0, page 11 at 6.5; recommendation at page 12 at 6.7 (2));”

Lost

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the recommendations set out in paragraph 10, the amendments to the Member's Annual Report and the amended By-Law be approved.

Carried

Re: Professional Liability Insurance Issues Respecting Non-Lawyers Under By-Law 25

It was moved by Mr. MacKenzie, seconded by Mr. Porter that (a) LPIC be the sole insurer of the primary level of coverage that members are required to maintain for non-lawyer partners in an MDP in accordance with By-Law 16 and (b) that the amount of insurance for non-lawyer partners be the same as required for a lawyer partner and that section 19 of By-Law 25 be amended as required.

This item was deferred to the November Convocation.

REPORTS OF THE PROFESSIONAL REGULATION AND PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEES

Re: Extension of the ADR Pilot Project

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that the ADR pilot project be extended for one year to December 31, 2000.

Carried

REPORT OF THE ADMISSIONS & EQUITY COMMITTEE

Admissions & Equity Committee
October 29, 1999

Report to Convocation

Purpose of Report: Decision Making

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POLICY

BAC Examination Appeal Process.....3

TERMS OF REFERENCE/COMMITTEE PROCESS

The Admissions and Equity Committee ("The Committee") met on October 13, 1999. In attendance were the following members:

Nancy Backhouse	(Chair)
Derry Millar	(Vice-Chair)
Edward Ducharme	(Vice-Chair)
Bob Armstrong	
Leonard Braithwaite	
Thomas Carey	
George Hunter	
Barbara Laskin	
Marshall Crowe	
Marion Boyd	
Gillian Diamond	

Staff: Bob Bernhardt, Ian Lebane, Maria Paez Victor, Wendy Johnson Martin, Roman Woloszczuk

This report contains a policy issue regarding the BAC Examination Appeal Process.

I. POLICY ISSUES

BAC Examination Appeal Process

The Issue

1. On September 24, 1999, Convocation decided that bar admission course students should be permitted to appeal a failed grade received on a licensing examination. Convocation further approved the criteria that a reliable, fair, open and equitable appeal process should meet. The Education Department was directed to develop a specific appeal process meeting these criteria for the approval of Convocation. (These criteria can be found at Appendix A)
2. The proposed bar admission course examination process is applicable to particular examination papers. The object of the appeal is to decide whether the grade assigned to a failed examination paper should remain or be altered.

3. The Education Department has developed an appeal process on the basis of the approved criteria. The Committee has reviewed the process and recommends its approval to Convocation.

Background

4. Until 1995, there was an appeal process at the bar admission course. Due to the lack of articulated criteria and the problems this generated for the appeal board, it was replaced by a system whereby students could request that failed examinations papers be re-graded.
5. In 1996, norm referencing was introduced as the evaluation method for the bar admission course examinations. A confidential bank of examination questions was created which required that student not be allowed to see their failed examination paper.
6. In 1998, re-grading was implemented in such a way that all failed examination papers were automatically re-graded. No appeal process was established and from the student's point of view, re-grading itself failed to be seen as a substitute.
7. On September 24, 1999 Convocation decided that bar admission course students should be permitted to appeal a failed grade received on a licensing examination. It also approved the criteria that an appeal process should meet in order to ensure a reliable, fair, open and equitable accreditation process.

Examination Appeal Process

8. The examination appeal process is available for students who have failed an examination within the Bar Admission Course. A student may appeal the assessment of the mark on one or more questions. A claim that the examination does not adequately assess the student's knowledge of the area of law does not constitute a ground for this appeal process. The full text of this policy is described below, including time and submission provisions which must be complied with. The Director of Education is responsible for the administration of the Examination Appeal Process.

Conditions for appeal:

9. The appeal process is only available to students who have received a failing grade in an examination (excluding Accounting) within Phase Three of the Bar Admission Course. A particular examination may only be appealed once.

Grounds for an appeal:

10. The appeal must be based upon an error made in the marking of one or more specific questions within an examination.

Process:

11. Appeals must be submitted in writing to the office of the Registrar by the latest of 30 days after the posting of the marks for the examination in question, or 30 days after the approval of this process by Convocation. The Registrar is authorized to permit an extension to this deadline in documented situations involving extenuating personal circumstances. Waiting for results in other examinations and ignorance of the 30 day time line are not acceptable reasons for failure to meet this deadline.

12. Students should be aware that examination papers, other than multiple choice, are marked by individuals who see the student's number, but not the student's name, at the time of marking. If the examination receives less than a passing mark then the paper is automatically regraded. No marks are made on the original examination paper, and as a result the individuals performing the regrade are not aware of the original assessment on either the individual questions, the parts of the paper, or of the paper itself. The regraders are aware that the paper did not achieve a passing mark in the first marking. The regraders work in pairs in order to ensure a fair assessment of each question.
13. Multiple choice examinations have been scored with the use of mechanical scoring equipment.
14. All students who fail an examination have a right to receive a copy of their answer sheet, a copy of the "bubble sheet" which indicates the mark received on each question, and a copy of the answer guide that was used by the markers.
15. Appeals will be received and reviewed through written submissions. All written appeals will be reviewed in an anonymous manner and the only identifier for appeal materials forwarded to the appeal panel will be the student number.

Appeal panel:

16. Appeals will be reviewed by a three person appeal panel consisting of, where practical, the Section Head (or designate) from the course in question, a full time faculty member, and a lawyer practicing within the area of law covered within the course. The appeal panel will be appointed by the Director of Education.

Requirements for the submission:

17. A student may submit up to one page (8½ by 11, one-sided) of text for each of the questions, or parts of questions, which are being challenged. The text is to be typewritten, with a 12 point font size, and with margins of at least one inch on each side of the page. Students must also submit a copy of their examination with the items highlighted. Students must succinctly identify the specific portions of their response that they feel should have received additional value.
18. For all written submissions the student name should appear only on a separate cover sheet. The student number should be used as an identifier on all other pages.

Resolution:

19. The appeal process is not the same as a regrade; only those items in question will be reviewed. For each of these items the appeal may be allowed and additional marks may be awarded (the marks may, or may not, match those requested), or the appeal may be denied, in which case the mark remains as it was. The mark on the examination will not be lowered as a result of the appeal.
20. Students will be provided a decision, with reasons, in writing within 30 days of the filing of the appeal.

The Committee's View

21. The Committee is of the view the examination appeal process developed by the Education Department meets the criteria approved by Convocation and recommends that Convocation approve the proposed examination appeal process set out in paragraphs 8 to 20 of this report.

For the decision of Convocation

22. Convocation has the following options with respect to the bar admission course examination appeal process proposed by the Education Department:

- (1) Approve the proposed examination appeal process.
- (2) Reject the proposed examination appeal process and direct the Department to revise it entirely.
- (3) Modify the proposed examination appeal process.

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

- (1) Copy of the Approved Criteria for a BAC Examination Appeal Process. (Appendix A)
- (2) Addendum to the Admissions & Equity Committee Report dated October 28, 1999 re: Examination Appeal Process.

Re: BAC Examination Appeal Process

It was moved by Ms. Backhouse, seconded by Mr. Edward Ducharme that the proposed examination appeal process as set out in the Addendum to the Report be approved.

Carried

MEMO FROM THE TREASURER RE: MDP'S (Public)

The Treasurer reported on his Memorandum at Tab 6 which was originally in camera and now in public.

REPORTS DEFERRED

The following Reports were deferred:

Status Report of the Multi-Disciplinary Practice Task Force and the Technology Task Force Report.

The following Orders were filed:

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Mitchell Lynn Houzer, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 11th day of February, 1999, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Mitchell Lynn Houzer be suspended for one month definite, commencing at the conclusion of any administrative suspension, and continuing indefinitely thereafter, until he has completed his filings to the satisfaction of the Secretary;

CONVOCATION FURTHER ORDERS that the Solicitor pay the costs of the Law Society in the amount of \$350.

DATED this 23rd day of September, 1999

"R. Armstrong"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Bernard Jacob Kamin, of
the City of Toronto, a Barrister and Solicitor
(hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 4th day of April, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

29th October, 1999

CONVOCATION HEREBY ORDERS that Bernard Jacob Kamin be given permission to resign his membership in the said Society and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 23rd day of September, 1999

"R. Armstrong"
Treasurer

(SEAL - The Law Society of Upper Canada)

Filed

CONVOCATION ROSE AT 4:10 P.M.

Confirmed in Convocation this 27 day of January, 2000
1999

Rene P. Lambey
Treasurer