

## MINUTES OF CONVOCATION

Thursday, 28<sup>th</sup> September, 2006  
9:00 a.m.

## PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Alexander, Backhouse, Bobesich, Campion (by telephone), Carpenter-Gunn, Caskey, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, Dickson, Doyle, Dray (by telephone), Eber, Filion, Finlayson, Furlong, Gold, Gotlib, Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrence, Legge, Millar, Minor, Murray, O'Donnell, Pawlitza, Potter, Robins, Ross, Ruby, St. Lewis, Sandler, Simpson, Swaye, Symes, Topp, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer introduced to Convocation, Ms. Tracy-Anne McPhee, President of the Federation of Law Societies of Canada.

Congratulations were extended to Professor Backhouse who was named the University of Ottawa's Researcher of the Year. She was also awarded the Trudeau Foundation Fellow Prize, the Jules and Gabrielle Leger Fellowship and the Ramon Hnatyshyn Prize for her outstanding contribution to law and legal research.

Condolences were extended to the families and friends of four individuals who passed away in August – The Honourable James Carthy, a former bencher, The Honourable John Fitzpatrick, The Honourable Eddie Goodman, a life bencher and Carlos Sousa, a Law Society employee of 28 years.

The Treasurer also expressed condolences to Mr. Caskey whose mother passed away on September 9<sup>th</sup>.

The Treasurer reported on his activities over the summer months including a status report on Bill 14.

MOTION – PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS  
COMMITTEE APPOINTMENT

It was moved by Mr. Cherniak, seconded by Ms. Pawlitza, that Vern Krishna be appointed to the Professional Development, Competence and Admissions Committee.

Carried

MOTION – CANADIAN NATIONAL EXHIBITION ASSOCIATION APPOINTMENT

It was moved by Mr. Cherniak, seconded by Ms. Pawlitza, that Bob Aaron be appointed the Law Society's representative on the Canadian National Exhibition Association for a term of one year, expiring September 2007.

Carried

NOTICE OF MOTION

Mr. Cherniak introduced a Notice of Motion, seconded by Derry Millar, that By-Law 6 be amended to provide that the election of Treasurer occur every year on the day on which the regular meeting of Convocation is held in April.

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IN CAMERA

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MOTION – AMENDMENTS TO BY-LAW 5 – ELECTION OF BENCHERS

REPORT TO CONVOCATION  
September 28, 2006

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Amendments to By-Law 5 – Election of Benchers

Purpose of Report: Decision

Prepared by the Policy Secretariat  
Katherine Corrick (416-947-5210)

FOR DECISION

AMENDMENTS TO BY-LAW 5

Motion

1. That Convocation approve the amendments to By-Law 5 as follows:

THAT By-Law 5 [Election of Benchers] made, under paragraph 6 of subsection 62 (1) of the *Law Society Act*, on January 28, 1999 and amended on February 19, 1999, March 26, 1999 and April 26, 2001 be further amended as follows:

1. Sections 5, 6 and 7 are deleted and the following substituted:

Elections Officer to conduct election

5. (1) An election of benchers shall be conducted by the Elections Officer.

Elections Officer to establish procedures, *etc.*

(2) The Elections Officer shall,

(a) by December 31 of the year immediately preceding an election year,

(i) establish all procedures, requirements and specifications required to be established with respect to the nomination of candidates for the election, and

(ii) establish the procedures by which electors may vote; and

- (b) by January 31 of an election year, publish all procedures, requirements and specifications established in respect of the election.

Administration de l'élection par le responsable des élections

5. (1) Le ou la responsable des élections administre l'élection des conseillers et des conseillères.

Définition des paramètres par le responsable des élections.

- (2) Le ou la responsable des élections se charge de ce qui suit :
  - a) avant le 31 décembre de l'année qui précède une année d'élection,
    - (i) définir les procédures, les exigences et tout autre paramètre imposé en l'espèce relativement à la nomination des candidats et des candidates à l'élection;
    - (ii) préciser la démarche de vote des électeurs et des électrices;
  - b) avant le 31 janvier d'une année d'élection, publier l'ensemble des procédures, des exigences et des paramètres propres à l'élection.

2. Section 9 is deleted and the following substituted:

Who may be candidate

9. Every member, other than a temporary member, is qualified to be a candidate in an election of benchers if, at the time of signing a nomination form containing his or her nomination as a candidate,

- (a) the member's business address, or, where the member has no business address, home address, as indicated on the records of the Society, is within Ontario; and
- (b) the member's rights and privileges are not suspended.

Qualités requises des candidats

9. Hormis les membres provisoires, peuvent se porter candidates et candidats à l'élection les membres qui, au moment de signer leur formule de mise en candidature :

- a) d'une part, possèdent une adresse professionnelle ou, à défaut, une adresse domiciliaire en Ontario, telle qu'elle figure dans les registres du Barreau;
- b) d'autre part, ne sont pas visés par une ordonnance de suspension de leurs droits ni de leurs privilèges.

3. (1) Subsection 10 (1) is amended by striking out "fourth/quatrième" and substituting "second/deuxième".

(2) Subsection 10 (6) is amended by striking out "original/originale".

4. Subclause 11 (3) (a) (ii) is amended by striking out “is/est” and substituting “may be/peut être”.

5. Subsection 12 (1) is deleted and the following substituted:

Nomination form: optional accompanying material

(1) A candidate may submit the following materials along with his or her nomination form:

1. A photograph of the candidate that meets all specifications established by the Elections Officer.
2. A statement of not more than 120 words, including headings, titles and other similar parts of the statement, containing biographical information about the candidate.
3. A typed election statement of not more than 700 words, including headings, titles and other similar parts of the statement.

Documents facultatifs à joindre à la formule de mise en candidature

(1) Le candidat ou la candidate peut joindre les documents suivants à sa formule de mise en candidature :

1. Une photographie du candidat ou de la candidate qui répond aux exigences précisées par le ou la responsable des élections.
2. Sa notice biographique d’au plus 120 mots, y compris les en-têtes, les titres et toute autre partie analogue de la notice.
3. Une déclaration électorale dactylographiée d’au plus 700 mots, y compris les en-têtes, les titres et toute autre partie analogue de la déclaration.

6. Section 14 is deleted and the following substituted:

Who may not be elected

14. (1) No person shall be elected as bencher if, at the time of his or her election, the person’s rights and privileges are suspended.

Who may be elected from electoral region

(2) A person is eligible to be elected as bencher from an electoral region if, at the time of his or her election, the person’s business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within the electoral region.

Inéligibilité

14. (1) Ne peuvent être élus conseillers ou conseillères les membres dont les droits et privilèges sont suspendus au moment de l’élection.

Éligibilité dans les régions électorales

(2) Au moment de l’élection, sont admissibles au poste de conseiller dans une région électorale les membres dont l’adresse professionnelle ou, à défaut de celle-

ci, l'adresse domiciliaire, telle qu'elle figure dans les registres du Barreau, est située dans la région électorale visée.

7. Section 18 is deleted and the following substituted:

Qualification of electors

18. A person who, on the fourth Friday in March, is a member whose rights and privileges are not suspended is entitled to vote in an election of benchers.

Qualités requises des électeurs

18. Aux fins de l'élection des conseillers et des conseillères, ont droit de vote les membres dont les droits et privilèges ne sont pas suspendus le quatrième vendredi de mars.

8. Sections 20 to 25 are deleted and the following substituted:

Polling list

20. (1) On or shortly after the first Monday after the fourth Friday in March, the Elections Officer shall prepare a polling list.

Same

(2) The polling list shall include the names of all person who, on the fourth Friday in March, are members whose rights and privileges are not suspended.

Liste électorale

20. (1) Le lundi qui suit immédiatement le quatrième vendredi de mars ou tôt par la suite, le ou la responsable des élections dresse la liste électorale.

Idem

(2) La liste électorale comprend le nom de tous les membres dont les droits et privilèges ne sont pas suspendus le quatrième vendredi de mars.

9. Clause 26 (1) (a) is amended by deleting "eligible/eligibles" and substituting "who may be eligible/qui peuvent être éligibles".

10. Section 28 is deleted and the following substituted:

Election materials: distribution

28. As soon as practicable after the Elections Officer has prepared the polling list, the Elections Officer shall distribute to every person whose name appears on the polling list,

- (a) the election materials prepared under section 26;
- (b) voting instructions; and
- (c) a return envelope.

Diffusion de la trousse électorale

28. Le plus tôt possible après avoir dressé la liste électorale, le ou la responsable des élections envoie ce qui suit à chaque personne dont le nom y figure :

- a) la trousse électorale préparée aux termes de l'article 26;
- b) les instructions de vote;
- c) une enveloppe-réponse.

11. Sections 29 and 30 are deleted and the following substituted:

Voting for candidates

29. An elector may vote for,

- (a) not more than 20 candidates who may be eligible to be elected as benchers from the Province of Ontario "A" Electoral Region; and
- (b) not more than 20 candidates who may be eligible to be elected as benchers from the Province of Ontario "B" Electoral Region.

Marking and casting ballots

30. Electors shall mark and cast their election ballots in accordance with the procedures established by the Elections Officer.

Vote

29. Les électeurs et les électrices ne peuvent voter :

- a) d'une part, pour plus de 20 candidats et candidates qui peuvent être éligibles au poste de conseiller dans la région électorale « A » de la province de l'Ontario;
- b) d'autre part, pour plus de 20 candidats et candidates qui peuvent être éligibles au poste de conseiller dans la région électorale « B » de la province de l'Ontario.

Inscriptions sur les bulletins de vote et directives de scrutin

30. Les électeurs et les électrices remplissent leur bulletin de vote et le remettent conformément aux directives formulées par le ou la responsable des élections.

12. Section 31 is deleted and the following substituted:

Elections Officer to cause counting of votes

31. (1) Beginning immediately after the deadline for casting election ballots on election day and proceeding thereafter for so long as necessary, the Elections Officer shall cause the votes for each candidate to be counted in accordance with sections 32 to 36.

Presence of electors

(2) Any elector may be present at any place where and at any time when the votes for each candidate are being counted.

Directives du responsable des élections propres au dépouillement du scrutin

31. (1) Le jour de l'élection, à compter du moment fixé avant lequel les électeurs ou les électrices doivent soumettre leur bulletin de vote et aussi longtemps que cela s'impose, le ou la responsable des élections fait procéder au décompte des voix exprimées pour chaque candidat ou candidate conformément aux articles 32 à 36.

Présence des électeurs

(2) Les électeurs et les électrices peuvent assister, en tout temps et en tous lieux, au décompte des voix exprimées pour chaque candidat ou candidate.

13. (1) Subsection 32 (2) is amended by deleting "are/éligibles" and substituting "were shown on the election ballot to have been/mentionnés sur le bulletin de vote comme étant éligibles".

(2) Subsection 32 (3) is amended by deleting "are/éligibles" and substituting "were shown on the election ballot to have been/mentionnés sur le bulletin de vote comme étant éligibles".

14. (1) Subsection 33 (1) is amended by deleting "and at least two scrutineers/et d'au moins deux scrutateurs et scrutatrices".

(2) Subsection 33 (2) is amended by deleting "and at least two scrutineers/et d'au moins deux scrutateurs et scrutatrices".

15. (1) Clause 38 (1) (a) is amended by deleting "were/s'il en existait qui y'étaient" and substituting "are/en présence de candidats".

(2) Clause 38 (1) (b) is amended by deleting "were" and substituting "are".

(3) Clause 38 (2) (a) is amended by deleting "were/s'il en existait qui y'étaient" and substituting "are/en présence de candidats".

(4) Clause 38 (2) (b) is amended by deleting "were" and substituting "are".

(5) Clause 38 (3) (a) is amended by deleting "were/s'il en existait qui y'étaient" and substituting "are/en présence de candidats".

(6) Clause 38 (3) (b) is amended by deleting "were" and substituting "are".

16. (1) Clause 49 (2) (a) is amended by deleting "was/était" and substituting "is/est".

(2) Subsections 49 (3) and (4) are deleted and the following substituted:

No candidate available for election under subsection (2)

(3) If no candidate is available for election under subsection (2), Convocation shall elect a member whose business address, or, where a member has no business address, whose home address, as indicated on the records of the Society on the day immediately before the day of his or her election as bencher by Convocation, is within the electoral region.

Absence de candidat pouvant être élu aux termes du paragraphe (2)



(3) En l'absence de candidat ou de candidate pouvant être élu aux termes du paragraphe (2), le Conseil élit un membre dont l'adresse professionnelle ou, à défaut, l'adresse domiciliaire, telle qu'elle figure dans les registres du Barreau la veille du jour de son élection par le Conseil, se trouve dans la région électorale.

17. (1) Clause 50 (1) (b) is amended by deleting "was/était" and substituting "is/est".

(2) Subsections 50 (2) and (3) are deleted and the following substituted:

No candidate available for election under subsection (1)

(2) If no candidate is available for election under subsection (1), Convocation shall elect a member whose business address, or, where a member has no business address, whose home address, as indicated on the records of the Society on the day immediately before the day of his or her election as bencher by Convocation, is within the electoral region.

Absence de candidat pouvant être élu aux termes du paragraphe (1)

(2) En l'absence de candidat ou de candidate pouvant être élu aux termes du paragraphe (1), le Conseil élit un membre dont l'adresse professionnelle ou, à défaut, l'adresse domiciliaire, telle qu'elle figure dans les registres du Barreau la veille du jour de son élection par le Conseil, se trouve dans la région électorale.

## Background

2. In June 2006, Convocation approved the following changes to the bencher election process:

### Recommendation 1

Members be permitted to vote in the traditional way by paper ballot, or over the Internet.

### Recommendation 2

The polling list be frozen on the fourth Friday in March.

### Recommendation 3

Voters be required to return their ballots in accordance with the voting instructions distributed pursuant to section 28.

### Recommendation 4

Convocation eliminate the requirement of the presence of scrutineers in light of the fact that an independent third party will be counting and tabulating the votes.

### Recommendation 5

The close of nominations and the deadline for submission of election statements be the second Friday in February rather than the fourth Friday in February.

### Recommendation 6

Candidates be permitted to provide a photograph that accords with the Elections Officer's specifications.

#### Recommendation 7

Candidates be permitted to provide a biographical statement of not more than 120 words, including headings.

#### Recommendation 8

Candidates be permitted to provide an election statement of not more than 700 words, including headings.

#### Recommendation 9

A member whose business address, as indicated on the records of the Society, is in Ontario at the time of signing a nomination form be permitted to run as a candidate in the election.

#### Recommendation 10

That it be a condition precedent to being elected as a benchner that the candidate's business address, or where the candidate has no business address, home address, at the time of election be within Ontario.

#### Recommendation 11

A candidate is only eligible to be elected as a regional benchner, if at the time of the candidate's election, the candidate's business address, or where the candidate has no business address, home address, is within the electoral region.

5. By-law 5 must now be amended to implement the changes Convocation has approved.
6. Appendix 1 contains a black-lined version of by-law 5 to reflect the amendments set out in the motion at paragraph 1 above. The black-lined version has been annotated to assist Convocation in its deliberations.

## APPENDIX 1

### BY-LAW 5

Made: January 28, 1999

Amended:

February 19, 1999

March 26, 1999

April 26, 2001

### ELECTION OF BENCHERS

#### GENERAL

#### Definitions

1. In this By-Law,

"Elections Officer" means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law;

"elector" means a person who is entitled under this By-Law to vote in an election of benchers;

“holiday” means,

- (a) any Saturday or Sunday;
- (b) Good Friday;
- (c) Easter Monday; and
- (d) Victoria Day.

Interpretation: reference to a day

2. (1) In this By-Law, a reference to a day or time shall be a reference to a day or time in an election year.

Same: commencement, etc. of event

(2) In this By-Law, except where a contrary intention appears, if the day on which an event is to take place, commence or end falls on a holiday, the event shall take place, commence or end on the next day that is not a holiday.

Same: residing in electoral region

(3) For the purposes of this By-Law, an elector resides in an electoral region if his or her business address, or, where an elector does not have a business address, home address, as indicated on the records of the Society on election day, is within the electoral region.

## ELECTION DAY

Election day

3. There shall be an election of benchers in 1999 and in every fourth year thereafter on the last day in April that is not a holiday.

## ELECTION OFFICERS

Treasurer to preside over election

4. (1) Subject to subsection (4), an election of benchers shall be presided over by the Treasurer.

Appointment of assistant

(2) The Treasurer may appoint a member who is not a candidate in an election of benchers to assist the Treasurer in exercising the powers and performing the duties of the Treasurer under this By-Law.

Appointment of member to act in absence of Treasurer

(3) The Treasurer shall appoint a member who is not a candidate in an election of benchers to exercise the powers and perform the duties of the Treasurer under this By-Law whenever the Treasurer is unable to act

Where Treasurer is candidate in election.

(4) If the Treasurer is a candidate in an election of benchers, Convocation shall, as soon as practicable after the Treasurer's nomination as a candidate is accepted, appoint a member to preside over the election and to exercise the powers and perform the duties of the Treasurer under this By-Law.

Elections Officer to conduct election

5. (1) An election of benchers shall be conducted by the Elections Officer.

Elections Officer to establish procedures, etc.

(2) The Elections Officer shall,

(a) by December 31 of the year immediately preceding an election year,

(i) establish all procedures, requirements and specifications required to be established with respect to the nomination of candidates for the election, and

(ii) establish the procedures by which electors may vote; and

(b) by January 31 of an election year, publish all procedures, requirements and specifications established in respect of the election.

Section 5(2) codifies current practice and implements recommendations 1 and 3. It also provides flexibility in the voting processes – mail, internet, telephone; the method of receipt of nomination forms – original, faxed, electronic; the address to which paper ballots must be delivered; and other administrative processes involved in conducting the election.

~~Appointment of scrutineers~~

~~6. (1) Convocation shall, not later than at its regular meeting in January, appoint as many scrutineers as it considers appropriate for an election of benchers.~~

~~Qualifications of scrutineers~~

~~(2) A scrutineer must be a member and must not be a candidate in an election of benchers.~~

~~Refusal or incapacity to act~~

~~7. (1) If a person appointed under subsection 4 (2), or a scrutineer appointed under subsection 6 (1), refuses or is unable to act, the Treasurer may appoint another person or scrutineer to take the place of that person or scrutineer.~~

~~Same~~

~~(2) If a person appointed under subsection 4 (3) refuses or is unable to act, the Treasurer or Convocation, if the Treasurer is unable to act, shall appoint another person to take the place of that person.~~

The deletion of sections 6 and 7 implements recommendation 4.

## ELECTORAL REGIONS

Electoral regions

8. (1) The following electoral regions are established:

1. The Province of Ontario “A” Electoral Region, composed of the City of Toronto.

2. The Province of Ontario "B" Electoral Region, composed of the area in Ontario outside the City of Toronto.

Same

(2) Within the Province of Ontario "B" Electoral Region, the following additional electoral regions are established:

1. The Northwest Electoral Region, composed of the territorial districts of Kenora, Rainy River and Thunder Bay.
2. The Northeast Electoral Region, composed of the territorial districts of Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury and Timiskaming.
3. The East Electoral Region, composed of,
  - i. the counties of Frontenac, Hastings, Lanark, Lennox and Addington, Prince Edward and Renfrew,
  - ii. the united counties of Leeds and Grenville, Prescott and Russell and Stormont, Dundas and Glengarry, and
  - iii. the Regional Municipality of Ottawa-Carleton.
4. The Central East Electoral Region, composed of,
  - i. the District Municipality of Muskoka,
  - ii. the counties of Haliburton, Northumberland, Peterborough, Simcoe and Victoria, and
  - iii. the regional municipalities of Durham and York.
5. The Central West Electoral Region, composed of,
  - i. the counties of Bruce, Dufferin, Grey and Wellington, and
  - ii. the regional municipalities of Halton and Peel.
6. The Central South Electoral Region, composed of,
  - i. the County of Brant, and
  - ii. the regional municipalities of Haldimand-Norfolk, Hamilton-Wentworth, Niagara and Waterloo.
7. The Southwest Electoral Region, composed of the counties of Elgin, Essex, Huron, Kent, Lambton, Middlesex, Oxford and Perth.

Province of Ontario "A" Electoral Region

(3) Twenty benchers shall be elected from the Province of Ontario "A" Electoral Region as follows:

1. One benchers shall be elected on the basis of the votes cast by electors residing in the electoral region.
2. Nineteen benchers shall be elected on the basis of the votes cast by all electors.

Province of Ontario "B" Electoral Region

(4) Twenty benchers shall be elected from the Province of Ontario "B" Electoral Region as follows:

1. One benchers shall be elected from each electoral region described in paragraphs 1 to 7 of subsection (2) on the basis of the votes cast by electors residing in the electoral region.
2. Thirteen benchers shall be elected on the basis of the votes cast by all electors.

### CANDIDATES

Who may be candidate

9. Every member, other than a temporary member, is qualified to be a candidate in an election of benchers if, at the time of signing a nomination form containing his or her nomination as a candidate,

(a) ~~the member resides in Ontario~~ the member's business address, or, where the member has no business address, home address, as indicated on the records of the Society, is within Ontario; and

(b) the member's rights and privileges are not suspended.

Section 9(a) implements recommendation 9 providing that a member whose business address, as indicated on the records of the Society, is in Ontario at the time of signing a nomination form be permitted to run as a candidate in the election

Time for close of nominations

10. (1) Subject to subclause 11 (3) (b) (ii), the close of nominations of candidates shall be 5 p.m. on the ~~fourth~~ second Friday in February.

Section 10(1) implements recommendation 5 changing the date for close of nominations to the second Friday in February.

Nomination of candidates

(2) A candidate shall be nominated by at least ten members who are not temporary members and whose rights and privileges are not suspended at the time of signing the nomination form.

Consent to nomination

(3) A nomination shall be accompanied by the candidate's consent to the nomination.

#### Nomination form

(4) The nomination of a candidate and the candidate's consent to the nomination shall be contained in a nomination form provided by the Society.

#### Signatures

(5) The nomination form shall be signed by the candidate and the ten members who are nominating the candidate.

#### Due date

(6) The ~~original~~ nomination form must be received in the office of the Elections Officer at Osgoode Hall before the close of nominations.

Elimination of the word "original" will permit receipt of the nomination form by fax or electronic means.

#### Acceptance and rejection of nominations

11. (1) A member shall not be a candidate if a requirement specified in section 9 or 10 has not been complied with.

#### Examination of nomination form

(2) As soon as practicable after receiving a nomination form, the Elections Officer shall examine the form and,

- (a) if he or she is satisfied that the requirements specified in sections 9 and 10 have been complied with, he or she shall accept the nomination; or
- (b) if he or she is not satisfied that the requirements specified in sections 9 and 10 have been complied with, he or she shall reject the nomination.

#### Results of examination of nomination form

(3) The Elections Officer shall communicate the results of his or her examination of a nomination form to the candidate whose nomination is contained therein and,

- (a) if the Elections Officer has accepted the nomination, he or she shall communicate to the candidate,
  - (i) the manner in which the candidate's name will appear on the election ballot; and
  - (ii) the electoral regions from which the candidate ~~is~~may be eligible to be elected as benchner; or

The substitution of the word "is" is required to implement recommendation 11 providing that a candidate can only be elected regional benchner if, at the time of the election, the candidate's address is within the electoral region.

- (b) if the Elections Officer has rejected the nomination, he or she shall communicate to the candidate,
  - (i) the reasons why the nomination was rejected; and

- (ii) the time by which the candidate, if he or she wishes to be a candidate in the election of benchers, must submit to the Elections Officer a valid nomination.

Nomination form: optional accompanying material

12. (1) A candidate may submit the following materials along with his or her nomination form:

1. ~~A black and white photograph, which may be reproduced, showing the candidate's head and shoulders, measuring at least 2 inches by 2 3/4 inches and no more than 8 inches by 10 inches~~ A photograph of the candidate that meets all specifications established by the Elections Officer.

Implements recommendation 6.

2. A statement of not more than ~~400~~ 120 words, including headings, titles and other similar parts of the statement, containing biographical information about the candidate.

Implements recommendation 7.

3. A typed election statement ~~contained on one side of a sheet of paper measuring 8 1/2 inches by 11 inches~~ of not more than 700 words, including headings, titles and other similar parts of the statement.

Implements recommendation 8.

Deadline for receipt of accompanying material

(2) Subject to subclause 27 (3) (b) (iii), the material referred to in subsection (1) must be received in the office of the Elections Officer at Osgoode Hall before the close of nominations.

Withdrawal of candidates

13. A candidate may withdraw from an election of benchers by giving the Elections Officer written notice of his or her withdrawal within seven days after the close of nominations.

## ELIGIBILITY FOR ELECTION

Who may not be elected

14. (1) No ~~candidate person~~ shall be elected as bencher ~~under section 15 or 36 if~~, at the time of his or her election ~~under section 15 or, in the case of election under section 36, on election day~~, the ~~candidate's~~ person's rights and privileges are suspended.

This is a housekeeping amendment to make the language in this section consistent with the language in section 52.

Who may be elected from electoral region

(2) ~~In an election under section 15 or 37, a candidate~~ A person is eligible to be elected as bencher from an electoral region if, at the time of his or her election, his or her



~~person's~~ business address, or, where the ~~candidate-person~~ has no business address, home address, as indicated on the records of the Society ~~at the time for close of nominations~~, is within the electoral region.

Implements recommendation 11 providing that a candidate can only be elected regional benchner if, at the time of the election, the candidate's address is within the electoral region. The current section 14(2) permits the election of a regional benchner if the candidate resided in the electoral region at the time of nomination.

## ACCLAMATION

### Election by acclamation

15. If after the acceptance of all valid nominations, the number of candidates eligible to be elected as benchner from an electoral region is the same as or fewer than the number of benchners to be elected from that electoral region, the Elections Officer shall declare the candidates to have been elected as benchners from that electoral region.

## POLL

### Poll

16. If after the acceptance of all valid nominations, the number of candidates eligible to be elected as benchner from an electoral region is greater than the number of benchners to be elected from that electoral region, a poll shall be conducted to elect the required number of benchners from that electoral region.

### Secret ballot

17. A poll to elect benchners shall be conducted by secret ballot.

## QUALIFICATION OF ELECTORS

### Qualification of electors

18. ~~The following persons are entitled to vote in an election of benchners:~~

~~1. — A member, other than a temporary member, whose rights and privileges are not suspended on election day.~~

~~2. — A member, other than a temporary member, whose rights and privileges are reinstated before 12 noon on election day.~~

~~3. — A student member who is called to the bar and admitted and enrolled as a solicitor before 12 noon on election day~~A person who, on the fourth Friday in March, is a member whose rights and privileges are not suspended is entitled to vote in an election of benchners.

Amendments to section 18 implement recommendation 2 freezing the voters list on the fourth Friday in March.

Eligibility to elect benchers from electoral regions

19. (1) An elector is eligible to elect the bencher from the Province of Ontario "A" Electoral Region who is to be elected on the basis of the votes cast by electors residing in the electoral region if the elector resides in the electoral region.

Same

(2) An elector is eligible to elect a bencher from an electoral region mentioned in paragraphs 1 to 7 of subsection 8 (2) if the elector resides in the electoral region.

## LIST OF ELECTORS

~~Preliminary p~~olling list

20. (1) On or shortly after ~~February 9, but not later than February 12~~the first Monday after the fourth Friday in March, the Elections Officer shall prepare a ~~preliminary~~-polling list.

Same

(2) ~~The preliminary polling list shall include the names of the following persons:~~

~~1. Members, other than temporary members, whose rights and privileges are not suspended on February 8.~~

~~2. Persons who are student members on February 8 and who may be called to the bar and admitted and enrolled as solicitors before 12 noon on election day. The polling list shall include the names of all persons who, on the fourth Friday in March, are members whose rights and privileges are not suspended.~~

~~Inspection of preliminary polling list~~

~~21. (1) The Elections Officer shall make the preliminary polling list available for inspection by members and student members in accordance with this section during the period commencing February 13 and ending March 3.~~

Same

~~(2) Members and student members may inspect the preliminary polling list in the office of the Elections Officer at Osgeode Hall between the hours of 9 a.m. and 5 p.m. on any day that is not holiday.~~

~~Errors in preliminary polling list~~

~~22. (1) During the period commencing February 13 and ending March 3, any member or student member may complain to the Elections Officer of an omission from, or an improper inclusion on, the preliminary polling list.~~

~~Consideration by Elections Officer~~

~~(2) The Elections Officer shall consider every complaint made to him or her under subsection (1) and shall,~~

~~(a) (i) correct the omission of a person from the preliminary polling list, if satisfied that the person should have been included on the list in accordance with subsection 20 (2), or~~

~~(ii) correct the inclusion of a person on the preliminary polling list of, if satisfied that the person should not have been included on the list in accordance with subsection 20 (2); or~~

~~(b) — dismiss the complaint.~~

#### Notice

~~23. — The Elections Officer shall give notice of his or her disposition of a complaint to,~~

- ~~(a) — the complainant; and~~
- ~~(b) — the person who was the subject of the complaint.~~

#### Reconsideration of Election Officer=s disposition: assignment of scrutineers

~~24. — (1) — Convocation shall assign three scrutineers to reconsider the Election Officer=s disposition of complaints under subsection 22 (2).~~

#### Request for reconsideration

~~(2) — Any person mentioned in section 23 who is dissatisfied with the Election Officer=s disposition of a complaint under subsection 22 (2) may request the Election Officer to refer the complaint to the scrutineers for reconsideration.~~

#### Request in writing

~~(3) — A request to refer a complaint to the scrutineers for reconsideration shall be made in writing and not later than March 7.~~

#### Referral to scrutineers

~~(4) — The Elections Officer shall refer to the scrutineers every complaint in respect of which a request for reconsideration has been made in accordance with subsections (2) and (3).~~

#### Consideration by scrutineers

~~(5) — The scrutineers shall consider every complaint referred to them and shall,~~

- ~~(a) — (i) — direct the Elections Officer to correct the omission of a person from the preliminary polling list, if satisfied that the person should have been included on the list in accordance with subsection 20 (2), or~~
- ~~(ii) — direct the Elections Officer to correct the improper inclusion of a person on the preliminary polling list, if satisfied that the person should not have been included on the list in accordance with subsection 20 (2);~~
- ~~or~~

~~(b) — dismiss the complaint.~~

#### Notice of scrutineers= disposition of complaint

~~(6) — The Elections Officer shall give notice of the scrutineers= disposition of a complaint to,~~

- ~~(a) — the person who requested that the complaint be referred to the scrutineers for reconsideration; and~~
- ~~(b) — the person who was the subject of the complaint.~~

#### Scrutineers= disposition final

~~(7) — The disposition of a complaint by the scrutineers is final.~~

### Final polling list

~~25. On or shortly after March 10, the Elections Officer shall prepare a final polling list containing the names of all persons included on the preliminary polling list after corrections made under subsections 22 (2) and 24 (5).~~

Only those members whose rights and privileges are not suspended on the fourth Friday in March will be eligible to vote. Therefore, a preliminary polling list prepared before the fourth Friday in March will necessarily be inaccurate.

## ELECTION MATERIALS

### Election materials: preparation

26. (1) The Elections Officer shall cause to be prepared,

- (a) an election ballot, showing the names of all candidates who may be eligible to be elected as benchers from each electoral region; and

Language necessary to implement recommendation 11.

- (b) an election booklet, containing the names of all candidates and, if available, the photograph, biography and, subject to subsection (4), election statement of each candidate.

(2) In causing the election ballot to be prepared, the Elections Officer shall ensure that it is prepared in a manner that preserves the anonymity of the voters and the secrecy of their votes.

### All election statements included

(3) Subject to subsection (4), the Elections Officer shall include in the election booklet all election statements which he or she receives under section 12.

### Certain election statements not be included unless approved

(4) The Elections Officer shall not include in the election booklet any election statement that in his or her opinion may be libelous, may be in breach of the Rules of Professional Conduct or is in bad taste unless the election statement has been approved by a committee of benchers in accordance with section 27.

### Appointment of committee to approve election statements

27. (1) If necessary, the Treasurer shall appoint a committee of two or more benchers who are not elected benchers to approve election statements.

### Referral of election statements to committee

(2) The Elections Officer shall refer to the committee appointed under subsection (1) all election statements that in his or her opinion may be libelous, may be in breach of the Rules of Professional Conduct or are in bad taste.

(3) The committee appointed under subsection (1) shall consider all election statements that are referred to it and, in respect of each election statement, shall,

- (a) approve the election statement and direct the Elections Officer to include it in the election booklet; or
- (b) if the committee is of the opinion that the election statement may be libelous, may be in breach of the Rules of Professional Conduct or is in bad taste,
  - (i) return the election statement to the candidate who submitted it,
  - (ii) provide the candidate a written explanation of the committee's objections to the election statement, and
  - (iii) specify the time by which the candidate may submit to the committee a redrafted election statement.

#### Consideration of redrafted election statements by committee

(4) The committee appointed under subsection (1) shall consider all redrafted election statements that are submitted to it in accordance with subsection (3), and, in respect of each redrafted election statement, shall,

- (a) approve the redrafted election statement and direct the Elections Officer to include it in the election booklet; or
- (b) if the committee is of the opinion that the redrafted election statement may be libelous, may be in breach of the Rules of Professional Conduct or is in bad taste,
  - (i) return the redrafted election statement to the candidate who submitted it,
  - (ii) provide the candidate a written explanation of the committee's objections to the redrafted election statement, and
  - (iii) advise the candidate that no election statement shall be included in the election booklet under his or her name.

#### Committee's decision final

(5) A decision of the committee under subsection (4) is final.

#### Election materials: distribution

28. ~~(1)~~ — As soon as practicable after the Elections Officer has prepared the ~~final~~ polling list, the Elections Officer shall distribute to every person whose name appears on the ~~final~~ polling list,

- (a) the election materials prepared under section 26;
- (b) voting instructions; and
- (c) a return envelope.

Same

~~(2) — If a person is an elector under paragraph 2 of section 18, the Elections Officer shall notify the person as soon as practicable after 12 noon on election day of his or her entitlement to vote in an election of benchers.~~

The deleted language is unnecessary in view of the freezing of the voters list.

## VOTING

~~Casting votes~~ Voting for candidates

29. ~~(1)~~ — An elector may vote for,

- (a) not more than 20 candidates who ~~are~~ may be eligible to be elected as bencher from the Province of Ontario “A” Electoral Region; and
- (b) not more than 20 candidates who ~~are~~ may be eligible to be elected as bencher from the Province of Ontario “B” Electoral Region.

Language necessary to implement recommendation 11.

Marking a ballot

~~(2) — An elector shall indicate the candidates of his or her choice by marking the election ballot in accordance with the voting instructions distributed under section 28.~~

Returning ballots Marking and casting ballots

30. Electors shall ~~deliver their marked election ballots to the office of the Elections Officer at Osgoode Hall in the return envelopes distributed under section 28 so that the election ballots are received in the office not later than 5 p.m. on election day.~~ mark and cast their election ballots in accordance with the procedures established by the Elections Officer.

Section 30 incorporates former section 29(2) and implements recommendation 1 permitting alternate forms of voting, such as by internet or telephone and recommendation 3 requiring voters to return their ballots in accordance with the voting instructions distributed by the Elections Officer.

## COUNTING THE VOTES

Elections Officer to cause counting of votes

31. (1) Beginning ~~on May 1~~ immediately after the deadline for casting election ballots on election day and proceeding ~~daily~~ thereafter for so long as necessary, the Elections Officer shall cause ~~the election ballots to be removed from the return envelopes and opened and~~ the votes for each candidate to be counted in accordance with sections 32 to 36.

Votes cast electronically are logged immediately. This language will allow paper ballots to be scanned and logged immediately upon receipt, thus treating them the same as electronic ballots. It will also allow the tabulation of votes to commence on April 30 immediately following the voting deadline, rather than waiting a further day. This will substantially decrease the time required to announce the election results.

Presence of scrutineers

~~(2) — The Elections Officer shall ensure that at least two scrutineers are present when election ballots are being removed from the return envelopes and the votes for each candidate are being counted.~~

Implements recommendation 4.

Presence of electors

~~(32) Any elector may be present at any place where and at any time when election ballots are being removed from the return envelopes and opened and the votes for each candidate are being counted.~~

This language is amended to implement a process whereby paper ballots are scanned and logged upon receipt mirroring the treatment of votes received electronically.

Valid votes

32. (1) Subject to subsections (2) and (3), only votes cast by electors for candidates eligible to be elected as benchers shall be counted.

Disqualified votes

(2) If an elector votes for more than 20 candidates who ~~are~~ were shown on the election ballot to have been eligible to be elected as benches from the Province of Ontario "A" Electoral Region, none of the elector's votes for those candidates shall be counted.

Same

(3) If an elector votes for more than 20 candidates who ~~are~~ were shown on the election ballot to have been eligible to be elected as benches from the Province of Ontario "B" Electoral Region, none of the elector's votes for those candidates shall be counted.

The new language in section 32(2) and (3) is necessary to implement recommendation 11.

Same number of votes

33. (1) For the purposes of the count of votes under section 34, the declaration of results under subparagraph i of paragraph 1 of subsection 36 (2) and the declaration of results under paragraph 2 of subsection 36 (2), if two or more candidates have the same number of votes and that number is the largest, the Elections Officer shall, in the presence of the Treasurer ~~and at least two scrutineers~~, randomly select one candidate to be the candidate who has the largest number of votes.

Implements recommendation 4.

Same

(2) For the purposes of the count of votes under section 35, the declaration of results under subparagraph ii of paragraph 1 of subsection 36 (2) and the declaration of results under paragraph 3 of subsection (2), if two or more candidates have the same number of votes, but the number of benches remaining to be elected is fewer than the number of candidates having the same number of votes, the Elections Officer shall, in the presence of the Treasurer ~~and at least two scrutineers~~, randomly select the necessary number of candidates to be elected as benches.

## Implements recommendation 4.

Counting votes: benchers elected on basis of votes cast by electors residing in electoral region

34. (1) For the Province of Ontario "A" Electoral Region, the votes cast by electors residing in the electoral region for each candidate eligible to be elected as bencher from the electoral region shall be counted.

Same

(2) For each electoral region described in paragraphs 1 to 7 of subsection 8 (2), the votes cast by electors residing in the electoral region for each candidate eligible to be elected as bencher from the electoral region shall be counted.

Removal of candidate from pool of candidates

(3) For the Province of Ontario "A" Electoral Region, the candidate eligible to be elected as bencher from the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection (1), shall be removed from the pool of candidates eligible to be elected as bencher for the purposes of the count of votes under subsection 35 (1).

Same

(4) For each electoral region described in paragraphs 1 to 7 of subsection 8 (2), the candidate eligible to be elected as bencher from the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection (2), shall be removed from the pool of candidates eligible to be elected as bencher for the purposes of the count of votes under subsection 35 (2).

Counting votes: Province of Ontario "A" Electoral Region

35. (1) For the Province of Ontario "A" Electoral Region, the votes cast by all electors for each candidate eligible to be elected as bencher from the electoral region shall be counted.

Same: Province of Ontario "B" Electoral Region

(2) For the Province of Ontario "B" Electoral Region, the votes cast by all electors for each candidate eligible to be elected as bencher from the electoral region shall be counted.

Report of result to Convocation

36. (1) Immediately after the count of votes under sections 34 and 35 has been completed, the Elections Officer shall report the results to Convocation.

Declaration of results

(2) Immediately after reporting the results to Convocation, the Elections Officer shall declare the following candidates to have been elected as benchers:

1. For the Province of Ontario "A" Electoral Region,
  - i. the candidate eligible to be elected as bencher from the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection 34 (1), and



- ii. the nineteen candidates eligible to be elected as benchers from the electoral region who have the largest number of votes from all electors, as determined by the count of votes under subsection 35 (1).
- 2. For each electoral region described in paragraphs 1 to 7 of subsection 8 (2), the candidate eligible to be elected as bencher from the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection 34 (2).
- 3. For the Province of Ontario "B" Electoral Region, the thirteen candidates eligible to be elected as bencher from the electoral region who have the largest number of votes from all electors, as determined by the count of votes under subsection 35 (2).

#### Taking office

37. (1) The benchers who are elected in an election of benchers shall take office on the later of the following dates:

- 1. The day on which Convocation has its regular meeting in May.
- 2. The day on which Convocation has its first regular meeting of Convocation following the declaration of results under section 36.

#### Term of office

(2) Subject to any by-law that provides for the removal of benchers from office, the benchers who take office under subsection (1) shall remain in office until their successors take office.

#### Failure to elect

38. (1) If in an election of benchers no candidate is elected as bencher from the Province of Ontario "A" Electoral Region on the basis of the votes cast by electors residing in the electoral region, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 36, whichever takes place later, elect as a bencher from the electoral region,

- (a) if there ~~were~~are candidates eligible to be elected as bencher from the electoral region, one of the candidates who was not elected as bencher; or
- (b) if there ~~were~~are no candidates eligible to be elected as bencher from the electoral region, or no candidate is available for election under clause (a), a member whose business address, or, where a member does not have a business address, home address, as indicated on the records of the Society on the day of his or her election as bencher by Convocation, is within the electoral region.

Housekeeping language amendments.

#### Same

(2) If in an election of benchers no candidate is elected as bencher from an electoral region described in paragraphs 1 to 7 of subsection 8 (2) on the basis of the votes cast by electors residing in the electoral region, Convocation shall, at its regular meeting in May or at its

first regular meeting following the declaration of results under section 36, whichever takes place later, elect as a benchers from the electoral region,

- (a) if there ~~were~~are candidates eligible to be elected as benchers from the electoral region, one of the candidates who was not elected as benchers; or
- (b) if there ~~were~~are no candidates eligible to be elected as benchers from the electoral region, or no candidate is available for election under clause (a), a member whose business address, or, where a member does not have a business address, home address, as indicated on the records of the Society on the day of his or her election as benchers by Convocation, is within the electoral region.

Housekeeping language amendments.
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Same

(3) If in an election of benchers fewer than the required number of benchers are elected from the Province of Ontario "A" Electoral Region or the Province of Ontario "B" Electoral Region on the basis of the votes cast by all electors, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 36, whichever takes place later, elect as benchers from the electoral region,

- (a) if there ~~were~~are candidates eligible to be elected as benchers from the electoral region, the required number of candidates who were not elected as benchers;
- (b) if there ~~were~~are no candidates eligible to be elected as benchers from the electoral region, or if all candidates have already been elected under clause (a), the required number of members whose business addresses, or, where members do not have a business address, home addresses, as indicated on the records of the Society on the day of their election as benchers by Convocation, is within the electoral region.

Housekeeping language amendments.
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Who may not be elected

39. (1) No person shall be elected as benchers under section 38 if the person's rights and privileges are suspended.

Consent to election

(2) No person shall be elected as benchers under section 38 if he or she does not consent to the election.

Taking office and term of office

40. The benchers who are elected under section 38 shall take office immediately after their election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until their successors take office.

## PETITIONS

## Right to petition

41. Any elector may petition Convocation against the election of a benchner under section 36.  
Time for making petition

42. No petition shall be made after fifteen days after the declaration of results under section 36.

## Filing a petition

43. (1) A petitioner shall, within fifteen days after the declaration of results under section 36, file in the office of the Elections Officer at Osgoode Hall a written petition setting out the grounds upon which the election of a benchner is disputed.

## Service of petition

(2) A petitioner shall serve on the benchner whose election the petitioner disputes a copy of the written petition filed in the office of the Elections Officer at Osgoode Hall.

## Time for service

(3) Service under subsection (2) shall be effected not later than the twentieth day after the declaration of results under section 36.

## Benchner's status during consideration of petition

44. A benchner whose election is disputed shall continue in office until Convocation determines that he or she was not eligible to be elected as benchner or was not duly elected.

## Appointment of committee to consider petition

45. (1) Where a petition is filed under subsection 43 (1), Convocation shall appoint a committee of two or more benchners to consider the petition.

## Procedure

(2) Subject to subsection (3), the procedure applicable to the consideration of a petition by a committee of benchners shall be determined by the committee and, without limiting the generality of the foregoing, the committee may determine who may make submissions to it, when and in what manner.

## Right to make submissions

(3) A petitioner and the benchner whose election the petitioner disputes are entitled to make submissions about the petition to the committee of benchners appointed to consider the petition.

Notice of appointment of committee, *etc.*

(4) The Elections Officer shall give notice to a petitioner and the benchner whose election the petitioner disputes of the appointment of a committee of benchners to consider the petition and of the procedure applicable to the consideration of the petition, including the manner in which the petitioner and the benchner will be permitted to make submissions to the committee.

## Report to Convocation

46. (1) A committee of benchners appointed to consider a petition shall report to Convocation on its consideration of the petition.

#### Decision of Convocation

(2) Convocation shall consider the report of a committee of benchers on a petition and shall decide whether a bencher whose election is disputed was eligible to be elected as bencher and was duly elected.

#### Notice of decision

(3) Convocation shall give notice of its decision on a petition, including the reasons for the decision, to the petitioner and the bencher whose election the petitioner disputed.

#### Payment of expenses

47. (1) When Convocation decides that a bencher whose election is disputed was eligible to be elected as bencher and was duly elected, Convocation may require the petitioner who disputed the bencher's election to pay to the bencher all or part of the expenses incurred by the bencher in responding to the petition.

#### Same

(2) When Convocation decides that a bencher whose election is disputed was not eligible to be elected as bencher or was not duly elected, Convocation may require the bencher to pay to the petitioner who disputed the bencher's election all or part of the expenses incurred by the petitioner in making the petition.

### DISPOSITION OF ELECTION MATERIALS

#### How long to be retained

48. (1) The Elections Officer shall retain all election materials and other documents relating to an election of benchers for at least thirty days after the declaration of results under section 36, or if Convocation is petitioned against the election of a bencher, for at least thirty days after Convocation gives notice of its decision on the last petition made.

#### Destruction

(2) The Elections Officer may destroy all election materials and other documents relating to an election of benchers after the time for retaining the materials and documents under subsection (1) has passed.

### VACANCIES DURING TERM OF OFFICE

#### Interpretation – “candidate”

49. (1) For the purposes of this section, “candidate” includes a candidate elected as bencher.

#### Vacancy in electoral region: election on basis of votes cast by electors residing in electoral region

(2) If a bencher who was elected from an electoral region on the basis of the votes cast by electors residing in the electoral region resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect as bencher from the electoral region a candidate in the most recent election of benchers,

(a) who ~~was~~is eligible to be elected as bencher from the electoral region; and

- (b) who, among all similar candidates, had the largest number of votes from electors residing in the electoral region.

~~Bencher must still be eligible for election from electoral region~~

~~(3) — Despite clause (2) (a), no candidate shall be elected as benchner unless the candidate=s business address, or, where a candidate has no business address, home address, as indicated on the records of the Society on the day immediately before the day of his or her election as benchner by Convocation, is within the electoral region from which he or she was eligible to be elected as benchner.~~

The language amendment in section 49(2)(a) makes section 49(3) redundant.

No candidate available for election under subsection (2)

~~(43)~~ If no candidate is available for election under subsection (2), Convocation shall elect a member whose business address, or, where a member has no business address, whose home address, as indicated on the records of the Society on the day immediately before the day of his or her election as benchner by Convocation, is within the electoral region.

Vacancy in electoral region: election on basis of votes cast by all electors

50. (1) If a benchner, who was elected from the Province of Ontario “A” Electoral Region or the Province of Ontario “B” Electoral Region on the basis of the votes cast by all electors, resigns, is removed from office, is elected as benchner under section 49 or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect as benchner from the electoral region a candidate in the most recent election of benchners,

- (a) who was not elected as benchner;
- (b) who ~~was is~~ eligible to be elected as benchner from the electoral region; and
- (c) who, among all similar candidates, had the largest number of votes from all electors.

~~Bencher must still be eligible for election from electoral region~~

~~(2) — Despite clause (1) (b), no candidate shall be elected as benchner unless the candidate=s business address, or, where a candidate has no business address, home address, as indicated on the records of the Society on the day immediately before the day of his or her election as benchner by Convocation, is within the electoral region from which he or she was eligible to be elected as benchner.~~

The language amendment in section 50(1)(b) makes section 50(2) redundant.

No candidate available for election under subsection (1)

~~(32)~~ If no candidate is available for election under subsection (1), Convocation shall elect a member whose business address, or, where a member has no business address, whose home address, as indicated on the records of the Society on the day immediately before the day of his or her election as benchner by Convocation, is within the electoral region.

Application of s. 49

51. (1) Section 49 applies, with necessary modifications, to,

- (a) a bencher elected under section 15 to fill the office of a bencher elected from an electoral region on the basis of the votes cast by electors residing in the region;
- (b) a bencher elected under subsection 38 (1);
- (c) a bencher elected under subsection 38 (2); and
- (d) a bencher elected under section 49.

#### Application of s. 50

- (2) Section 50 applies, with necessary modifications, to,
  - (a) a bencher elected under section 15 to fill the office of a bencher elected from an electoral region on the basis of the votes cast by all electors;
  - (b) a bencher elected under subsection 38 (3); and
  - (c) a bencher elected under section 50.

#### Who may not be elected to fill vacancy

52. (1) No person shall be elected as bencher under section 49 or 50 if the person's rights and privileges are suspended.

#### Consent to election

(2) No person shall be elected as bencher under section 49 or 50 if he or she does not consent to the election.

#### Term of office

53. A bencher who is elected under section 49 or 50 shall take office immediately after his or her election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until his or her successor takes office.

#### Commencement

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

It was moved by Professor Krishna, seconded by Mr. Cherniak, that Convocation approve the amendments to By-Law 5 contained in the Report.

Carried

#### LAWPRO REPORT

Ms. Carpenter-Gunn presented the LAWPRO Report to Convocation.

LAWPRO

September 2006  
Report to Convocation

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LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")  
REPORT TO CONVOCATION – SEPTEMBER, 2006

## INTRODUCTION

1. Each September since 1995, LAWPRO's Board of Directors has reported to Convocation changes to the Law Society's professional liability insurance program for the following calendar year. The timing of this report is necessitated by the logistics of renewing in excess of 20,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.
2. This report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy direction where necessary. Financial information on LAWPRO and the program is provided to Convocation throughout the year.
3. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report (Task Force Report). The mandate and principles of operation were to be as follows:
  - that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
  - that LAWPRO be operated in a commercially reasonable manner;
  - that LAWPRO move to a system where the cost of insurance reflects the risk of claims; and



- that claims be resolved fairly and expeditiously; however, this was not to be a system of “no-fault” compensation and there would be certain circumstances where coverage was denied.

For 2007, we have conducted our annual review of the program to re-validate the approach and rating structure in relation to these Task Force recommendations.

4. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed program for 2007 continues to operate on these principles. This report deals solely with the mandatory professional liability program. Optional programs such as TitlePLUS®, and the Excess professional liability insurance program are operated on an expected break-even or better basis.

#### 2007 PROGRAM SUMMARY

5. The following summarizes the 2007 professional liability insurance program, as provided for in this report.

##### *Premium pricing for 2007*

- (i) The base premium is decreased by \$100 to \$2,600 per lawyer for 2007, from the \$2,700 per lawyer charged in 2006 (paragraph 82).
- (ii) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at \$22.5 million for the purposes of establishing the base premium for 2007 and other budgetary purposes (paragraph 82).
- (iii) \$8.4 million (approximately \$400 per insured lawyer) will be drawn from the Premium Stabilization Fund built up in previous years (a \$28.6 million balance is forecast as at December 31, 2006) and applied to the 2007 insurance premium (paragraph 82).
- (iv) To the extent that levies [noted in (ii) above] collected in 2007 are different than the budgeted amount, the surplus or shortfall will flow to/from the Premium Stabilization Fund (paragraph 82).
- (v) 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2007, subject to reinsurance protecting the program from aggregated losses (paragraph 86).

##### *Changes to the insurance program for 2007*

##### *(A) Changes in the Part-time Practice Option Criteria:*

- (vi) The gross billing criteria for lawyers in respect of the Part-time Practice Option, is increased by 25 per cent to \$75,000 from \$60,000 per year (paragraph 21).

##### *(B) Exemption for Lawyers Acting as Estate Trustee, Trustee for Inter Vivos Trust, or Attorney for Property:*

(vii) With the decision of Convocation in June 2006 allowing retiring lawyers and others to continue to act as estate trustee, trustee for *inter vivos* trust, or attorney for property, without maintaining their practicing status and ongoing practice coverage, changes to By-Law 16 of the *Law Society Act*, R.S.O. 1990, c. L.8 will be required to implement this change effective January 1, 2007. Pending approval of these by-law changes later in the year, it is appropriate that LAWPRO manage the program on the basis of the following recommended by-law changes:

- a) That subsection 9(1) be amended as follows:  
 “9. (1) The following are eligible to apply for exemption from the payment of insurance premium levies:  
 ...  
 6. Any member who, during the course of the year for which a levy is payable, is named, or acts in the capacity of, estate trustee for *inter vivos* trust, or attorney for property, as residual work from the member's past practice in Ontario,  
     i. and will not otherwise engage in the practice of law in Ontario, or  
     ii. who otherwise qualifies for exemption from payment of insurance premiums levies under paragraph 3, 4 or 5, and will not engage in the practice of law in Ontario other than as provided for under this paragraph or paragraph 3, 4 or 5 for which the member would otherwise qualify.”
- b) That subsection 9(1.1), allowing for certain legal advice or services to be provided on a *pro bono* basis to or on behalf of non-profit organizations by a member even though on exemption, be amended to also refer to and apply in the case of paragraph 6 of subsection (1) (paragraph 29).

*(C) Changes in Exemption for the Territorial Mobility Agreement:*

(viii) With formal execution of the Territorial Mobility Agreement and approval of required by-law changes not expected until late this year but effective January 1, 2007, and implementation of the 2007 insurance program to commence early this October, it is appropriate that LAWPRO proceed to implement the program on the basis that the current mobility exemption is expanded for 2007 to also provide exemption for Law Society members exercising their permanent mobility rights under the Territorial Mobility Agreement (paragraph 44).

*(D) Protection Against Misappropriations During Mobility:*

(ix) LAWPRO should continue to work with the Law Society to identify and provide the appropriate level of mobile, uniform protection contemplated by the Federation of Law Societies, for Ontario lawyers exercising their mobility rights within Canada (paragraph 55).

*CLE Premium Credit*

(x) The Continuing Legal Education Premium Credit will be continued for the 2008 program, with a \$50 premium credit per course, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational courses taken and

successfully completed by the member between September 16, 2006 and September 15, 2007, for which the lawyer has successfully completed the online CLE Declaration Form (paragraph 108).

(xi) Subject to the changes identified earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2006 will remain unchanged for the 2007 insurance program (paragraph 94).

#### *E & O Fund*

(xii) The investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund will be made available to the Law Society during 2007 (paragraph 8).

#### *Conclusion*

(xiii) The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate. The LAWPRO Board offers this program of insurance for 2007 and asks for Convocation's acceptance of this Report at the September Convocation so that the 2007 insurance program can be implemented by January 1, 2007.

### PART 1 – THE ERRORS & OMISSIONS FUND

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

7. As of June 30, 2006, the Fund had outstanding claims liabilities of \$4.4 million. The number of open files for 1994 and prior years stood at 30. Since there are sufficient assets in the Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the Fund is surplus to the needs of the Fund and can be used by the Law Society for its general purposes. It is expected that \$3.25 million of investment income would be transferred during the 2007 year.

8. Accordingly, investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund will be made available to the Law Society during 2007.

### PART 2 – CHANGES TO THE INSURANCE PROGRAM FOR 2007

9. The current program structure, as well as policy limits, coverage and available options, appear to meet the needs and practice realities of the profession for 2007. In developing the 2007 program, LAWPRO has considered the changing environment in which lawyers practise and comments received from the profession during the previous year.

10. Accordingly, relatively few modifications in the structure of the program, and in the form and substance of the policy are contemplated for 2007. However, some minor refinements in policy wording may be made to clarify or better ensure underwriting intention.

### Changes to the Part-time Practice Option Criteria

11. The part-time practice option, which provides for a premium discount equal to 40 per cent of the base premium, was first introduced under the program effective January 1, 1997, and has continued in place without change since that time.

12. Appreciating the impact of inflation upon the part-time practice option criteria, it is proposed that the limitation on gross billings per year for lawyers be increased to \$75,000 from \$60,000.

13. The discount is only available to lawyers who, in the year in which the policy is to be in force and the year which immediately precedes it:

- Restrict their law practice to 20 hours per week on average for each week actually worked, and to 750 hours per year, of professional time in private practice (including time for undocketed work); and
- Have gross billings of \$60,000 (or \$75,000 as now proposed) per year or less.

14. For the premium discount to apply, the lawyer must elect this practice option and sign a declaration confirming compliance with each of these practice restrictions, on her or his insurance application. As well, the lawyer cannot have had a claim reported under the program with a repair and/or an indemnity payment within the last five years.

15. The introduction of this practice option discount was consistent with the reduced risk of claims found to have been associated with the part-time practice of lawyers, and the mandate of LAWPRO to transform the program into one in which the costs of insurance generally reflects the risk. The particular part-time practice criteria was established in consultation with various volunteer practice law associations in Ontario.

16. A significant number of lawyers have elected this option since its introduction: In 2006, for example, 1,248 lawyers (about six percent of all practising lawyers), selected the part-time practice option. This practice option is seen as being particularly important to lawyers in various types of practice circumstances, including those who have chosen to practise law on a part-time basis for family or other reasons, those whose disabilities prevent them from practising full-time, older members whose intention is to reduce their practice responsibilities gradually, and in-house counsel who provide only occasional services to those other than their employer.

17. However, the \$60,000 ceiling on gross billings has not changed since the part-time practice option was introduced in 1997, and lawyers are increasingly asking about an increase in this criterion. To adjust for inflation and ensure that the part-time criteria continue to reflect a similar size of practice today as when it was first introduced, LAWPRO recommends that the gross billing criterion for lawyers be increased by 25 per cent to \$75,000 from \$60,000 per year.

18. This adjustment is consistent with the impact of inflation on lawyers' practices during this period. The Consumer Price Index, for example, increased more than 20 per cent over the same period.<sup>1</sup>

19. A review of the program loss experience indicates that the 40 per cent premium discount

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<sup>1</sup> Further details are available online from Statistics Canada at [www.statscan.ca](http://www.statscan.ca)

that applies to the part-time practice option is still appropriate. An analysis of the loss experience of lawyers electing this option indicates that the six percent of insureds who claimed the part-time discount in 2006 incurred only 2.1 percent of all claims reported between 2000 – 2005 and 1.6 percent of claims costs.

20. Administrative costs do not vary in the same proportion and accordingly the discount is limited to 40 per cent.

#### Comparison of the Proportion of Lawyers Claiming Part-Time Discount to their Proportion of Claims

See graph in Convocation Report

21. Accordingly, the gross billing criteria for lawyers in respect of the Part-time Practice Option, is increased by 25 per cent to \$75,000 from \$60,000 per year.

#### Exemption for Lawyers acting as Estate Trustee, Trustee for *Inter Vivos* Trust, or Attorney for Property

22. It is proposed that the exemption provisions under the program be expanded to allow lawyers who retire or change to a non-practising status, to continue to act in the capacity of estate trustee, trustee for *inter vivos* trust, or attorney for property, as residual work from the lawyers' former law practice.

23. In June 2006, Convocation considered whether lawyers who wish to cease practising law should continue to be required to wind up any trusts or estates before retiring (or changing to a non-practising membership status), and to carry the ongoing practice coverage under the insurance program during this period.

24. Convocation adopted the report of the Professional Regulation Committee providing that these lawyers should not be required to maintain their practice status and ongoing practice coverage while they continue to act as estate trustee, trustee for *inter vivos* trust, or attorney for property, and approved the following motion:

“a. A member of the Society who is over 65 years of age and permanently retired from the practice of law in Ontario who has been appointed or acts as an estate trustee, as a trustee for an *inter vivos* trust or who is an attorney for property may be exempt from payment of the Law Society's annual fee on condition that the member,

- i. declares to the Society such trusteeships or powers of attorney upon retirement,
- ii. continues to file the Member's Annual Report,
- iii. continues to be subject to the Spot Audit Program, and
- iv. files the appropriate exemption forms each year with LAWPRO to confirm the member's continued status as exempt from payment of insurance premium levies.

b. A member of the Society who changes from a practising membership status to a

non-practising membership status who has been appointed or acts as an estate trustee, as trustee for an *inter vivos* trust or who is an attorney for property must

- i. declare to the Society such trusteeships or powers of attorney at the time of the change to a non-practising membership status, and
- ii. file the appropriate exemption forms each year with LAWPRO to confirm the member's continued status as exempt from payment of insurance premium levies."

25. That report indicates that the insurance program should be structured so that retired members or members who have changed from a practising to a non-practising status, and who continue to act as estate trustee, trustee for *inter vivos* trust, or attorney for property, are exempt from paying insurance premium levies.

26. The Law Society has indicated to LAWPRO that related by-law changes would be presented to Convocation for approval late in 2006, to become effective January 1, 2007.

27. However, to have the insurance program in place for the start of each calendar year, LAWPRO must begin the annual insurance renewal process by early October. To enable LAWPRO to guide lawyers through the process this fall, and help the Law Society realize this proposed change as quickly as possible, we seek some direction as to the general form of by-law changes that will affect the 2007 insurance program.

28. LAWPRO has consulted extensively with the Law Society on the proposed form of changes in by-law. The following proposed changes provide for a new form of exemption under the program. As with most other categories of exemption, members electing this form of exemption who wish to provide legal advice or services on a *pro bono* basis to or on behalf of non-profit organizations, would have to specifically indicate their intention to do so by application to the Law Society and LAWPRO. LAWPRO will accommodate such applications upon the proposed by-law changes being passed and approved by Convocation.

29. Accordingly, pending approval of these by-law changes later in the year, it is appropriate that LAWPRO manage the program on the basis of the following recommended changes to By-Law 16 of the *Law Society Act*, R.S.O. 1990, c. L.8:

- a) That subsection 9(1) be amended as follows<sup>2</sup>:
  - "9. (1) The following are eligible to apply for exemption from the payment of insurance premium levies:
    - 6. Any member who, during the course of the year for which a levy is payable, is named, or acts in the capacity of, estate trustee for *inter vivos* trust, or attorney for property, as residual work from the member's past practice in Ontario,
      - i. and will not otherwise engage in the practice of law in Ontario, or
      - ii. who otherwise qualifies for exemption from payment of insurance premiums levies under paragraph 3, 4 or 5, and will not engage in the practice of law in Ontario other than as provided for under this

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<sup>2</sup> By-Law 16 is set out in its entirety in its existing form, in Appendix "D" of this report.

paragraph or paragraph 3, 4 or 5 for which the member would otherwise qualify.”

- b) That subsection 9 (1.1), allowing for certain legal advice or services to be provided on a *pro bono* basis to or on behalf of non-profit organizations by a member even though on exemption, be amended to also refer to and apply in the case of paragraph 6 of subsection (1).

30. The LAWPRO Board confirms its intention that the company make available an optional professional liability insurance program to lawyers electing exemption on the basis of their continuing to act in the capacity of estate trustee, trustee for *inter vivos* trust, or attorney for property, as residual work from the lawyer's former law practice.

31. Under this optional program, protection provided under the basic Run-Off or optional Run-Off Buy-Up coverage would also apply to the member's ongoing activities as estate trustee, trustee for *inter vivos* trust, or attorney for property.

32. This extended protection would be offered on an individual lawyer basis, and in respect of one or more matters. It would only be intended to apply to residual work from the lawyer's former law practice.

33. This optional coverage would not be provided for trusteeships or estates of family members of the lawyer, or for any dishonest, fraudulent, criminal or malicious act or omission of the lawyer. In these instances, recourse may be available to the Lawyer's Fund for Client Compensation.

34. Applications would be individually underwritten, with available terms and premium varying by account. LAWPRO expects premiums for extended protection under the basic \$250,000 per claim and aggregate Run-Off limits would start at a single premium payment of about \$400.

35. This optional program would be available effective January 1, 2007, upon introduction of the proposed program exemption, and would be open to competition from other insurance providers. Lawyers would not be obliged to apply for this extended protection, nor would LAWPRO be obliged to provide this extended protection when applied for.

#### Changes in Exemption for the Territorial Mobility Agreement

36. It is proposed that the current mobility exemption under the program be expanded to provide for the exemption of Law Society members exercising their permanent mobility rights under the Territorial Mobility Agreement ("TMA"), and not just those exercising their permanent mobility rights under the National Mobility Agreement ("NMA").

37. In June 2006, Convocation approved the TMA and authorized the Law Society to become a signatory to the agreement. The TMA is expected to be signed in November 2006, with by-law amendments implementing the agreement to be presented to Convocation during that month.

38. The NMA was adopted by resolution of the Federation of Law Societies in August 2002, and provides for the temporary and permanent mobility of lawyers within Canada. Eight provincial law societies, including the Law Society of Upper Canada, signed the NMA on

December 9, 2002.

39. The resolution of the Federation of Law Societies adopting the NMA acknowledged that “the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed...but should be undertaken in the future.”

40. The Federation now has approved the TMA, allowing the territorial law societies to participate in the national mobility initiative, to the extent possible for them at this time, given their present circumstances.

41. In the TMA, the signatories agree that the territorial law societies will participate in national mobility as reciprocating governing bodies with respect to permanent mobility only (i.e. the transfer of lawyers from one jurisdiction to another); however, the territorial law societies are not required to participate in the temporary mobility provisions. This agreement is for a period of up to five years, which will allow the territorial law societies to evaluate their ability to become signatories to the NMA. The TMA is to expire on January 1, 2012, with the signatories under no further obligation and with no further rights under the agreement.

42. Once the Law Society of Upper Canada becomes a signatory to the TMA in November this year, the current mobility exemption would be expanded to also provide for the exemption of Law Society members exercising their permanent mobility rights under the TMA. This change to the exemption would be effective January 1, 2007.

43. The mobility exemption aims to avoid any duplication in premium and insurance coverage under the law society programs. In this regard, section 9(1)2.1 of By-Law 16 allows for the exemption of lawyers under the insurance program where the lawyer is resident in a “reciprocating jurisdiction” and demonstrates proof of coverage for the lawyer’s practice in Ontario under the mandatory professional liability insurance program of the reciprocating jurisdiction.

44. With formal execution of the Territorial Mobility Agreement and approval of required by-law changes not expected until late this year but effective January 1, 2007, and implementation of the 2007 insurance program to commence early this October, it is appropriate that LAWPRO proceed to implement the program on the basis that the current mobility exemption is expanded for 2007 to also provide exemption for Law Society members exercising their permanent mobility rights under the Territorial Mobility Agreement.

#### Protection Against Misappropriations During Mobility

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

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

- uniform protection for all Canadian lawyers,



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

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

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

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

49. To help establish an appropriate limit of liability, the various jurisdictions now are obtaining actuarial assessments of their respective compensation fund loss experience.

50. Once they have agreed on a limit, law societies in each jurisdiction would determine how best to provide the agreed-on mobile uniform protection. For Ontario lawyers, LAWPRO may provide this protection through a restricted form of innocent party coverage under the insurance program, to the extent that lawyers exercise their mobility rights in other Canadian jurisdictions.

51. This protection likely would form part of the base insurance program and would be funded through the base-rated premiums. The cost of this added exposure to the program is not expected to be significant, not just because of the early stage of mobility within Canada, but also because of the areas of practice that most lend themselves to mobility, and the precautions in place under the mobility initiative in respect of trust accounts.

52. For example, the most prevalent areas of practice in Ontario involving lawyer misappropriations are real estate practices, and wills and estates practices, which together account for about 90 per cent of claim costs under the Lawyers' Fund for Client Compensation.

Proportion of Lawyer Misappropriation Claim Costs, 2002-2006  
Source: Lawyers' Fund for Client Compensation

(See graph in Convocation Report)

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

54. To better assess and monitor the exposure associated with any proposed mobile uniform protection, it is important to understand the degree to which Ontario lawyers are exercising their mobility rights and in respect of what areas of practice. This information is now being gathered through amendment to the Member's Annual Report form in relation to 2005, which lawyers are required to have filed by March 31, 2006. LAWPRO expects to receive this information from the Law Society in electronic form shortly.

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

### PART 3 — THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

56. The program appears to be on track for 2006, with LAWPRO currently performing at or better than budget. An important reflection of the current program's success is the consistent "A" (Excellent) rating that LAWPRO has received from A.M. Best Co. for each of the last six years.

57. To date, investment returns and revenue from transaction levies are better than projected, driven largely by a robust economic climate and continued strong real estate market.

58. However, the stable loss experience of the last few years has deteriorated. Recent statistics indicate an increase in the number of claims involving \$100,000 or more (as seen below) and an overall increase in claims severity (cost per claim). As well, the number of real estate claims reported, and costs attributed to these claims, has increased noticeably.

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

(See graph in Convocation Report)

59. To establish the recommended base levy for 2007, the LAWPRO Board considered several factors:

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

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

61. Proposed changes for the 2007 program, including adjustments to the billing volume criteria for the optional part-time practice discount, and changes in program exemption criteria, should have a relatively minor impact in setting the base rate.

62. The LAWPRO Board therefore advises that the base insurance premium for the program for 2007 should be reduced by \$100 to \$2,600 per lawyer, to give credit for the superior investment income. However, the higher claims costs noted above may require an increase in the base rate in future years.

63. The Board is satisfied that this adjustment in base rate appropriately recognizes recent favourable results, while ensuring that the program continues to operate on a self-sustaining basis, and protecting the company's sound financial position on the whole.

#### Premiums – Costs, revenues and pricing

64. LAWPRO's revenue requirements for the 2007 insurance program are based on the anticipated cost of claims for the year, and the cost of applicable taxes and program administration. We estimate total program funds required in 2007 at \$81.5 million. This is consistent with the current forecast for the 2006 program, which is up \$3 million from the \$78.5 million originally estimated for that year. The primary reason for this increased premium requirement is the recent program loss experience signaling an overall increase in the severity of claims.

65. As the following graph illustrates, claims costs for 2007 are estimated at \$71 million, an increase of \$3 million from the \$68 million estimated for the 2006 program at this time last year.

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

(See graph in Convocation Report)

66. As in past years, premium revenues to meet our fiscal requirements for 2007 will come from three principal sources: the base premiums, levy surcharges, and the Premium Stabilization Fund. The projected insurance revenues from these three sources are as follows.

#### Premium Revenues, by Source (\$000's)

(See graph in Convocation Report)

#### a) *Levy surcharges:*

67. Based on recent forecasts published by Canada Mortgage and Housing Corporation (CMHC), residential sales are expected to decline by approximately 5 per cent in 2007. Ontario housing starts are expected to drop by 13 per cent from 2005 levels.

68. The levy surcharges include a \$50 transaction levy paid by lawyers for each prescribed real estate and civil litigation transaction in which they are involved, as well as a claims history levy surcharge<sup>3</sup>. Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

69. For 2007, LAWPRO estimates transaction and claims history levy surcharge revenues at \$22.5 million. This is down from an expected \$23.5 million now forecasted for 2006, although above the \$21.0 million original forecast for that year. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while real estate transaction levies have

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<sup>3</sup> The claims history levy surcharge ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice, to \$25,000 for a lawyer with five claims paid in the last five years in practice (an additional \$10,000 is levied for each additional claim paid in excess of five).

declined 20 per cent since 1999, despite an increase in residential real estate activity of 30 per cent during the same period.

#### Number of Levies v. Real Estate Transactions (Units)

(See graph in Convocation Report)

70. The increased use of title insurance is considered to be largely responsible for the reduction in real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer. It is estimated that well over 90 per cent of residential real estate transactions now handled in Ontario are title-insured.<sup>4</sup>

71. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, we have taken a conservative approach to estimating revenues from levy surcharges. As well, the continuing incidence and costs of fraud-related claims<sup>5</sup> continues to warrant attention and concern.

72. The use of transaction levies ensures an element of risk rating in the insurance program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995. (Risk rating is discussed in more detail in paragraphs 95 to 123 of this report).

#### *b) Premium Stabilization Fund:*

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

74. As well, through the use of a refund of premium provision in the policy, any surplus in funds resulting from claims costs being lower than budgeted are similarly transferred to the Premium Stabilization Fund for future insurance purposes. This return of premium provision, which has been in place since the 2000 policy period and considers premiums and claims costs under the program since the 1995 policy year, has generated a total of \$35.9 million in return premiums.

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<sup>4</sup> LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy filings.

<sup>5</sup> Fraud-related claims by "clients" represents more than 4 per cent of the number of claims and 11 per cent of the costs for 2006 reported claims, which compares to 6 per cent and 12 per cent respectively for claims reported in 2005.

75. At June 30, 2006, the Premium Stabilization Fund balance was \$32.5 million. The current forecast would see \$28.6 million in the Fund as at December 31, 2006. LAWPRO advises that \$8.4 million (about \$400 per insured lawyer) would be drawn from that surplus and applied towards the 2007 program.

76. This represents a little less than one third of the anticipated balance of the Fund as at December 31, 2006. Similar draws are forecast for the 2008 and 2009 budget years. Although the balance in the fund is expected to continue to decline over time, as draws exceed declining contributions in the form of surplus transaction levies and return of premiums in profitable years, the fund is expected to continue to offer a significant source of stability and revenue in determining the base rate in the short term.

*c) Base premiums*

Base Premium, by Fund Year

(See graph in Convocation Report)

77. For 2007, the LAWPRO Board advises that the base premium is to be decreased by \$100, or about 3.7 per cent to \$2,600 per member. As illustrated in the graph on the previous page, the base rate has varied from \$5,600 per lawyer in 1995 to \$2,500 per lawyer in 2004. The proposed base premium is based on the following assumptions:

- 20,900 practising insured lawyers (full-time equivalents);
- \$71 million in anticipated total loss costs;
- \$22.5 million in budgeted transaction and claims history levy revenues;
- \$8.4 million drawn from the Premium Stabilization Fund; and
- 5 per cent return on investment.

78. Although the number of lawyers in practice year over year has grown steadily by one to two per cent, there has not been a corresponding increase in the number of claims. Between 1995 and 2003, an additional 1,900 lawyers came into practice over this time, while the number of claims per thousand lawyers decreased to 90 from 129. This factor has contributed to stable claims costs, and enabled LAWPRO to gradually reduce premiums over the 1995-2003 period. However, the most recent loss experience signals an overall increase in the severity of claims. To date in 2006, the number of reported claims has also trended upwards.

79. Our forecast for 2007 reflects these trends, and takes a conservative approach to projecting the frequency and cost of claims under the program. Uncertainties associated with predicting trends, as well as any uncertainties in anticipating claims associated with recommended program changes, and general economic and inflationary pressures on the program, dictate this prudent approach.

80. Despite the increased penetration of title-insured transactions since 1996, real estate losses still account for about 37 per cent of claims costs. We do not expect to see this number fall significantly, largely because residential real estate prices have doubled in the last decade. It is interesting to note that title insurers reported \$48.5 million in claims costs in Ontario in 2005.

81. In setting a base rate for 2007, LAWPRO looked at a three-year planning horizon. Various scenarios were modeled for the three-year period to test the proposed rate structure. Under a "status-quo" type scenario, with a similar level of subsidization from the Premium

Stabilization Fund level of subsidy in each of the three years<sup>6</sup>, the base premium remains constant over the period. Many factors influence this forecast, most significantly interest rates and claims experience. This forecast should be considered illustrative, rather than definitive in nature.

82. Accordingly:

- a) The base premium is decreased by \$100 to \$2,600 per lawyer for 2007, from the \$2,700 per lawyer charged in 2006.
- b) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at \$22.5 million for the purposes of establishing the base premium for 2007 and other budgetary purposes.
- c) \$8.4 million (approximately \$400 per insured lawyer) will be drawn from the Premium Stabilization Fund built up in previous years (a \$28.6 million balance is forecast as at December 2006) and applied to the 2007 insurance premium.
- d) To the extent that levies [noted in (b) above] collected in 2007 are different than the budgeted amount, the surplus or shortfall will flow to/from the Premium Stabilization Fund.

#### Reinsurance

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

84. Accordingly, the Board proposes that LAWPRO not pursue the expensive course of purchasing reinsurance on a program-wide basis. Instead, as has been done in the last four years, the retroactive premium endorsement would be used to backstop the capital held in LAWPRO with the Premium Stabilization Fund/E&O Surplus, to a maximum of \$15 million in the event that claims experience is outside of the expected range of outcomes.

85. For 2007, LAWPRO will consider purchasing reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005. This protection against aggregated losses extends across both the professional liability and TitlePLUS programs, and offers some measure of protection against a series of claims such as fraud-related claims relating to a single lawyer, or a single defect in title affecting an entire condominium project.

86. Accordingly, 100 per cent of the premiums and losses for the Ontario professional liability program again will be retained by the company in 2007, subject to reinsurance protecting the program from aggregated losses.

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<sup>6</sup> Assumptions:

- Investment returns during the period have been projected at 5 per cent per annum.
- The number of practising lawyers is expected to grow approximately 2 per cent per annum.
- Claims costs are expected to increase by \$3 million to \$71 million annually.

## The 2007 program

87. With the exception of the proposed policy and exemption changes detailed earlier, all aspects of the insurance program for 2007 would remain unchanged from that now in place.

88. As detailed in Appendix A, the current insurance program for lawyers in private practice encompasses the following:

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

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

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a “no application form” surcharge.

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

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

91. Lawyers renewing their insurance applications online this fall will benefit from several enhancements including online access to their policy status information, their financial account information, as well as the status of their application and transaction levy filings.

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

93. All practising lawyers will be able to easily access their 2007 policy documentation and invoices online through a secure section of the LAWPRO website. As in the past, lawyers again can opt for hard copies of these materials.

94. Subject to the changes identified earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2006 will remain unchanged for the 2007 insurance program.

## Risk Rating

### *a) Background*

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

96. Specifically the Report indicated that "... as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."<sup>7</sup>

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

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

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

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

101. This review reaffirmed the validity and magnitude of the rating structure currently in place. No changes to the type or amount of surcharges or discounts, as a percentage of the base rate, are contemplated for 2007. The results of the customary re-evaluation of the earlier risk analyses are addressed in this report at paragraphs 95 to 123.

#### *b) Practice trends*

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

- Overall, the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with these two areas of practice representing 62 per cent of the claims reported and 64 per cent of the claims costs under the program in 2005;

However:

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<sup>7</sup> 1994 Task Force Report, at page 17.



- a) While the exposure relating to the practice of real estate law was less than it had been at its peak<sup>8</sup>; last year, this practice area accounted for 29 per cent of the claims reported and 37 per cent of the claims costs under the program, up from the 29 per cent of costs reported in 2004.
- b) In 2005, the exposure relating to the practice of civil litigation has again been substantially more than that traditionally seen, with civil litigation accounting for 32 per cent of the claims reported and 27 per cent of the claims costs under the program (well above the traditional levels of 27 per cent and 18 per cent seen in the 1989-94 period);
- c) In 2005, the nature of claims against civil litigators was also reaffirmed, with claims involving the general conduct or handling of the matter at 75 per cent compared to purely missed limitation period claims at 25 per cent; and
- d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers; lawyers with claims in the prior ten years were three times as likely as those with no claims in the prior ten years to report a claim during the past year.

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

*c) Risk management initiatives*

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

- *TitlePLUS®*: Now in its ninth year, LAWPRO's successful title insurance program has had a significant impact on both real estate practice and real estate claims. Real estate claims in 2005 cost the program between \$6 million and \$8.5 million less than they did in 1996 – a decline that can be attributed to changes in the lawyers' practice environment and the insurance program, and to widespread acceptance of title insurance. In 2006 we launched a "Lawyers in Conveyancing" initiative, which involves a print and media campaign highlighting the role of lawyers and TitlePLUS insurance. This initiative includes the development of a consumeroriented, online Real Simple Real Estate Guide which helps educate buyers about what to expect in real estate transactions and the role a lawyers plays in the transaction.
- *practicePRO®*: Now in its eighth year, LAWPRO's successful risk management and claims prevention initiative continues to grow and mature. It is a recognized source of high-quality risk management tools and resources, both inside and outside of Ontario. practicePRO has been active in helping lawyers avoid malpractice claims during the course of this year through its managing series of booklets (the eighth in the series, on *managing a better professional services firm* was released in 2006), articles in LAWPRO Magazine and other publications, and live presentations and/or an exhibitor presence at

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<sup>8</sup> 48 per cent and 58 per cent seen in the 1989-94 period.

CLE programs and other law-related events. practicePRO continues to build a significant presence in the legal community by expanding relationships and actively working with its various constituents, including the Law Society of Upper Canada, the Ontario and Canadian Bar Associations, The County and District Law Presidents' Association, The Advocates' Society, the Carleton County Law Association and others.

- *Electronic Discovery*: The widespread use of computers, e-mail and the internet have made e-Discovery a hot topic for litigators, corporate lawyers and others who deal with electronic records and information. In the September 2005 issue of LAWPRO Magazine, LAWPRO led the charge, making Ontario lawyers aware of the many and far-reaching implications of electronic discovery. Supplementing the magazine are an e-Discovery reading list and case law digest, both of which are being actively updated and are being widely used and referred to by members of the profession. Through participation on a sub-committee of the Discovery Task Force, practicePRO helped create practical guidelines to help lawyers deal with issues that arise while conducting electronic discoveries.
- *Delivering Better Client Service*: Helping lawyers avoid malpractice claims by teaching them how to provide better client service is a primary focus of the practicePRO initiative. The Winter 2006 issue of LAWPRO Magazine included the eighth “*managing*” booklet, *managing a better professional services firm* booklet. Both the magazine and booklet reviewed how lawyers can provide superlative client service, better communicate with clients, evolve and improve a practice and clientele, enhance personal and firm marketing efforts, explore alternatives to the billable hour, and make greater use of technology.
- *Work and Wellness*: Lawyers are exposed to high levels of stress on a daily basis, with the result that many suffer from substance abuse problems and challenges to physical or mental wellness. Stress is also a contributing factor in many LAWPRO claims. The Summer 2006 issue of LAWPRO Magazine focused on the issue of work and wellness for lawyers. It included articles on how to deal with stress and burnout, how to find balance, how to recognize the first signs of potential trouble, and how to integrate exercise into a hectic lifestyle. The magazine also highlighted the health- and balance-related tools and resources available through the Ontario Lawyers' Assistance Program (formerly OBAP/LINK) and on the practicePRO website.
- *Fraud*: LAWPRO continues to take steps to combat fraud through measures within its own operations, its relationship with the profession, and by working with law enforcement, registry, banking, insurance and other organizations and industries also affected by fraud. An article on how to “fraud-proof” your practice in the Winter 2006 issue of LAWPRO Magazine served to keep fraud-avoidance on the minds of Ontario lawyers, and built upon the information provided to lawyers in the 2001 Special Report on Fraud and the June 2004 “*Focus on Fraud*” issue of LAWPRO Magazine.

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

106. The premium credit was broadened in the following year to provide a \$50 credit (to a maximum of \$100 per lawyer in a year) for designated law-related courses and programs

completed by the lawyer. These courses are offered by the Law Society, Ontario Bar Association, The Advocates' Society and other organizations, and must include a substantial risk management component. Much of the risk management content deals with the "soft" skills of lawyering — communication, documentation, and time management rather than substantive law, in keeping with the most frequent causes of loss.

107. For a credit on premiums for 2007, lawyers must have participated in LAWPRO-approved CLE programs between September 16, 2005, and September 15, 2006. In addition to the Online Coaching Centre, 145 programs qualified for the credit during this period, with an estimated 17,100 lawyers eligible for a premium credit. Traditionally, CLE programs focused solely on substantive law. Due to the CLE credit, the content of a significant number of programs has been broadened to include risk management and claims prevention content.

108. Accordingly, the Continuing Legal Education Premium Credit will be continued for the 2008 program, with a \$50 premium credit per course, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational courses taken and successfully completed by the member between September 16, 2006 and September 15, 2007, for which the lawyer has successfully completed the online CLE Declaration Form.

*d) Revalidating risk rating*

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

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

(See graph in Convocation Report)

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

111. The fact that few lawyers practise exclusively in one area provides a compelling reason to group together common or related areas of practice. However, to ensure that risk rating is being achieved, the program's anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program in 2005 and the first six months of 2006), the following charts compare the anticipated losses distributed by area of law, to the proposed base levy premiums by area of practice. The following chart allocates the base levy premiums by the lawyer's primary area of practice. The premiums in this chart includes only the proposed base levy premiums (together with discounts), and no amounts applied as transaction levies and claims history surcharges.

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

*Comparison of Projected 2007 Premium by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law*

(See graph in Convocation file)

113. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, base premium levies of about \$10,000 and \$4,200 would be required of members whose primary area of practice is real estate or civil litigation, respectively.

114. Past reports have discussed the importance of using the transaction and claims history surcharge levies as premium, to avoid any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.<sup>9</sup>

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

116. To compare the actual claims experience of lawyers to revenues received from those lawyers, the following chart compares the anticipated premiums (with the transaction and claims history levies) sorted by the lawyer's area of practice, and compares this to the anticipated claims costs and expenses of these lawyers. Claims history surcharge levies are grouped in proportion to the claims reported by area of practice in 2005 and 2006; real estate transaction levies are entirely allocated to real estate and civil litigation transaction levies are allocated to the litigation category.

Comparison of Projected 2007 Premium + Levies by Lawyer's Primary  
Area of Practice to Claims and Expenses by Claim's Area of Law

(See graph in Convocation Report)

117. This comparison indicates that with the benefit of the transaction and claims history surcharge levies, there is a substantial correlation between revenues and claims.

118. However, the graph does indicate some subsidy by area of practice. This subsidy changes somewhat over time. For lawyers whose area of practice is classified as "All Other," premiums somewhat exceed losses. Lawyers in the real estate area of practice, on the other hand, currently have claims that exceed premium. Yet, as illustrated in the 2002 Report to Convocation, premium generated by real estate practice at times exceeds the cost of real estate claims. Whether real estate practice in a given year subsidizes other areas of practice depends on where that year resides in the economic cycle.

119. Appreciating the foregoing variables and possibilities of comparison, by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year. Although a small amount of subsidy may exist for some areas of practice, taking into account the commercial realities and the relatively small amount of the subsidy, the cost of insurance under the program is considered to

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<sup>9</sup> 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-37; and 1996 LAWPRO Report to Convocation, pp. 32-36.

generally reflect the risk. Notably, the Task Force Report acknowledged that "...no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."<sup>10</sup>

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

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

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

123. Various examples of premiums which would be charged to members depending upon the nature of their practice are summarized in Appendix C of this Report.

## CONCLUSION

124. The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LAWPRO Board offers this program of insurance for 2007 and asks for Convocation's acceptance of this report at the September Convocation, so that the 2007 insurance program can be implemented by January 1, 2007.

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

September, 2006

Kim A. Carpenter-Gunn

Chairman, LAWPRO's Board of Directors

## APPENDIX A

- Standard Program Summary & Options

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<sup>10</sup> 1994 Task Force Report, at page 17.

## Appendix "A"

The Standard Insurance Program Coverage for 2007
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*Eligibility*

- Required for all sole practitioners, lawyers practising in association or partnership, and lawyers practising in a Law Corporation, who are providing services in private practice.
- Available to other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who opt to purchase the insurance coverage.

*Coverage limit*

- \$1 million per CLAIM/\$2 million aggregate (i.e. for all claims reported in 2007), application to CLAIM expenses, indemnity payments and/or cost of repairs together

*Standard DEDUCTIBLE*

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

*Standard base premium*

- \$2,600 per insured lawyer

*Transaction Premium Levy*

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

*Premium reductions for new lawyers*

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

*Mandatory Innocent Party Coverage**Eligibility*

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

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

### *Premium*

\$250 per insured lawyer

2007 Program Options
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#### 1. Deductible option

##### *\$Nil deductible*

- Increase in premium equal to 15 per cent of base premium (\$390.00 increase).

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

- Increase in premium equal to 7.5 per cent of base premium (\$195.50 increase).

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

- Increase in premium equal to 12.5 per cent of base premium (\$325.00 increase).

##### *Standard insurance program: \$5,000 deductible applicable to CLAIM expenses, indemnity*

##### *payments and/or costs of repairs together*

- Base premium of \$2,600 per insured lawyer.

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

- Increase in premium equal to 10 per cent of base premium (\$260.00 increase).

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

- Decrease in premium equal to 7.5 per cent of base premium (\$195.00 decrease).

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

- Increase in premium equal to 7.5 per cent of base premium (\$195.00 increase).

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

- Decrease in premium equal to 12.5 per cent of base premium (\$325.00 decrease).

#### 2. Innocent Party Sublimit Coverage Options

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

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

Innocent Party Coverage in two ways:

Increase coverage sublimit to:

Additional annual premium:

\$500,000 per CLAIM/aggregate

\$150 per insured lawyer

\$1 million per CLAIM/aggregate

\$249 per insured lawyer

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

#### *Coverage limits*

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

### 3. Practice Options

#### *Restricted Area of Practice Option*

##### *Eligibility*

Available only to lawyers who agree to restrict their practice to criminal<sup>11</sup> and/or immigration law<sup>12</sup> throughout 2007.

##### *Premium*

Eligible for discount equal to 40 per cent of base premium, to a maximum of \$1,040.<sup>13</sup>

#### *Part-Time Practice Option*

##### *Eligibility*

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

##### *Premium*

Eligible for discount equal to 40 per cent of base premium, to a maximum of \$1,040.<sup>15</sup>

### 4. Premium Payment Options

#### *Instalment Options:*

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

<sup>11</sup> Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government, for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

<sup>12</sup> Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining thereto, including admissions, removals enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

<sup>13</sup> The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Practitioners' discount combined cannot exceed 40 per cent of the base premium.



- Quarterly instalments
  - Monthly instalments
5. E-filing Discount
- \$50 per insured lawyer (if filed by November 1, 2006)
6. Continuing Legal Education (Risk Management) Premium Credit
- \$50 per course, subject to a \$100 per insured lawyer maximum discount, will be applied under the 2008 insurance program.
  - For pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2006, and September 15, 2007, where the lawyer completes and files the required LAWPRO CLE electronic declaration by September 15, 2007.
  - LAWPRO'S Online Coaching Centre is included as a pre-approved course, where the insured lawyer completes at least three modules between September 16, 2006, and September 15, 2007.

## APPENDIX B

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

(See graphs/charts in Convocation Report)

## APPENDIX C

(See chart in Convocation Report)

## APPENDIX D

Section 9 (1) of By-Law 16 of the <i>Law Society Act</i>	59
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### BY-LAW 16

Made: January 28, 1999

Amended:

February 19, 1999

April 30, 1999

May 28, 1999

September 24, 1999

September 19, 2002

June 26, 2003  
September 25, 2003  
September 22, 2005

## PROFESSIONAL LIABILITY INSURANCE LEVIES

Interpretation: "Society's insurance plan"

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

Interpretation: engaging in practice of law

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

Requirement to pay insurance premium levies

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

Same

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

Insurance premium levies

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

Time for payment of insurance premium levies

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

Same

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

Period of default

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

Payment plan: deemed date of failure to pay

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

#### Reinstatement of rights and privileges

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

#### Refund of unearned portion of insurance premium levy

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

#### Society's insurance fund

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

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

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

#### Eligibility for coverage

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

#### Application for coverage

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

#### Exemption from payment of insurance premium levies

9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:

1. Any member who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario.
2. Any member who, during the course of the year for which a levy is payable,
  - i. will be resident in a Canadian jurisdiction other than Ontario,
  - ii. will engage in the practice of law in Ontario on an occasional basis only, and
  - iii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be reasonably comparable in

coverage and limits to professional liability insurance that is required under the Society's insurance plan.

- 2.1 Any member who, during the course of the year for which a levy is payable,
  - i. will be resident in a reciprocating jurisdiction, and
  - ii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of the reciprocating jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.
  
3. Any member who, during the course of the year for which a levy is payable,
  - i. will be employed by a single employer,
  - ii. will provide legal service only for and on behalf of the employer as,
    - A. counsel or solicitor to the Government of Canada or the Government of Ontario,
    - B. a Crown Attorney,
    - C. counsel to a corporation other than a law corporation, or
    - D. a city solicitor, and
  - iii. will not engage in the practice of law in Ontario so as to provide legal services to persons other than the employer.
  
4. Any member employed as a law teacher who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario so as to provide legal services other than teaching.
  
5. Any member who, during the course of the year for which a levy is payable,
  - i. will be employed or volunteer in a clinic within the meaning of the *Legal Aid Services Act*, 1998, a student legal aid services society or an Aboriginal legal services corporation, that is funded by Legal Aid Ontario, but will not be directly employed by Legal Aid Ontario,
  - ii. will provide legal service only through the clinic, student legal aid services society or Aboriginal legal services corporation to individuals in communities served by the clinic, student legal aid services society or Aboriginal legal services corporation and will not otherwise engage in the practice of law in Ontario, and
  - iii. demonstrates proof of coverage for the provision of such legal service under a professional liability insurance policy issued by a licensed insurer in Canada, such coverage to be at least equivalent to that required under the Society's insurance plan.

Same

(1.1) A member who is exempt from payment of insurance premium levies under paragraph 1, 2, 2.1, 3, 4 or 5 of subsection (1) continues to be exempt from payment of insurance premium levies even though he or she engages in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies if the following conditions are met:

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

Interpretation: occasional practice of law

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

- (a) practises law in respect of not more than ten matters; and
- (b) practises law for not more than twenty days in total.

Interpretation: "reciprocating jurisdiction"

(2.1) In subsection (1), "reciprocating jurisdiction" means a Canadian jurisdiction other than Ontario,

- (a) which is a signatory to the agreement on the inter-provincial practice of law originally entered into in December 2002 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Nova Scotia Barristers' Society and the Law Society of Newfoundland;
- (b) in which a member is authorized to practise law; and
- (c) which would exempt the member from its mandatory professional liability insurance program if the member were resident in Ontario and demonstrated proof of coverage for the member's practice in the jurisdiction under the Society's insurance plan which was reasonably comparable in coverage and limits to the professional liability insurance that would otherwise be required of the member by the jurisdiction.

Interpretation: "employer"

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

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

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

Interpretation: "resident"

(5) In subsection (1), "resident" has the same meaning given it for the purposes of the *Income Tax Act* (Canada).

Exemption from payment of insurance premium levies: honorary members

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

Commencement

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

It was moved by Ms. Carpenter-Gunn, seconded by Ms. Pawlitza, that the Report be accepted so that the 2007 insurance program can be implemented by January 1, 2007.

Carried

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Amendments to By-Law 17 Respecting the Member's Annual Report

Re: Amendments to Rules 1.02, 3.02(4), 3.03(1) of the Rules of Professional Conduct

Mr. Ruby presented the Professional Regulation Committee Report.

Report to Convocation  
September 28, 2006

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Professional Regulation Committee

Committee Members  
Clayton Ruby, Chair  
Laurence Pattillo, Vice-Chair  
Heather Ross, Vice-Chair  
Anne Marie Doyle  
George Finlayson  
Alan Gold  
Allan Gotlib  
Gary Gottlieb  
Paul Henderson  
Ross Murray  
Sydney Robins  
Robert Topp  
Roger Yachetti

Purposes of Report: Decision and Information

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

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Professional Regulation Division Quarterly Report (April to June 2006)

*In Camera* Report

## COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on September 14, 2006. In attendance were Clayton Ruby (Chair), Lawrence Pattillo and Heather Ross (Vice-chairs), Anne-Marie Doyle, Allan Gotlib, Gary Gottlieb, Paul Henderson and Sydney Robins. Staff attending were Naomi Bussin, Lesley Cameron, Donna Farquharson, Mark Goodman, Terry Knott, Zeynep Onen, Niloo Vahabzadeh, and Jim Varro.

# AMENDMENTS TO BY-LAW 17 RESPECTING THE MEMBER'S ANNUAL REPORT

## Motion

2. That By-Law 17 [Filing Requirements] made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, May 28, 1999, October 29, 1999, January 27, 2000, June 22, 2000, October 19, 2000, April 26, 2001, October 25, 2001, October 31, 2002, September 25, 2003, October 28, 2004 and September 22, 2005 be further amended by revoking Form 17A and substituting the following:

## Background and Nature of the Amendments

3. By-Law 17 governs the filing of the annual information report by members with respect to their practices and related activities, including trust account holdings.
4. Section 2 of the By-Law reads:
  2. (1) Every member shall submit a report to the Society, by March 31 of each year, in respect of the member's practice of law and other related activities during the preceding year.

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

5. In an effort to improve the form, the integrity of the information sought through the Member's Annual Report (MAR) and its "user-friendly" component, staff in the Law Society's Administrative Compliance Processes department, under the direction of Terry Knott and in consultation with staff, including senior managers, review the MAR annually and bring forward to the Committee suggested changes to the MAR.
6. The Committee has reviewed these changes, explained in the chart that follows on the next page, and recommends that Convocation adopt them.
7. The amended prescribed MAR (Form 17A), which as a prescribed form does not include references to a particular year, appears in the motion at paragraph 2 in English and French.
8. The amended MAR with references for the 2006 filing year, which is the form members will receive, appears after the chart.

#### Explanation of Changes to the 2006 MAR

Question on the MAR	Nature of Change
Front Page/Section A: "YOU MAY FILE THIS REPORT ELECTRONICALLY AT: <a href="https://eforms.lsuc.on.ca">https://eforms.lsuc.on.ca</a> "	This sentence has been capitalized, bolded, highlighted and moved from the centre of the paragraph to the beginning in an effort to encourage electronic filing.
Page 1 – Non-Mandatory Survey Questions	The "Continuing Legal Education" survey question on the 2005 MAR has been removed.
Page 2 – Year End Status/Section B:	Members in the following three categories are now required to "Complete if Applicable" Sections C and/or D:  "A lawyer practicing law outside of Ontario" Explanation: A member may have practiced law within Ontario at some point during 2006, and Section D may apply.  "Not working or on parental leave or unemployed" Explanation: A member may enter a non-working status at any point during the calendar year. Some members who do so may have practiced law for the majority of the year.  "Suspended" Same reason as above.
Pages 2 and 3 – Areas	For clarity, the following changes are being made:



of Practice/Section D:	<p>The instruction box formerly read:</p> <p>“To be completed by all members engaged in the private practice of law, and all members not engaged in private practice, but who provided legal services in the course of their employment or engagement in [insert year].”</p> <p>It has now been expanded as follows:</p> <p>“To be completed by all members resident in Ontario in 2006, who engaged in the private practice of law at the time, or did not engage in the private practice of law at the time but provided legal services in the course of their employment or engagement in 2006.</p> <p>Other members, including those resident and practicing in Canada, but outside of Ontario throughout 2006, and those resident and practicing outside of Canada throughout 2006, should omit this section and proceed to section ‘E’.”</p> <p>A new NOTE has been added:</p> <p>“Questions in this section relate only to your law practice while resident in Ontario in 2006. “Resident” as used in this section, has the same meaning given it for the purposes of the <i>Income Tax Act</i> (Canada).”</p>
Page 5 – Individual Member Questions/Section F:	<p><u>Cash Transactions Questions:</u></p> <p>Within the title heading for question 1, the following specific instruction has been added:</p> <p>Members must report on large cash transactions regardless of jurisdiction of practice”.</p> <p>anti-money laundering rules for lawyers are consistent across the country, a member should answer this question with respect to his or her practice of law anywhere.</p> <p>Question 1:</p> <p>As a result of calls from members on the scope of the question, which read: “Did you receive cash in the amount of \$7,500.00 or more in any one client matter or transaction during the 2005 calendar year?”, the question has been amended to ask:</p> <p>“Did you receive cash in an aggregate amount equivalent to \$7, 500.00 CDN or more in respect of one client file during the 2006 calendar year?”</p> <p>The question relates only to currency. A definition of cash will appear in the 2006 Member’s Annual Report Guide.</p>

	<p><u>Trust Property Questions</u></p> <p>Questions 2a) and b)</p> <p>These questions have been expanded to capture members who have signing authority over their firm's trust accounts, but also physically accepted a cheque, cash or other trust property from the client to be deposited into the firm's trust account, or for safekeeping by the firm.</p> <p>Question 2a) now reads:</p> <p>"In 2006, did you receive trust funds* and/or trust property* on behalf of your firm in connection with the practice of law in Ontario?"</p> <p>Question 2b) now reads:</p> <p>"In 2006, did you disburse, or did you have signing authority to disburse, trust funds* or trust property* on behalf of your firm in connection with the practice of law in Ontario?"</p> <p><u>Estates and Powers of Attorney Questions</u></p> <p>Question 3a)i):</p> <p>No changes were made to the wording of this question, but the numbering for 3a) 3b), and 3c) has been amended.</p> <p>Question 3a)iii):</p> <p>The question has been amended to ask:</p> <p>"As a sole estate trustee for any estate, did you receive, hold*, or disburse estate funds or estate property?"</p> <p>The 2005 Member's Annual Report did not specify that this question related to any estate for which the member may have acted as a sole estate trustee.</p> <p>Question 3a)iv):</p> <p>The question, which read " In 2005, the total number of open estate files was:" has been amended to clarify the applicable time period:</p> <p>"In 2006, the total number of estate files open at any time during the year where you were sole estate trustee was:"</p> <p>Question 3a) vi) vii) 3b) vi) vii) 3c) v) vi):</p> <p>No changes were made to the wording of these questions,</p>
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	<p>but they have been re-formatted to include v), vi) or vii) as part of each individual question.</p> <p>Question 3b)i):</p> <p>As the 2005 Member's Annual Report did not ask the member to specify if the Power of Attorney was for property, the question has been amended as follows:</p> <p>"In 2006 did you exercise a Power of Attorney for property in Ontario?"</p> <p>Question 3b)iii):</p> <p>As the 2005 Member's Annual Report did not ask if the Power of Attorney was for any person, the question has been amended as follows:</p> <p>"In exercising the Power(s) of Attorney for any person, did you receive, hold*, or disburse the donors' funds or property?"</p> <p>Question 3b)iv):</p> <p>The question, which read " In 2005, the total number of files...." has been amended to clarify the applicable time period:</p> <p>"In 2006 the total number of files open at any time during the year in which you exercised a Power of Attorney was:"</p> <p>Question 3c)iii):</p> <p>As the 2005 Member's Annual Report did not specify if the control over estate assets was at any time during the year, the question has been amended as follows:</p> <p>"In 2006, the total number of estate files open at any time during the year in which you were a solicitor with control* over estate assets, but not an estate trustee was:"</p> <p><u>Private Mortgages Questions</u></p> <p>Question 6a):</p> <p>The question has been amended to read:</p> <p>"In 2006, did you act for, or receive money from, a lender who was lending money secured by a charge, or charges on real property, except for transactions listed in subsection 7(2) of By-Law 18 made under the Law Society Act? (Note: For</p>
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	<p>exception 7(2)(i), funds loaned through RRSPs and RSPs belong to the plan holder, not the financial institution)."</p> <p>The amended wording more accurately reflects the wording of section 7(2) of By-Law 18.</p> <p>Question 6a)i) and 6a)ii):</p> <p>These two questions have been amended by adding the word "approximately":</p> <p>"In 2006, approximately how many "private" mortgage loans were advanced?"</p> <p>"In 2006, the approximate total dollar value of "private" mortgage loans advanced was:"</p> <p>For audit purposes, an approximation would assist Society auditors in identifying potential high-risk situations.</p> <p>Question 6b):</p> <p>The following is a new question for the 2006 Member's Annual Report:</p> <p>"In 2006, did you act for a lender, lending money through a mortgage broker?"</p> <p>The purpose is to obtain information on mortgage brokers, as this is an area where Society auditors commonly find that members do not properly report.</p>
<p>Page 7 – Financial Reporting/Section G:</p>	<p>"NOTES ABOUT THIS SECTION" has been condensed. Note #3 has been removed and placed in the Guide as an instruction.</p> <p><u>Question 1</u></p> <p>The question on Trust and General Accounts has been amended to distinguish between trust and general accounts, as noted below.</p> <p>Question 1i):</p> <p>"As at Dec 31, 2006 did you or your firm operate trust accounts in Ontario?"</p> <p style="padding-left: 40px;">If "Yes", proceed to 2.</p> <p style="padding-left: 40px;">If "No", proceed to question 1ii).</p> <p>Question 1ii):</p>

	<p>“As at December 31, 2006, did you or your firm operate a general account?”</p> <p>If “Yes” proceed to complete question 4 (page8), and then proceed to Section H. (page 12)</p> <p>If “No”, proceed to Section H (page 12).</p> <p><u>Question 2i):</u></p> <p>Thfoll This question has been amended and reformatted to direct members to respond appropriately according to their financial reporting requirements.</p> <ul style="list-style-type: none"> <li>• The term Joint Filing will be replaced with Financial Filing.</li> <li>• The term Joint Filing Partner will change to Designated Financial Filing Member.</li> <li>• The declaration will be referred to as Financial Filing Declaration.</li> <li>• The option for the Designated Financial Filing Member to sign individual Member’s Annual Reports is being removed.</li> <li>• The Designated Financial Filing Members must submit a signed Financial Filing Declaration for consistency and to facilitate accurate electronic record keeping for the Society’s internal cross-referencing program.</li> </ul> <p>Reasons for the Changes:</p> <p><i>The</i> The term “Joint Filing” was not well understood by members. The option for the Designated Financial Filing Member to sign individual Member’s Annual Reports is being removed as it is redundant and was confusing for some members.</p> <p>The changes are as follows:</p> <p>“As at December 31, 2006, were you a sole practitioner, or were you the member responsible for filing the trust account information on behalf of your firm in Ontario?”</p> <p>If “yes”, proceed to complete question 4 through 9 (pages 8-11).</p> <p>Note: If you are reporting financial information on behalf of other firm members, you must also submit a Financial Filing Declaration (the declaration is enclosed with your Member’s Annual Report package). Your report is not considered complete without the submission of the Financial Filing Declaration.</p>
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If "No", tell us who will be reporting the financial information on behalf of you, or your firm on lines a) and b) below, and then proceed to Section H (page 12).

Note: The designated financial filing declaration is available to members who are not responsible for filing trust information, and who, as at December 31, 2006, were engaged in the private practice of law, practiced exclusively as an employee (or associate practicing in the manner of an employed lawyer) of a law firm or sole practitioner or partner of a law firm.

See (page ?) of the enclosed "guide" for assistance in completing this section.

PRINT DESIGNATED FINANCIAL FILING MEMBER'S  
NAME & LAW SOCIETY MEMBER NUMBER

a) -----

b) -----

Given Name Surname

e.g. (12345 A)

The member you have named is responsible to file the Financial Filing Declaration indicating that they will be filing firm financial information on your behalf. Your filing will not be considered complete without the submission of the Financial filing Declaration.

#### Question 4:

This question has been expanded so that it reads:

" Were books and records for all your firm's general and/or trust accounts (mixed, separate, estates, power(s) of attorney and other interest generating investments) maintained throughout 2006, on a current basis, in accordance with By-Law 18 (enclosed) made under the Law Society Act?

If "Yes", leave the following schedule blank and proceed to question 5 to report on trust accounts OR proceed to section H if you only operated a general account.

If "No", indicate below which areas were deficient and provide an explanation for each."

Only members who operate general accounts are required to report in question 4.

#### Question 5a)ii):

The Audit Department has added a new question to identify

	<p>the value of the estate assets and isolate potential high-risk audit situations. The new question is:</p> <p>“Of the total mixed trust account balance recorded in 5a i) what is the estimated value of any estate assets:”</p> <p>\$ _ _ _ , _ _ _ , _ _ _ . _ _</p> <p><u>Question 5d):</u></p> <p>In 2005 this question included a sub-question asking members to report if client authorization was received for separate interest or income generating investments. This sub-question has been removed as unnecessary.</p> <p><u>Question 6i) and 7i):</u></p> <p>These questions have been re-worded to read in the positive. This also facilitates more accurate programming by error detection. The question after <i>If “Yes”</i> now reads as follows:</p> <p>“ Were the account(s) corrected by December 31, 2006?”</p>
Page 11 – Certification and Signature/Section H:	<p>A new box has been added under the “Mail to” box. This new box contains information with regards to E-Filing. It has been added to remind members of the option to E-File.</p>

AMENDMENTS TO RULES 1.02, 3.02(4) AND 3.03(1)  
THE *RULES OF PROFESSIONAL CONDUCT*

Motion

9. That Convocation make the following amendments to the *Rules of Professional Conduct*:
  - a. Amend the definition of “associates” in rule 1.02 to read “associate” includes:
    - (a) a member who is an employee of the law firm in which the member practises law; and
    - (b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law in which the non-member provides his or her services.
  - b. Amend rule 3.02(4) to add the word “the” before the word “practice”; and
  - c. Amend Rule 3.03(1) by
    - i. adding a new paragraph (c) as follows:

the name of a deceased member of the firm who was qualified to practice law (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or (ii) in a jurisdiction outside of Canada where the law firm carries on its practice;

and

- ii. renumbering existing paragraphs (c) through (n) as (d) through (o).

## Introduction

10. The Committee reviewed two separate matters related to the *Rules of Professional Conduct*. The Committee is proposing that Convocation agree in principle to the amendments to the Rules described in paragraph 9. Thereafter, the Committee will refer the proposed language to the Law Society's Rules drafter for preparation of the precise wording of the amendments to be adopted by Convocation. It is anticipated that this will be ready for October 26, 2006 Convocation.

## Rules 1.02 and 3.02(2)

11. The Committee reviewed a matter referred from the Proceedings Authorization Committee ("the PAC"). The issue concerned the meaning of the words "associate" and "Associates" in rules 1.02 and 3.02(4) respectively, and whether, for example, use of the phrase "& Associates" by a group of sole practitioners was appropriate.
12. Rules 1.02 and 3.02(4) read:

Rule 1.02:

"associate" includes:

- (a) a member who is an employee of a law firm; and
- (b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law.

Rule 3.02(4):

The name of a law firm shall not include the use of such phrases as "John Doe and Associates", "John Doe and Company", or "John Doe and Partners" unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm."

13. In the Committee's view, the intent of rule 3.02(4) is to prevent the public from being misled about the type and size of the firm that is being retained. In order to use the words "& Associates" in the firm name, the member must have associates who are actually associated in practice with the member (i.e. associates who are employees of the member's firm). As such, use of the phrase "& Associates" by a number of independent sole practitioners may mislead the public into thinking that the lawyers are part of the same law practice.
14. As a matter of interpretation, there is a concern that rule 3.04(2) does not make it clear that the "associates" must be employees of the firm using the "& Associates" in its firm



name and not “associates” from another firm. In the Committee’s view, the rule was not intended to permit, for example, a sole practitioner’s use of the designation “& Associates” in cases where the “associates” are employees of other firms retained by the lawyer on an occasional basis.

15. The Committee agreed that the rule required clarification.

#### The Committee’s Recommendation

16. The Committee determined that the Rules should be amended as follows:

- a. the definition of “associates” in rule 1.02 should be amended to read:
 

“associate” includes:

  - (a) a member who is an employee of a ~~law firm~~ the law firm in which the member practices law”
  - (b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law in which the non-member provides his or her services”;
- b. rule 3.02(4) should be amended to add the word “the” before the word “practice”:  
The name of a law firm shall not include the use of such phrases as “John Doe and Associates”, “John Doe and Company”, or “John Doe and Partners” unless there are in fact, respectively, two or more other lawyers associated with John Doe in the practice or two or more partners of John Doe in the firm.”

#### Rule 3.03(1)

17. A matter was referred to the Committee as a result of a bencher’s advice to the Treasurer about a gap in the letterhead rule, rule 3.03, namely, that the rule does not permit a law firm to include the name of a deceased member of the firm.
18. Rule 3.03(1) reads:

#### RULE 3.03 - LETTERHEAD

3.03 (1) Subject to subrules (2), (3) and (4), a lawyer’s letterhead and the signs identifying the office may only include

- (a) the name of the lawyer or law firm;
- (b) a list of the members of any law firm, including counsel practising with the firm;
- (c) the words “barrister”, “barrister-at-law”, “barrister and solicitor”, “lawyer”, “law office”, “solicitor”, “solicitor-at-law”, or the plural, where applicable;
- (d) the words “notary” or “commissioner for oaths” or both, where applicable;
- (e) the words “patent and trade mark agent”, where applicable;

(f) a statement that a member of the law firm is qualified to practise law in another named jurisdiction, along with his or her title in that jurisdiction, such as “attorney” or “attorney at law”,

(g) a statement that a member of the law firm is certified by the Law Society as a specialist in a specified field;

(h) the phrases “limited liability partnership” or “société à responsabilité limitée” or the letters “LLP,” “L.L.P.” or “s.r.l.” where applicable,

(i) the words “Professional Corporation”, or “Société professionnelle,” where applicable,

(j) the phrase "multi-discipline practice" or "multi-discipline partnership" where applicable;

(k) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice; and

(l) a logo.

(m) reference to an affiliation, and

(n) advertising permitted under rules 3.04 and 3.05.

19. As noted above, rule 3.03(1) includes a lengthy but exclusive list of items that are permitted to appear on letterhead. The rule does not include an item for the name of a deceased member of a firm.
20. Rule 3.02(1) on firm names (see Appendix 1) permits law firm names, subject to certain restrictions in rule 3.02(3) through (6), to include a name of a current, a retired from practice, or a deceased member of the firm who is or was qualified to practice law
  - a. in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or
  - b. in a jurisdiction outside of Canada where the law firm carries on its practice.

#### The Committee’s Recommendation

21. The Committee acknowledged that it is not uncommon for law firms to include the names of deceased partners on their letterhead. As such, the Committee decided that it would be appropriate to amend the letterhead rule to permit law firms to include such names on their letterhead.
22. The suggested language for the amendment is the language used in rule 3.02 to describe permissible firm names that include a deceased member of the firm. Accordingly, the proposal is that a new paragraph (c) be added to the rule as follows:
  - (c) the name of a deceased member of the firm who was qualified to practice law

- (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or
- (ii) in a jurisdiction outside of Canada where the law firm carries on its practice;

## APPENDIX 1

## RULE 3.02 – LAW FIRM NAME

## Permissible Names

3.02(1) A law firm name shall not include any name that is not

- (a) a name of a current, a retired from practice, or a deceased member of the firm who is or was qualified to practice law
  - (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or
  - (ii) in a jurisdiction outside of Canada where the law firm carries on its practice, or
- (b) a descriptive or trade name that is in keeping with the dignity, integrity, independence, and role of the legal profession in a free and democratic society and in the administration of justice.

3.02(2) A lawyer who purchases a practice may, for a reasonable length of time, use the words "Successor to \_\_\_\_\_" in small print under the lawyer's own name.

## Restrictions

3.02 (3) A law firm name shall not include a descriptive or trade name that is misleading about

- (a) the identities, responsibilities, or relationships of the lawyers practicing under the firm name, or
- (b) the association or relationship of the law firm with other lawyers or non-lawyers.

3.02(4) The name of a law firm shall not include the use of phrases such as "John Doe and Associates", "John Doe and Company", or "John Doe and Partners" unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm.

3.02(5) When a lawyer retires from a law firm to take up an appointment as a judge or master or to fill any office incompatible with the practice of law, the lawyer's name shall not be included in the firm name.

3.02(6) A lawyer or law firm may not acquire and use a firm name unless the name was acquired along with the practice of a deceased or retiring member who conducted a practice under the name.

### Limited Liability Partnership

3.02(7) If a law firm practices as a limited liability partnership, the phrases “limited liability partnership” “société à responsabilité limitée” or the letters “LLP,” “L.L.P.” or “s.r.l.” shall be included as the last words or letters in the firm name.

### Professional Corporation

3.02(8) If a lawyer practices law through a professional corporation, the name of the corporation shall include the words “Professional Corporation” or “Société professionnelle”.

## FOR INFORMATION

### REPORT FROM THE PROFESSIONAL REGULATION DIVISION

23. The Professional Regulation Division’s Quarterly Report (second quarter 2006), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division’s activities and responsibilities, including file management and monitoring, for the period April to June 2006. The Committee also received an information report from Donna Farquharson, Manager, Trustee Services on the operations in that department.

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

- (1) Copy of amendments to By-Law 17 respecting the Member’s Annual Report.  
(pages 5 – 28)
- (2) Copy of the amended MAR with references for the 2006 filing year.  
(pages 38 – 49)
- (3) Copy of the Professional Regulation Division’s Quarterly Report (second quarter 2006).  
(pages 59 – 105)
- (4) Copy of In Camera report for information only.  
(pages 106 – 114)

It was moved by Mr. Ruby, seconded by Mr. Robins, that By-Law 17 be amended by revoking Form 17A and substituting the Form 17A in the Report;

and

That Convocation make the following amendments to the *Rules of Professional Conduct*:

- a. Amend the definition of “associates” in rule 1.02 to read  
“associate” includes:
  - (a) a member who is an employee of the law firm in which the member practises law; and

- (b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law in which the non-member provides his or her services.
- b. Amend rule 3.02(4) to add the word “the” before the word “practice”; and
- c. Amend Rule 3.03(1) by
  - i. adding a new paragraph (c) as follows:  
the name of a retired from practice or deceased member of the firm who was qualified to practise law (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or (ii) in a jurisdiction outside of Canada where the law firm carries on its practice;
  - and
  - ii. renumbering existing paragraphs (c) through (n) as (d) through (o).

Carried

*Items for Information*

- Quarterly Report from the Professional Regulation Division
- In Camera Report

MOTION – FEDERATION OF LAW SOCIETIES OF CANADA

It was moved by Mr. Campion, seconded by Ms. Ross, that Convocation approve the change in location of the head office of the Federation of Law Societies of Canada from the City of Montreal in the Province of Quebec to the City of Ottawa in the Province of Ontario.

Carried

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IN PUBLIC

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REPORT OF THE FINANCE AND AUDIT COMMITTEE

Mr. Millar presented the Report of the Finance and Audit Committee.

Report to Convocation  
September 28, 2006

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Finance and Audit Committee

Committee Members  
Derry Millar, Chair  
Beth Symes, Vice-Chair  
Brad Wright, Vice-Chair  
Abdul Chahbar  
Andrew Coffey  
Marshall Crowe  
Holly Harris  
Ross Murray  
Alan Silverstein  
Gerald Swaye

## Purposes of Report: Decision and Information

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

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5. LawPro Financial Statements For The Quarter Ended June 30, 2006
6. 2007 Budget
7. Pension Fund Governance
8. AS/400 Upgrade

### COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on September 14, 2006. Committee members in attendance were: Derry Millar (c), Beth Symes (v.c.), Brad Wright (v.c.), Abdul Chahbar, Marshall Crowe, Holly Harris, Vern Krishna, Ross Murray, Alan Silverstein and Gerry Swaye.
2. Michelle Strom and Akhil Wagh of LawPro attended. Staff attending were Malcolm Heins, Wendy Tysall, Fred Grady and Brenda Albuquerque-Boutilier.

### FOR DECISION

### PARTIAL WIND UP OF PENSION PLAN

### Motion

30. That Convocation approve the following resolution:

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

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

AND WHEREAS the Plan permits only employees of the Law Society to participate in the Plan;

AND WHEREAS, inadvertently, certain employees of the Law Foundation of Ontario ("LFO") have been participating in the Plan;

AND WHEREAS the Law Society wishes to partially wind up the Plan with respect to employees of the Law Foundation of Ontario;

AND WHEREAS the Law Society wishes to direct the Pension Committee of the Law Society to complete all necessary regulatory filings to give effect to these resolutions;

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective August 4, 2006, the Plan is to be partially wound up with respect to employees of the Law Foundation of Ontario.
2. The partial wind up of the Plan is to be administered in accordance with the terms of the Plan and the requirements of applicable legislation.
3. The Law Society directs the Pension Committee to complete all necessary regulatory filings to give legal effect to these resolutions.

AND BE IT FURTHER RESOLVED THAT any authorized signing officer of Convocation is authorized, empowered and directed to execute and deliver in the Law Society of Upper Canada's name, under corporate seal or otherwise, all documents, amendments and instruments and to take all other such actions as may be appropriate and requisite for the purpose of carrying into effect the foregoing resolutions.

31. Employees of the Law Foundation of Ontario have been members of the Law Society's Pension Plan for over twenty years. The LFO has been providing contributions and the Law Society has been administering the benefits. At the beginning of 2006, four LFO employees were participating with two additional LFO employees eligible to join this year.
32. Recently, the Law Society undertook a review of the Plan. It was noted that LFO employees are not legally entitled to participate in the Law Society's Plan as only employees of the Law Society are eligible to participate in the Plan under its terms. Options such as turning the Plan into a multi-employer pension plan are not appropriate. Consequently, in order to maintain the current status of the Plan, the Law Society has chosen to declare a partial wind up of the Plan encompassing those members of the

plan employed by the LFO. Standard Life, the Plan administrator, is providing a group RRSP to LFO employees on the same terms as the Law Society plan and the change is not expected to be financially detrimental to LFO employees.

33. The Board of the LFO approved the partial wind up in June 2006. Employees of the LFO were informed of the partial wind up in July 2006. The effective date of the wind up will be August 4, 2006. A report on the partial wind up is required to be filed with the Superintendent of Financial Services of Ontario and the requested resolution will be part of this filing.

FOR INFORMATION  
GENERAL FUND - FINANCIAL STATEMENTS FOR THE QUARTER  
ENDED JUNE 30, 2006

34. The Committee recommends the second quarter financial statements for the General Fund be received by Convocation for information.

General Fund  
Financial Statement Highlights  
For the six months ended June 30, 2006

35. The attached unaudited financial statements for the first half of 2006 have been prepared on a full accrual basis consistent with the annual financial statements.
36. At the end of June, the Society's unrestricted fund has a surplus of \$1.4 million and an accumulated fund balance of \$1.8 million. By the end of 2006 it is anticipated that the unrestricted fund will have an operating deficit of approximately \$1.0 million and an accumulated fund balance of \$500,000.

Balance Sheet

37. Cash and short-term investments have increased by \$1.6 million over the first half of 2005 primarily as a result of the proceeds from the sale of the Ottawa building.
38. Accounts receivable and prepaid expenses are in line with 2005. Accounts receivable are for the most part members' annual fees that are paid as part of the monthly installment plan.
39. Portfolio investments have increased slightly over 2005 as income earned and gains realized from investments have been re-invested in the long-term portfolio. Market value is slightly less than book value.
40. Accounts payable and accrued liabilities have increased by \$1.225 million. This is primarily the result of the transfer of funds to the Compensation Fund (\$3.3 million) occurring in July of this year. The equivalent transfer occurred in June of 2005 and therefore was not included in the accounts payable balance for last year. The 2005 balance included large accruals and holdbacks (approximately \$1.4 million) for the north wing project. With the completion of this project, those accrued liabilities and holdbacks have been paid. In addition, the accounts payable balance for 2005 included amounts

(\$227,000) related to the wind up of the old Bar Admission Course. These amounts have been paid and are not included in the 2006 balance. The balance of the difference (\$440,000) reflects normal fluctuations in regular trade payables.

41. The decrease in the capital allocation fund balance of \$624,000 from June 2005 reflects completion of the north wing project and the proceeds of the sale of the Ottawa building.
42. Deferred revenue of \$23.9 million is comprised largely of members' fees billed but not yet earned and licensing process tuition fees billed but not yet earned.

#### Revenue and Expenses

43. Annual membership fee revenue is recognized on a monthly basis. Membership fees have increased from \$17.9 million in 2005 to \$19.6 million in 2006 with approximately 1,000 new members and an increase of \$68 in the member fee.
44. Professional development and competence revenue has declined over 2005 as a result of a reduction in the licensing process tuition fee from \$4,400 to \$2,600.
45. Investment income has increased by approximately \$312,000. \$250,000 of this increase relates to increased investment income from the E&O fund with the balance being the result of higher rates of return over 2005.
46. Other income has increased approximately \$467,000 over 2005. This is the result of increased ordered costs from monitoring and enforcement, recovery of bench director fees from LawPro, and a gain on the sale of the Ottawa building.
47. Overall, expenses have decreased over 2005 in line with expectations. Expenses are down in professional development and competence with the change in the licensing process. Expenses in professional regulation are approximately at the same level as 2005. However, the 2005 number included a \$700,000 provision for a litigation matter. 2006 numbers do not include this but operating expenses have increased with the rising costs of mortgage fraud.
48. Amortization has increased over 2005 with the amortization of the renovation costs of the north wing. The project will be amortized over a 10 year period.

#### Changes in Fund Balances

49. The unrestricted fund balance ends the period at \$1.772 million. The 2006 budget anticipated utilizing \$1.0 million of this fund balance to reduce the annual membership levy. It is projected that the unrestricted fund will end 2006 with a balance of approximately \$500,000.
50. The capital allocation fund has increased with the allocation of the net proceeds of the Ottawa building (\$2.2 million) to this fund.
51. The invested in capital assets fund is relatively unchanged with the additional costs of the north wing renovation being transferred to this fund and the disposal of the Ottawa building.

52. The county library fund holds funds collected from members' annual fees for transfer to LibraryCo for county library purposes. The fund balance (\$99,000) should be reduced in the second half of the year with additional fee revenue generated by the call to the bar in July.
53. The repayable allowance fund has made payments to students based on need in the amount of \$77,000 to 22 students for an average of \$3,600.
54. The special projects fund includes a transfer of \$465,000 from the unrestricted fund for projects approved for funding from contingency.

#### FOR INFORMATION

#### LAWYERS FUND FOR CLIENT COMPENSATION - FINANCIAL STATEMENTS FOR THE QUARTER ENDED JUNE 30, 2006

55. The Committee recommends the second quarter financial statements for the Lawyers Fund for Client Compensation be received by Convocation for information.

#### Lawyers Fund for Client Compensation Financial Statement Highlights For the six months ended June 30, 2006

56. The first half of 2006 has been completed and the financial position of the Lawyers Fund for Client Compensation ("the Fund") and the Fund's balance (\$19.4 million) have increased from what was reported in June of 2005 (\$17.1 million). The Fund's Financial Statements for the six months ended June 30, 2006 identify a surplus of \$1.5 million compared to a deficit of \$2.4 million for the first half of 2005.
57. An actuarial valuation of the reserve for unpaid grants was prepared as at June 30, 2006 and the balance has decreased by \$1.3 million to \$9.7 million since the valuation at the same time in 2005. A significant matter involving multiple claims against one member has been processed by the Fund since first being notified of the matter in late 2004. This resulted in a net grants expense of \$4.5 million for the first half of 2005 but management believes the remaining reserve is appropriate. The net grants expense for the first half of 2006 is a small surplus of \$32,000.
58. This has arisen because of the downward revision of the reserve of \$995,000 since the beginning of the year and significant recoveries of \$629,000. Recoveries do not follow any pattern and the relatively high amounts in the current period come from payments from trust accounts frozen by Trustee Services under court orders, the proceeds from the sale of a property and restitution orders. Grants paid of \$1.6 million are \$590,000 less than the first half of 2005.

## Second Quarter Balance Sheet

- 59. The only variances of any significance in the Balance Sheet from June 2005 to June 2006 are the decrease of \$3.4 million in cash and short-term investments to \$5.8 million, partially offset by the increase in portfolio investments of \$1.1 million to \$23 million and the year on year decrease in the reserve for unpaid grants of \$1.4 million to \$9.7 million.
- 60. The increase in the book value of the portfolio investments of \$1.3 million is entirely related to the reinvestment of income and realized gains from the portfolio. The market value of the portfolio is nominally less than the book value.

## Second Quarter Revenue and Expenses

- 61. Membership fee revenues of \$3.1 million have increased by \$64,000 from the first half of 2005. The annual levy of \$200 per member is consistent between the years with slightly more members in the current year. Annualized fee revenue for the Fund will approximate \$6 million.
- 62. Investment income has decreased from \$750,000 to \$714,000, primarily because of variations in realized gains.
- 63. Grants paid of \$1.6 million have decreased by \$590,000 compared to the first half of 2005. These payments relate largely to claims previously reserved and, unlike 2005, there is no additional increase in the provision for unpaid grants.
- 64. Favourable developments on previously reserved amounts combined with relatively low claims in the current year means the reserve has decreased by \$1.3 million year on year.
- 65. Recoveries of claims paid have increased from \$181,000 in the first half of 2005 to \$629,000 this year.
- 66. Investigations and discipline costs allocated from the unrestricted fund are up \$63,000 as costs for investigations have increased over 2005. The increase is approximately 13%, in line with the increased budget for discipline and investigations for 2006.

## FOR INFORMATION

### LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE QUARTER ENDED JUNE 30, 2006

- 67. The Committee recommends Convocation receive the second quarter financial statements for LibraryCo Inc. for information.

## FOR INFORMATION

## INVESTMENT COMPLIANCE REPORTS

68. The Committee recommends the investment compliance reports for the General Fund and Compensation Fund long-term and short-term portfolios be received by Convocation for information.

## FOR INFORMATION

## STATEMENT OF COMPLIANCE – SHORT-TERM PORTFOLIO

## FOR INFORMATION

## STATEMENT OF COMPLIANCE – LONG-TERM PORTFOLIO

## FOR INFORMATION

## COMPLIANCE REPORT – COMPENSATION FUND - FOYSTON, GORDON &amp; PAYNE

## FOR INFORMATION

## COMPLIANCE REPORT – GENERAL FUND - FOYSTON, GORDON &amp; PAYNE

## FOR INFORMATION

## LAWPRO FINANCIAL STATEMENTS FOR THE QUARTER ENDED JUNE 30, 2006

69. The Committee recommends the second quarter combined financial statements for the Errors & Omissions Insurance Fund and the Lawyers' Professional Indemnity Company be received by Convocation for information.
70. Ms Michelle Strom and Mr. Akhil Wagh of LawPro will be in attendance.
71. LawPro's Report to the Finance and Audit Committee is attached.



## FOR INFORMATION

## 2007 BUDGET

72. A meeting for all benchers was held on September 13, 2006 to discuss the preliminary 2007 budget and to review possible options prior to the budget's submission to Convocation in October.

## FOR INFORMATION

## PENSION FUND GOVERNANCE

73. In June 2005, Convocation resolved to delegate the Pension Plan administrative oversight duties set out in the Pension Fund Governance Guidelines to the Finance & Audit Committee. In the Governance Guidelines it states that the Pension Committee will prepare an annual report to the Finance & Audit Committee that includes the following:
- Confirmation that required reports have been filed with the authorities and required disclosure made to Plan members
  - Confirmation the Plan has been administered in accordance with legislation and Plan documents
  - A summary of investment performance.
74. The Committee reviewed the following report on Pension Plan activities, prepared by the Secretary of the Law Society's Pension Committee for information.
75. Staff Reporting
- (a) Member Enrolment, Termination, Retirement
- Pension enrollment information is provided to the new employee during benefits orientation within the first 3 months of employment. After eleven months of service the Human Resource ("HR") Representative contacts eligible employees to commence the enrollment process. The employee completes a Standard Life application form, selecting their investment choices.
- Each new plan member completes and signs a "Group Pension Plan Contribution Authorization" form, which serves as authorization to make the payroll deduction each pay. Members elect to contribute to the Plan an amount between 1% and 6% of his/her annual earnings.
- Members may change their elected deduction % on an annual basis. If a Member chooses to change the %, they indicate their decision on a new Group Pension Plan Contribution Authorization form.
- HR advises Payroll and Standard Life of terminations, retirements or deaths. Payroll ceases deductions as instructed and Standard Life notifies the member, with options for consideration, within 15 days of notification by the Law Society. Thereafter members terminating or retiring deal directly with Standard Life.

## (b) Procedures for Payments from the Plan

When a member terminates they may choose to remain in the plan, transfer to their own retirement savings plan with Standard Life or move their plan to another institution or employer.

A non-vested member receives only their contributions in the plan and can have them paid out as cash or transfer them to another retirement arrangement. If the member is vested they must transfer their money to another pension plan, if allowed, a registered retirement savings plan, a registered retirement income fund or purchase a deferred life annuity contract.

No changes have been made in 2005 to these options.

## (c) Remittance of Member Contributions to the Fund within 30 days

Payroll remits member contributions to Standard Life (the Trustee) within 2 business days of the date of deduction from the Member.

## (d) Statistical Data

Number of participants December 2005: 384 (includes 351 active members and 69 former members (assets still in the plan))

New Entrants in 2005: 61

Terminations/retirements in 2005: 33 (12 transferred out their assets and 21 remain in the plan)

Contributions made in 2005 by employees: \$ 1,432,988.51

Contributions made in 2005 by the Law Society: \$1,604,872.70

Account balances in 2005: - Opening Balance: \$15,907,050.38-

Closing Balance: \$19,121,109.96

## 76. Investment and Legislative Review

## (a) Income Tax Act

The Annual Information Return form is prepared, on behalf of the Law Society, by Standard Life and certified by the Director of HR. The annual information return for 2005 was filed before the June 30, 2006 deadline (6 months after the Plan year end). The annual information return for the year ending December 31, 2005 was filed on June 16, 2006.

Audited statements for the Fund of the Pension Plan for the Employees of the Law Society of Upper Canada for the year ending December 31, 2005 were finalized and signed by the Law Society's external auditors, Deloitte & Touche, on May 12, 2006. The statements together with the annual information return were filed on June 16, 2006. The statements were reviewed by the Finance and Audit Committee on June 8, 2006 and sent to Convocation for information on June 22, 2006.

Plan amendments filed within 60 days of the amendment date:

The contribution formula has been revised where employees can choose to contribute between 1-6% of their pensionable earnings with a corresponding employer match. They may elect to change their contribution % once a year in October for the next calendar year. The option to delay plan entry to age 30 was eliminated. The membership

criteria for plan entry for part-timers was revised to allow part-time employees who work an average of 20 hours per week to join the first day of the month following one year of service. The definition of annual earnings was amended to include lump sum merit payments; the definition of spouse was amended to be in compliance with An Act to Amend Various Statutes in Respect of Spousal Relationships. A new definition of designated employee was added to reflect employees in this category. A new definition of Registered Retirement Income Fund was added to include a Life Income Fund and a Locked In Retirement Fund upon retirement.

No amendments have been made to date in 2006.

(b) Pension Benefits Act ("PBA")

The PBA requires that the annual Member statements be provided to Members by June 30 of the following year and must include notice of any amendments made during the Plan year. Standard Life issues Member's statements quarterly as well as one annual statement. The statements are mailed to the Member's home address.

The PBA requires that a termination statement be provided within 30 days after the Member's termination date and payouts must be made within 60 days of when the Member chooses a termination option. 33 people terminated from the Law Society pension plan during 2005. They received their statements within 15 business days of notification by the Law Society. Payouts were processed within 15 business days of all documentation and selection instruction received by Standard Life. If no instructions are received the terminated Member is moved to the terminated sub-group of the Pension Plan 90 days after they have been notified of their options.

The PBA states that if adequate notice is not provided to Members before retirement, retirement options must be provided to them within 30 days after the retirement application is received. The Pension Committee has delegated the processing of retirement benefits to Standard Life. Retiring members obtain information regarding pension amounts and options directly from Standard Life. One member retired in 2005.

No members made written requests to view Plan documents, annual information returns, financial statements, the Statement of Investment Practices or correspondence with regulatory authorities.

(c) Auditor's Report

The Pension Committee has reviewed the Auditor's Report which was also presented to the Finance & Audit Committee and Convocation. The Committee's representation letter acknowledges that contributions were made to the plan as required remitted in accordance with legislative requirements and all payments from the Plan are in accordance with the Plan terms. In 2005 the investments of the Plan comply with the Statement of Investment Practices and applicable legislation.

## 77. Administrative Compliance

### (d) Pension Committee Meetings

The Pension Committee met 3 times in 2005 and 5 times to date in 2006.

March 31, 2005 – Meeting with Hicks Morley to review final pension plan documents, including pension plan text, governance guidelines, SIP&P, conflict of interest policy and service agreements. Documents forwarded to Standard Life for comments.

April 27, 2005 – Standard Life provided 2004 investment review and market outlook for 2005.

May 4, 2005 – Aon review of the Law Society's pension plan investments for 2004. SIP&P is up to date as of 2004. Discussion of funds on watch. Government of Canada announced the removal of the 30% foreign content limit.

January 30, 2006 – Aon presented the investment review of the plan for the period ending June 2005. Discussion of funds under watch. The 2004/2005 pension committee report and the 2005 CAP guidelines report were approved. The addition of a spousal RRSP to the group RRSP was approved. There was discussion and agreement to notify The Law Foundation of Ontario that its members cannot remain in the Law Society Pension Plan.

March 22, 2006 – Standard Life presented their review of the investments of the pension plan for the year 2005. This was another strong year with double-digit returns. Discussion on the global and North American economic situation and its implications on markets. Annual administrative review of member activity to the SL call center and online usage. Peter Beca of Aon was in attendance.

April 5, 2006 – Aon investment review for 2005. The funds were reviewed at a Plan level, Manager level, fund level. Generally funds that were under-invested in energy and oil and gas under-performed in 2005. Seven funds continue to be monitored; five funds have been put on watch due to management changes and not meeting their performance targets, four funds remain on watch and one fund has been blocked to member contributions. Communicate results of the 2005 investment review and addition of funds to employees. There was discussion on the transfer of The Law Foundation of Ontario plan members out of the plan.

May 31, 2006 – Meeting held with the CFO and the Director HR with Peter Beca from Aon to review the Law Society's options for the transfer of the Law Foundation out of the Pension Plan. The options for the Law Society are either a partial windup of the plan or a transfer of assets. The decision was made that a partial windup was the best solution.

June 9, 2006 – Meeting with Mary Brown from The Law Foundation of Ontario, Peter Beca from Aon, Laura Cohen and Wendy Tysall, members of the Pension Committee. Peter Beca presented The Law Foundation with the options available to them (their own pension plan, group RRSP or no retirement vehicle).

Standard Life is prepared to offer a group RRSP on the same terms as the Law Society plan.

(e) Resolutions of Pension Committee

In June 2005, Convocation approved a pension governance structure for the Pension Plan as proposed by the Finance and Audit Committee. Convocation adopted the amended and restated pension plan text, adopted the pension governance guidelines, delegated administrative oversight to the Finance and Audit Committee, confirmed the role of the Pension Committee, which is charged with day- to-day responsibility of the plan and directs the Pension Committee to make all regulatory filings.

(f) Investment Review Meetings

There were 2 investment meetings in 2005, one with Standard Life and one with Aon Consulting Inc. The Standard Life meeting took place on April 27, 2005 and on May 4, 2005 with Peter Beca from Aon. The details of both meetings are noted above. In 2006 there have been 3 investment review meetings to date; one with Standard Life on March 22, 2006 to review the investment performance in 2005. (see above). The Pension Committee met with Aon on January 30 and April 5, 2006 to review the 2005 performance at mid year and for the entire year. (see above).

(g) Plan Amendments

See 2(a) above). The decision was made to revise the pension plan text to be written from the perspective of a defined contribution plan along with changes to definitions of spouse, and entry of permanent part time members into the plan after one year of service.

(h) Employee Advisory Committee Meetings

The Employee Advisory Committee met 3 times in 2005.

March 29, 2005 – Standard Life review of investment changes that took place in 2004. Review of the elimination of the foreign content limits. A discussion on the CAP guidelines. A review of the performance of the funds in 2004.

April 13, 2005 – Meeting with Aon Consulting to review the performance of the investment funds for 2004. Review of the CAP guidelines. Discussion on the elimination of the foreign content limit. A discussion of the funds on watch. The others remain on watch and the Bond Fund continues to be blocked.

December 15, 2005 – Aon investment review for the period ending June 30, 2005.

In 2006 the Employee Advisory Committee has met twice.

March 22, 2006, along with the Pension Committee, to hear the Standard Life investment performance presentation for 2005.

April 4, 2006 – Aon investment review of 2005 performance. Concern was voiced at the number of funds either on watch or being monitored. The concern was forwarded to the Pension Committee at their following meeting on April 5, 2006.

78. Notable Actions in 2005 / 2006

In 2005 Convocation approved a formal pension plan governance structure.

In 2005 Standard Life provided 4 information sessions and individual meetings for interested plan members. Each of these sessions included individual time allotments for personal discussion with the financial SL representative to review their pension investments and goals. SL went to Ottawa and met individually with members as to their options on leaving the plan as the office was closing.

It was decided, based on legal advice, that employees of the Law Foundation of Ontario could not remain in the Law Society pension plan as it is a single employer plan. On July 27, 2006 LFO employees received notification from the Law Society that they could no longer participate in the Law Society plan effective August 4, 2006 and that there would be a partial windup of the plan. LFO members would receive documents outlining their options for their funds. The board of The LFO has approved the creation of a group RRSP for its employees. Standard Life will provide the group RRSP at the same rates as offered to members of the LS pension plan.

In 2006 Standard Life held an information session in April for employees reviewing the 2005 results of the investment options. In March a meeting for new members of the plan was cancelled due to lack of attendance.

Two additional funds will be added to the investment options available for members effective September 1, 2006.

## FOR INFORMATION

### AS/400 UPGRADE

79. The Law Society uses the AS/400 as the main computer to run its many business application systems and store member and financial data. A decision has been made to upgrade the AS/400 and because of its pivotal role in the operations of the Law Society the Committee reviewed a short rationale for information below.

#### Background

80. The AS/400 is the main computer that the Law Society uses to run its many business application systems and store member and financial data. The AS/400 is a mature IBM computing environment that provides a reliable, stable and secure environment to manage the Society's mission critical applications. There are over 30 applications running on the AS/400. These applications include the Member Database and Inquiries, Complaints Tracking, Administrative Compliance, Continuing Legal Education, and the

financial applications such as Accounting, Accounts Payables, Financial Analysis and Reporting. These AS/400 applications are continually being maintained and enhanced to support our changing business needs and to ensure they continue to be efficient and effective. The AS/400 computing platform will continue to serve the Society well as the main repository of enterprise data for years to come and we will continue to invest in the AS/400 hardware and applications into the foreseeable future.

81. The current AS/400 system installed at the Law Society is an old entry level Model 270. We have a Model 270 that was installed in 2002 in our main computer room, and a second Model 270 in our Disaster Recovery facility. Due to continued growth in our applications and data, and increasing reliance on computers to provide efficient and effective services to our members and the public, the Model 270 has reached its capacity. Information Systems has worked with IBM and its systems partners to find a cost effective upgrade for this computer. We have determined that our current and foreseeable needs can be met with an upgrade to an IBM System i5 Model 810. The System i5 Model 810 will provide sufficient capacity to expand our online systems and handle increased data storage needs.

#### Upgrade Plan and Cost

82. The upgrade is planned for this fall, to be completed by December 1, at a cost of approximately \$150,000. This cost includes upgrading the two computers – one at Osgoode Hall and the other at the Disaster Recovery facility.
83. This upgrade can be completed within the existing Capital Budget for 2006, by re-allocating capital from other technology initiatives that were completed under budget or are no longer required. As a result no new capital funding is required.

Note: Please note that for marketing reasons IBM has rebranded the AS/400, firstly to the IBM iSeries, and more recently the IBM System i5 series. However, most users continue to refer to it as the AS/400.

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

- (1) Copy of the General Fund – Financial Statements for the Quarter Ended June 30, 2006.  
(pages 15 – 17)
- (2) Copy of the Lawyers Fund for Client Compensation – Financial Statements for the Quarter Ended June 30, 2006.  
(pages 21- 22)
- (3) Copy of the LibraryCo Inc. – Financial Statements for the Quarter Ended June 30, 2006.  
(pages 24 – 32)
- (4) Copy of the Investment Compliance Reports for the General Fund and Compensation Fund long-term and short-term portfolios.  
(pages 34 – 37)

- (5) Copy of LAWPRO Financial Statements for the Quarter Ended June 30, 2006.  
(pages 39 – 53)
- (6) Copies of Pension Plan re: Investment Review as at December 31, 2005.  
(pages 64 – 68)

Re: Partial Wind Up of Pension Plan

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the following resolution:

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

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

AND WHEREAS the Plan permits only employees of the Law Society to participate in the Plan;

AND WHEREAS, inadvertently, certain employees of the Law Foundation of Ontario ("LFO") have been participating in the Plan;

AND WHEREAS the Law Society wishes to partially wind up the Plan with respect to employees of the Law Foundation of Ontario;

AND WHEREAS the Law Society wishes to direct the Pension Committee of the Law Society to complete all necessary regulatory filings to give effect to these resolutions;

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective August 4, 2006, the Plan is to be partially wound up with respect to employees of the Law Foundation of Ontario.
2. The partial wind up of the Plan is to be administered in accordance with the terms of the Plan and the requirements of applicable legislation.
3. The Law Society directs the Pension Committee to complete all necessary regulatory filings to give legal effect to these resolutions.

AND BE IT FURTHER RESOLVED THAT any authorized signing officer of Convocation is authorized, empowered and directed to execute and deliver in the Law Society of Upper Canada's name, under corporate seal or otherwise, all documents, amendments and instruments and to take all other such actions as may be appropriate and requisite for the purpose of carrying into effect the foregoing resolutions.

Carried



*Items for Information*

- General Fund Financial Statements
- Lawyers Fund for Client Compensation Financial Statements
- LibraryCo Inc. Financial Statements
- LAWPro Financial Statements
- Investment Compliance Reports
- Pension Fund Governance
- AS/400 Upgrade

REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS COMMITTEE

Re: Proposed Amendment to By-Law 24 Respecting Practice Review

The matter was stood down.

REPORT OF THE TRIBUNALS COMMITTEE

Mr. Sandler presented the Tribunals Committee Report.

Report to Convocation  
September 28, 2006

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Tribunals Committee

Committee Members  
Larry Banack (Chair)  
Mark Sandler (Vice Chair)  
Carole Curtis  
Sy Eber  
Janet Minor  
Derry Millar  
Bonnie Warkentin

Purpose of Report:    Decision  
                                 Information

Policy Secretariat  
(Sophia Sperdakos 416-947-5209)

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New Process – Oral Reasons

Society of Ontario Adjudicators and Regulators (SOAR) Training

## COMMITTEE PROCESS

1. The Committee met on September 14, 2006. Committee members Larry Banack (Chair), Carole Curtis, Derry Millar, Janet Minor and Bonnie Warkentin attended. Staff members Grace Knakowski and Sophia Sperdakos also attended.

FOR DECISION  
GUIDELINES FOR ADJUDICATORS RESPECTING  
ORAL/WRITTEN REASONS FOR DECISION  
(carried over from June 22, 2006 Convocation)

## MOTION

2. That Convocation approve the following as guidelines for adjudicators to consider when assessing whether written reasons are appropriate or mandatory, or oral reasons are appropriate:

*WHEN WRITTEN REASONS MAY BE APPROPRIATE*

1. The reasons will contribute to the Law Society's jurisprudence:
  - a. The issue is novel (no jurisprudence exists or it is still developing).
  - b. The law is unsettled (the existing jurisprudence is conflicting).
  - c. The area of law is settled, but plausible distinctions were raised.
  - d. Tribunal decisions are not technically binding in future cases, but it would be appropriate to explain a departure from existing jurisprudence.
2. The issue requires interpretation (not the mere application) of statutes, regulations, the *Rules of Practice and Procedure*, the *Rules of Professional Conduct* or Law Society by laws.

3. Reasons will contribute to the parties' understanding of the decision (even if the decision may turn on the specific facts of the case, so that it may not be of great value as a precedent.) For example, written reasons might be considered in the following circumstances:
  - a. The facts are complex.
  - b. There will be dissenting reasons.
  - c. The penalty will have a serious impact on the member (e.g. long suspension or disbarment).
  - d. The evidence is conflicting or credibility issues must be resolved.
  - e. The matter was highly contentious and vigorously pursued/defended or an appeal (or judicial review) is otherwise likely.
  - f. The tribunal rejected the terms of an agreed statement of facts or a joint submission on penalty.

#### *WHEN ORAL REASONS MAY BE APPROPRIATE*

1. An expedited decision is required for fairness to a party or for protection of the public.
2. The member waives the right to appeal, for example, where the penalty is an admonition or a reprimand.
3. The matter proceeded under ss. 46 to 49.1 of the *Law Society Act* to be dealt with as a summary hearing, by a single bench.
4. There is little involved in the way of valuable precedent either because,
  - a. the matter was routine; or
  - b. no issue was in dispute between the parties. For example, the tribunal accepted an agreed statement of facts and a joint submission on penalty.
5. The decision relates to a decision or order that does not finally dispose of the matter.

#### *WHEN A HYBRID APPROACH MAY BE APPROPRIATE*

In some limited circumstances, a matter may require an immediate decision, but may also be a proper (or even mandatory) subject for written reasons. In such circumstances, the appropriate course of action may be to render an oral decision with a brief explanation immediately, while reserving the right to provide complete written reasons later.

## MANDATORY REQUIREMENTS FOR REASONS

### *Written Reasons Required*

1. Rule 13.03(1) of the *Rules of Practice and Procedure* (the Rules) requires that a tribunal give reasons in writing, if the request is made within 30 days of a panel making its final decision or order.
2. Rule 13.03(2) of the Rules requires that the Hearing Panel issue written reasons for decisions in relation to capacity in every case.
3. Rule 15.07 of the Rules requires that the Appeal Panel give written reasons for its decision in every case.

### *Reasons Required (Oral or Written)*

1. On May 26, 2005 Convocation approved a motion requiring that oral or written reasons should be given in urgent matters. The example cited, when the motion was introduced, was that some reasons should be given when a member is suspended or disbarred.
3. That Convocation review the guidelines in September 2007 to consider their effectiveness.

### Introduction and Background

4. In May 2005 the Tribunals Task Force Report proposed that Law Society panels produce written reasons for their decisions and orders, in every instance. This recommendation was discussed extensively following which Convocation approved an amendment to delete the recommendation that there be written reasons in every case.
5. Despite the views that written reasons were not necessary in every case it was acknowledged that there are certain circumstances in which written reasons would be important and appropriate. Convocation suggested that guidelines be produced setting out circumstances when written reasons might be more appropriate than oral reasons.

### Respective Advantages of Written and Oral Reasons

6. At the May 26, 2005 meeting of Convocation, the benchers who favoured the universal use of written reasons felt that written reasons would,
  - a. lead to more fully considered reasons and enhanced quality;
  - b. provide a more complete body of jurisprudence;
  - c. enhance the appeal process;

- d. provide transparency to the disciplinary process (justice can be seen to be done); and
  - e. increase the accountability of tribunals for the decisions that they make.
7. The benchers who felt that written reasons were not necessary in every case noted that not every case is of jurisprudential value. They pointed out that courts do not always provide written reasons.
  8. Some benchers were of the view that when written reasons are not required in every case, this allows urgent cases to receive an immediate decision; the tribunals' time is used more efficiently; and backlogs are avoided.
  9. The proposed guidelines, set out in paragraph 2 above, have been developed with a view to capturing the considerations raised in the discussion in Convocation in May 2005, balancing the differing principles behind written and oral decisions, and reflecting Convocation policies or rules on this issue that currently exist.
  10. The Committee is of the view that the proposed guidelines will assist adjudicators to consider the most appropriate or required form for rendering their decisions. The Committee considers, however, that it would be useful to evaluate the effectiveness of the guidelines in the fall of 2007.

## AMENDMENT TO RULES OF PRACTICE AND PROCEDURE

### MOTION

11. That Convocation approve the following amendments to Rule 3 of the Rules of Practice and Procedure:

THAT Rule 3 [Access to Hearings and Non-Publication Orders] of the Rules of Practice and Procedure made under section 61.2 of the *Law Society Act* be amended as follows:

1. Rule 3.01 of Rule 3 [Access to Hearings and Non-Publication Orders] is amended by deleting "Subject to rules 3.04 and 3.04.1" / "Sous réserve des règles 3.04 et 3.04.1".
2. Rule 3 is amended by deleting rules 3.04 and 3.04.1.
3. Rule 3 is amended by deleting rule 3.05 and substituting the following:

#### Application to Appeals

3.05 The provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications to an appeal from a decision or order of a tribunal.

#### Application aux appels

3.05 Les dispositions des règles 3.01, 3.02 et 3.03 s'appliquent, avec les adaptations nécessaires, à un appel d'une décision ou d'une ordonnance d'un tribunal.

## Introduction and Background

12. In June 2006 Convocation approved the joint recommendation of the Professional Regulation Committee and the Professional Development, Competence and Admissions Committee to rescind the policy that competence and capacity proceedings be held in the absence of the public. It agreed to apply the current policy applicable to conduct hearings to competence and capacity hearings.
13. Rule 3 of the Rules of Practice and Procedure must be amended, as set out above, to reflect Convocation's decision. APPENDIX 1 contains a black-lined version of Rule 3 to reflect the amendments set out above.

## INFORMATION

### TRIBUNALS OFFICE QUARTERLY STATISTICS

14. APPENDIX 2 contains the Tribunals Office Quarterly Statistics for the second quarter of 2006 (April – June), for Convocation's information.

### NEW PROCESS – ORAL REASONS

15. The Chair has prepared a memorandum for adjudicators respecting a new process for oral reasons. This is set out at APPENDIX 3.

## APPENDIX 3

### MEMORANDUM

To: Hearing Panel and Appeal Panel Adjudicators

FROM: LARRY BANACK, HEARING PANEL CHAIR

DATE: AUGUST 23, 2006

RE: NEW PROCESS - ORAL REASONS

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## Review of Oral Reasons By A Hearing Panel

A Hearing Panel may provide oral reasons, unless written reasons are legislatively required, requested by a party, or undertaken by the Panel. Oral reasons are prepared from the transcript of the proceedings. They are formatted and edited by the Tribunals Office for publication purposes.

To ensure that oral reasons accurately reflect the Hearing Panel's reasoning, as provided at the hearing, it is proposed that the Tribunals Office request Panels to review their oral reasons. Substantive changes to the reasons cannot be made as they have already been delivered orally. However, a review of the reasons provides the Hearing Panel with an opportunity to correct typographical or minor errors and errors of transcription.

There is no obligation on the Hearing Panel to review the oral reasons. However, it is wise practice as these reasons will be published on Quicklaw and the Canadian Legal Information Institute (CanLII) and may be relied on as precedent in other proceedings. Also, this process accords with the practice of the courts.

#### Tribunals Office Process

To facilitate the new process above, Publications Counsel, Tribunals Office, would provide the Hearing Panel with electronic versions of the formatted and edited oral reasons and the corresponding portion of the transcript. At this time, Publications Counsel would also request the Panel to review the oral reasons and provide any comments regarding typographical or minor errors within 5 business days from the date of the e-mail. Immediately after this date, the oral reasons would be assumed to accord with the transcript and published on Quicklaw and CanLII as edited. Oral reasons would be published even if no reply were received from the Panel within the time frame noted above so that transparency of the tribunal's jurisprudence is achieved in a timely manner.

#### SOCIETY OF ONTARIO ADJUDICATORS AND REGULATORS (SOAR) TRAINING

16. Interested benchers are advised that the next session of SOAR training for which openings are available is January 22-26, 2007. If you are interested in attending please contact Zelia Pereira in the Policy Secretariat at 416-947-4047 or at [zpereira@lsuc.on.ca](mailto:zpereira@lsuc.on.ca).

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

- (1) Copy of Rule 3 of the Rules of Practice and Procedure containing a black-lined version reflecting amendments.  
(Appendix 1, pages 9 - 13)
- (2) Copy of the Tribunals Office Quarterly Statistics for second quarter of April – June 2006.  
(Appendix 2, pages 15 – 28)

#### Re: Guidelines for Adjudicators Respecting Oral/Written Reasons for Decision

It was moved by Mr. Sandler, seconded by Ms. Curtis, that Convocation approve the following guidelines for adjudicators to consider when assessing whether written reasons are appropriate or mandatory, or oral reasons are appropriate:

#### *WHEN WRITTEN REASONS MAY BE APPROPRIATE*

1. The reasons will contribute to the Law Society's jurisprudence:
  - a. The issue is novel (no jurisprudence exists or it is still developing).
  - b. The law is unsettled (the existing jurisprudence is conflicting).

- c. The area of law is settled, but plausible distinctions were raised.
  - d. Tribunal decisions are not technically binding in future cases, but it would be appropriate to explain a departure from existing jurisprudence.
2. The issue requires interpretation (not the mere application) of statutes, regulations, the *Rules of Practice and Procedure*, the *Rules of Professional Conduct* or Law Society by laws.
  3. Reasons will contribute to the parties' understanding of the decision (even if the decision may turn on the specific facts of the case, so that it may not be of great value as a precedent.) For example, written reasons might be considered in the following circumstances:
    - a. The facts are complex.
    - b. There will be dissenting reasons.
    - c. The penalty will have a serious impact on the member (e.g. long suspension or disbarment).
    - d. The evidence is conflicting or credibility issues must be resolved.
    - e. The matter was highly contentious and vigorously pursued/defended or an appeal (or judicial review) is otherwise likely.
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2. The member waives the right to appeal, for example, where the penalty is an admonition or a reprimand.
3. The matter proceeded under ss. 46 to 49.1 of the *Law Society Act* to be dealt with as a summary hearing, by a single bench.
4. There is little involved in the way of valuable precedent either because,
  - a. the matter was routine; or
  - b. no issue was in dispute between the parties. For example, the tribunal accepted an agreed statement of facts and a joint submission on penalty.
5. The decision relates to a decision or order that does not finally dispose of the matter.



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### *MANDATORY REQUIREMENTS FOR REASONS*

#### *Written Reasons Required*

1. Rule 13.03(1) of the *Rules of Practice and Procedure* (the Rules) requires that a tribunal give reasons in writing, if the request is made within 30 days of a panel making its final decision or order.
2. Rule 13.03(2) of the Rules requires that the Hearing Panel issue written reasons for decisions in relation to capacity in every case.
3. Rule 15.07 of the Rules requires that the Appeal Panel give written reasons for its decision in every case.

#### *Reasons Required (Oral or Written)*

1. On May 26, 2005 Convocation approved a motion requiring that oral or written reasons should be given in urgent matters. The example cited, when the motion was introduced, was that some reasons should be given when a member is suspended or disbarred.
3. That Convocation review the guidelines in September 2007 to consider their effectiveness.

Carried

### Re: Amendments to the Rules of Practice and Procedure

It was moved by Mr. Sandler, seconded by Ms. Curtis, that Convocation approve the following amendments to Rule 3 of the Rules of Practice and Procedure:

THAT Rule 3 [Access to Hearings and Non-Publication Orders] of the Rules of Practice and Procedure made under section 61.2 of the *Law Society Act* be amended as follows:

1. Rule 3.01 of Rule 3 [Access to Hearings and Non-Publication Orders] is amended by deleting "Subject to rules 3.04 and 3.04.1" / "Sous réserve des règles 3.04 et 3.04.1".
2. Rule 3 is amended by deleting rules 3.04 and 3.04.1.
3. Rule 3 is amended by deleting rule 3.05 and substituting the following:

### Application to Appeals

3.05 The provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications to an appeal from a decision or order of a tribunal.

### Application aux appels

3.05 Les dispositions des règles 3.01, 3.02 et 3.03 s'appliquent, avec les adaptations nécessaires, à un appel d'une décision ou d'une ordonnance d'un tribunal.

Carried

### *Items for Information*

- Tribunals Office Quarterly Statistics
- New Process – Oral Reasons
- Society of Ontario Adjudicators and Regulators (SOAR) Training

### EQUITY AND ABORIGINAL ISSUES COMMITTEE/Comité sur l'équité et les affaires autochtones Report

Ms. St. Lewis presented the Equity and Aboriginal Issues Committee.

Report to Convocation  
September 28, 2006

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

Committee Members  
Joanne St. Lewis, Chair  
Paul Copeland, Vice-Chair  
Marion Boyd  
Richard Filion  
Holly Harris  
Thomas Heintzman  
Tracey O'Donnell  
Mark Sandler

Purposes of Report: Decision and Information

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

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2. Advancing the Full Participation in the Legal Profession of Students and Lawyers with Disabilities - online information
3. *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada - January 1, 2006 to June 30, 2006*
4. *Equity Advisor's Report on the Implementation of the Bicentennial Report January 2005 – June 2006*
5. Public Education Series and Professional Development Programs - 2006

### COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on September 14, 2006. Committee members Joanne St. Lewis (Chair), Paul Copeland (Vice-Chair), Dr. Richard Fillion, Holly Harris and Tracey O'Donnell participated. Nathalie Boutet (representative of the Association des juristes d'expression française de l'Ontario), Cynthia Petersen (Discrimination and Harassment Counsel) and members of the Equity Advisory Group (the "EAG") Evelyn Baxter, Joseph Cheng, Amandi Esonwanne, Milé Komlen (Chair of the EAG), Dania Majid, Chantal Morton, Julie Ralhan and Victoria Romero attended. Staff members Josée Bouchard, Marisha Roman, Rudy Ticzon and Sybila Valdivieso also attended.

## FOR DECISION

### PREGNANCY AND PARENTAL LEAVES AND BENEFITS FOR PROFESSIONAL LEGAL STAFF AND LAW FIRM EQUITY PARTNERS – MODEL POLICY

(Deferred from June 22, 2006 Convocation meeting)

### Motion

2. That Convocation approves the model policy for law firms and legal organizations entitled *Pregnancy and Parental Leaves and Benefits for Professional Legal Staff and Law Firm Equity Partners*, presented at Appendix 1.

## Background

3. The *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*<sup>1</sup> recommends that the Law Society develop resources for the profession. Recommendation 5 reads as follows: "In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of equity and diversity."
4. In the last decade, the Law Society has adopted a number of model policies and produced resources to promote equality and diversity within the legal profession. The following resources are available:
  - a. *Guide to Developing a Policy Regarding Workplace Equity in Law Firms*<sup>2</sup> ;
  - b. *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*<sup>3</sup> ;
  - c. *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities- Legal Developments and Best Practices*<sup>4</sup> ;
  - d. *Guide to Developing a Policy Regarding Flexible Work Arrangements*<sup>5</sup> ;

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<sup>1</sup> (Toronto: Law Society of Upper Canada, 1997).

<sup>2</sup> *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, updated March 2003). This guide includes a model policy for the promotion of workplace equity. Topics discussed include recruitment practices, interviewing candidates, hiring and promotion, the right to equal opportunities at work, professional development, the duty to accommodate, mentoring and compensation.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

<sup>3</sup> *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, March 2001). This document sets out an employer's legal duty to accommodate employees' creed and religious beliefs, disability, as well as gender and family status. It includes examples and model procedures for requesting and granting accommodations.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

<sup>4</sup> *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities- Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001, updated December 2004). This document is a companion piece to the *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*. It includes a summary of best practices and a comprehensive legal analysis of the duty to accommodate.

Available on request from [equity@lsuc.on.ca](mailto:equity@lsuc.on.ca)

<sup>5</sup> *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, updated March 2003). One way of fulfilling an employer's legal duty to accommodate employees with family responsibilities or disabilities is through the adoption of flexible work arrangements. This guide outlines various alternate work arrangements for both

- e. *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms*<sup>6</sup> ;
- f. *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment- Model Policy for Law Firms and Other Organizations*<sup>7</sup> ;
- g. *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada*<sup>8</sup> ;
- h. *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law*<sup>9</sup> .

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associates and partners of law firms in addition to outlining responses to the challenges presented by each option.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

¶ *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms* (Toronto: Law Society of Upper Canada, March 2002). This document was adopted to guide law firms in taking a proactive approach and having an effective complaints mechanism in place to address discrimination and harassment in the workplace. The guide includes an overview of legal requirements, a discussion of policy and implementation issues, a sample model policy for law firms, and step by step complaints procedures for both medium/large and small law firms.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

<sup>7</sup> *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment - A Model Policy for Law Firms and other Organizations* (Toronto: Law Society of Upper Canada, May 2004). The Law Society published this model policy for law firms and other legal organizations as an initiative to promote equality for gay, lesbian, bisexual, Two-Spirited and transgender individuals within the legal profession.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

<sup>8</sup> *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, March 2005). The Statement of Principles presented in this document promotes respect for religious diversity and condemns religiously motivated hatred and discrimination based on religion. The report includes a discussion of the meaning of "religion" and "creed", the religious demographic profile of Canada and Ontario, legal developments in Ontario and Canada, and the international position on this issue. The report also presents the Law Society's statement of principle.

Available at <http://www.lsuc.on.ca/equity/publications.jsp>

Also available in French at <http://www.lsuc.on.ca/media/mar1005antisemitismfre.pdf>

<sup>9</sup> *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law* (Toronto: The Law Society of Upper Canada, April 2005). This document is a companion piece to the *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada* and includes interviews with a cross-section of the legal profession about the relationship between their faith/spiritual belief(s) and practices, the rule of law and legal practice. Available at <http://www.lsuc.on.ca/about/b/equity/publications-and-reports/>

5. The Pregnancy and Parental Leaves and Benefits for Professional Legal Staff and Law Firm Equity Partners model policy for law firms and legal organizations was developed to complement other resources available to the legal profession.
6. The Equity Advisory Group, a number of partners and associates of large, medium and small law firms, and law firm directors of students and associates have reviewed the policy. The model policy was revised to incorporate proposed changes.
7. On June 8, 2006, the Committee adopted the model policy presented at Appendix 1. The model policy was included in Convocation's June 22, 2006 agenda, but the item was not reached.

## APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

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PREGNANCY AND PARENTAL LEAVES AND BENEFITS  
FOR PROFESSIONAL LEGAL STAFF AND LAW FIRM  
EQUITY PARTNERS

## A MODEL POLICY FOR LAW FIRMS AND LEGAL ORGANIZATIONS

September 28, 2006

## INTRODUCTION

This document includes a model policy that has been drafted to guide law firms and legal organizations in providing leaves and benefits to professional legal staff<sup>1</sup> and equity partners wishing to spend time with their newborn or newly adopted children.

The availability of pregnancy<sup>2</sup> and parental leaves, as well as related benefits, varies greatly within the legal profession. Some lawyers are eligible for benefits provided under federal and/or provincial legislation while others are not. Some firms have policies that exceed statutory minimum standards, while others require that individual lawyers negotiate leaves and benefits

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<sup>1</sup> Although this document focuses on professional legal staff and equity partners, law firms and legal organizations are encouraged to provide pregnancy and parental leaves and benefits to staff who are not professional legal staff or equity partners.

<sup>2</sup> In this document, unless otherwise specified, the term "pregnancy leave" has the same meaning as "maternity leave" and the term "pregnancy benefits" has the same meaning as "maternity benefits".

with management on a case-by-case basis. The Law Society encourages law firms and organizations to provide pregnancy and parental leaves and benefits to their professional legal staff and equity partners, and to adopt policies that clearly define the extent of the leaves and benefits and outline processes for requesting and granting such leaves and benefits.

Without a written pregnancy and parental leaves and benefits policy (hereinafter “pregnancy/parental leave policy”), decisions are more likely to be made arbitrarily and on an ad hoc basis, resulting in inconsistent decision-making processes, lack of transparency and even discriminatory practices.

Since the late 1990’s, over half of the province’s law school graduates are women. Yet women continue to leave the profession at a much higher rate than men. Studies have noted that women in the legal profession often delay having children because of the impact it might have on their careers.<sup>3</sup> Research findings also show that lawyers with children encounter a lack of workplace support to accommodate childcare responsibilities, which has a greater impact on women who still assume the greater share of those responsibilities.<sup>4</sup> To this end, law firms are encouraged to be proactive in adopting pregnancy/parental leave policies that provide pregnancy leaves and benefits to female lawyers and parental leaves and benefits to lawyers of either sex. Such policies promote equality for men and women in the legal profession and assist parents with family responsibilities.

The *Ontario Human Rights Code*<sup>5</sup> and Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct*<sup>6</sup> promote equality in the workplace by prohibiting discrimination and harassment. The Code and the Rules outline the following legal obligations, which are described in this report:

- a. Law firms and legal organizations, like all Ontario employers, must ensure a workplace where all are treated equally without discrimination and harassment, including discrimination and harassment on the grounds of pregnancy and/or sex;
- b. Law firms and legal organizations have a duty to accommodate, up to the point of undue hardship, differences that arise from personal characteristics enumerated in the *Code*, including pregnancy and/or sex.

This document provides information for law firms and legal organizations about their legal obligations to provide leaves and benefits to new parents, and to accommodate the needs of professional legal staff and equity partners. The document also includes a model policy that may be used as a precedent by law firms and legal organizations. Firms and organizations may

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<sup>3</sup>Fiona Kay et al., *Turning Points and Transitions: Women’s Careers in the Legal Profession* (Toronto: Law Society of Upper Canada, 2004) [*Turning Points and Transitions* report].

<sup>4</sup> See for example Fiona Kay, *ibid.* and Fiona Kay et al., *Diversity and Change: The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, 2004) [*The Contemporary Legal Profession* report].

<sup>5</sup> *Ontario Human Rights Code*, R.S.O. 1990, c.H.19 [the *Code*].

<sup>6</sup> *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, November 1, 2000) [the *Rules*].

adapt the principles and procedures proposed in the model policy to reflect their own organizational needs, culture and practices.

This report is divided as follows:

- I. WHY LAW FIRMS NEED WRITTEN POLICIES
- II. CHALLENGES FACED BY MEMBERS OF THE LEGAL PROFESSION
- III. MODEL POLICIES AND RESOURCES PROVIDED BY THE LAW SOCIETY
- IV. LEGAL REQUIREMENTS - AN OVERVIEW
- V. ISSUES TO CONSIDER WHEN DRAFTING POLICIES
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## I. WHY LAW FIRMS NEED WRITTEN POLICIES

The Ontario Human Rights Commission has stated that “[t]he best defence against human rights complaints is to be fully informed and aware of the responsibilities and protections included in the *Code*.”<sup>7</sup> It is now well established that the adoption of effective policies and procedures to promote equity and diversity and the design and delivery of education programs for employees of organizations such as law firms have the potential of limiting harm and consequently reducing the liability of employers.<sup>8</sup>

It is advantageous to a firm to adopt written policies for a number of reasons:

1. Written policies encourage respect for the dignity of all professional legal staff and equity partners of the law firm.
2. Written policies show that the law firm’s management takes seriously its legal and professional obligations.
3. Many firms provide pregnancy and parental leaves and benefits over and above those mandated by law, but do so on an ad hoc basis. The lack of established criteria and process in the decision-making process might cause concern among professional legal staff and equity partners. Written policies increase the likelihood the decision-making process will be fair, objective and transparent.
4. Written policies on equity issues encourage respect for members of diverse communities, such as those protected under the Code and the Rules. In the context of employment and contractual agreements, such as partnership agreements, the Code and the Rules promote equality and protection against harassment and discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (not protected in the context of contracts), marital status, family status and/or disability.
5. The existence of written policies allows the law firm to communicate its commitment to equity principles to people outside of the law firm, such as prospective recruits and clients.

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<sup>7</sup> *Policy and Guidelines on Disability and the Duty to Accommodate* (Toronto: Ontario Human Rights Commission, November 23, 2000) at 41.

<sup>8</sup> For example, see *Ferguson v. Meunch Works Ltd.* (1997), 33 C.H.R.R. D/87 (B. C. H. R. T.).



6. Written policies minimize the risk of workplace harassment or discrimination and of harm to individual employees, as well as the risk that a law firm will be held liable for such unlawful harassment or discrimination.
7. Written policies may provide the necessary focus for education programs on preventing and responding to overt, subtle or systemic workplace harassment and discrimination.

## II. CHALLENGES FACED BY MEMBERS OF THE LEGAL PROFESSION

Many parent lawyers who assume childcare responsibilities face challenges in managing their personal responsibilities and maintaining fulfilling legal careers. A recent Catalyst Canada report notes "Today, across many industries, men and women report greater instances of work-life conflict and role overload, along with higher rates of stress, burn-out, and absenteeism. Reasons for these trends include growing competition and client demands, lean staffing and the advent of a 24/7 mentality that often accompanies new technology."<sup>9</sup>

With the greater number of women in the profession, firms must address the reality that women joining private practice must often manage the demands of the most critical years of career development with their optimal childbearing years. Both male and female members of the legal profession who wish to have families and a fulfilling career face serious challenges. Studies reviewed and undertaken by the Law Society since 1989 indicate that a significant source of dissatisfaction in the profession is the lack of support and benefits for lawyers who take time off for pregnancy and parental leaves:

1. The 2004 *Turning Points and Transitions* report<sup>10</sup> provides the findings of a longitudinal study of lawyers called to the Ontario Bar between 1975 and 1990. The findings reveal that sizable gaps remain between men and women in salaries, promotion opportunities and job satisfaction. The study indicates that women in private practice are likely to delay having children. They also assume a larger share of childcare responsibilities than men and they encounter a lack of workplace supports to accommodate family responsibilities. Men are also more likely to be partners and more likely to be senior partners than women, while women are more likely to be in alternative forms of partnerships.<sup>11</sup>
2. Catalyst Canada, a research and advisory organization working to advance women in business, has studied the issue of work life balance within the legal profession. Key findings of Catalyst Canada indicate that, of associates surveyed, 62% of women and 47% of men intend to stay with their firms for five years or less. Respondents indicate that the top factors for choosing to work at another firm are an environment more supportive of family and personal commitments, and more control over work schedules.<sup>12</sup> Catalyst also found that female partners, female associates, and male associates perceive and experience the law firm work environment differently than male

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<sup>9</sup> Catalyst Canada, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (Toronto: Catalyst Canada, 2005) at 38 [*Creating Opportunities*].

<sup>10</sup> Fiona Kay, *Turning Points and Transitions*, *supra* note 3.

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

<sup>12</sup> *Creating Opportunities*, *supra* note 9.

partners. Female lawyers feel the challenge of managing work and personal/family disproportionately, especially female associates. Catalyst also notes “Forty-two percent of men lawyers with children report they have spouses who do not work outside the home, in comparison to ten percent of women lawyers with children. Of those male lawyers with children and a spouse who does not work outside the home (76 percent of whom are partners), 49 percent express difficulty managing the demands of work and personal/family life, in comparison to 74 percent of female lawyers with children and a spouse employed full-time (48 percent of whom are partners).<sup>13</sup>

3. In 2001, the Law Society conducted a survey of students who had undergone articling recruitment for 2001-2002 to evaluate whether firms ask inappropriate or discriminatory questions during the recruitment process.<sup>14</sup> Twenty percent of the respondents stated that they were asked inappropriate questions during at least one interview. Students reported being asked about their marital status and plans to have children. It was also insinuated that female lawyers are a liability when they take pregnancy leaves.
4. Convocation established the Discrimination and Harassment Counsel program in 1999 to confidentially assist anyone who may have experienced harassment or discrimination by a lawyer or within a law firm. Nine percent (9%) of harassment and discrimination complaints between January 1, 2003 and December 31, 2005 were made on the basis of pregnancy.<sup>15</sup> Incidents reported include being asked at an interview for an associate's position whether the candidate is pregnant; being told that one's partnership prospects would be detrimentally impacted by taking too many pregnancy leaves; being pressured to work while on leave; being asked to return to work before the end of the leave; being told to hire a full-time nanny or the individual's partnership prospects would be adversely impacted. Women who are articling students, associates and partners have raised these concerns.

In light of these findings, the Law Society has undertaken initiatives to promote equality in the legal profession.

### III. MODEL POLICIES AND RESOURCES PROVIDED BY THE LAW SOCIETY

In the last decade, the Law Society has adopted a number of model policies and produced resources to promote equality within the legal profession. Some of these model policies may be used to complement a pregnancy/parental leave policy. These include:

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<sup>13</sup> *Ibid.* at 15.

<sup>14</sup> *Summary of Students Hiring Practice Guidelines* (Toronto: Law Society of Upper Canada, May 2003).

<sup>15</sup> *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada – July 1, 2005 to December 31, 2005* (Toronto: Law Society of Upper Canada, 2005).

*Guide to Developing a Policy Regarding Workplace Equity in Law Firms*<sup>16</sup>

This guide includes a model policy for the promotion of workplace equity. Topics discussed include recruitment practices, interviewing candidates, hiring and promotion, the right to equal opportunities at work, professional development, the duty to accommodate, mentoring and compensation.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

*Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*<sup>17</sup>

This document sets out an employer's legal duty to accommodate employees' creed and religious beliefs, disability, as well as gender and family status. It includes examples and model procedures for requesting and granting accommodations.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

*Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities- Legal Developments and Best Practices*<sup>18</sup>

This document is a companion piece to the *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*. It includes a summary of best practices and a comprehensive legal analysis of the duty to accommodate.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

*Guide to Developing a Policy Regarding Flexible Work Arrangements*<sup>19</sup>

One way of fulfilling an employer's legal duty to accommodate employees with family responsibilities or disabilities is through the adoption of flexible work arrangements. This guide

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<sup>16</sup> *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, updated March 2003).

<sup>17</sup> *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, March 2001).

<sup>18</sup> *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities- Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001, updated December 2004).

<sup>19</sup> *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, updated March 2003).

outlines various alternate work arrangements for both associates and partners of law firms in addition to outlining responses to the challenges presented by each option.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms<sup>20</sup>

This document was adopted to guide law firms in taking a proactive approach and having an effective complaints mechanism in place to address discrimination and harassment in the workplace. The guide includes an overview of legal requirements, a discussion of policy and implementation issues, a sample model policy for law firms, and step by step complaints procedures for both medium/large and small law firms.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

*Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment- Model Policy for Law Firms and other Organizations*<sup>21</sup>

The Law Society published this model policy for law firms and other legal organizations as an initiative to promote equality for gay, lesbian, bisexual, Two-Spirited and transgender individuals within the legal profession.

Available at <http://www.lsuc.on.ca/about/b/equity/model-policies/>

Also available in French at <http://www.lsuc.on.ca/fr/about-the-society/b/promoting-equity-and-diversity/model-policies/>

*Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada*<sup>22</sup>

The Statement of Principles presented in this document promotes respect for religious diversity and condemns religiously motivated hatred and discrimination based on religion. The report includes a discussion of the meaning of "religion" and "creed", the religious demographic profile

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<sup>20</sup> *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms* (Toronto: Law Society of Upper Canada, March 2002).

<sup>21</sup> *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment - A Model Policy for Law Firms and other Organizations* (Toronto: Law Society of Upper Canada, May 2004).

<sup>22</sup> *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, March 2005).

of Canada and Ontario, legal developments in Ontario and Canada, and the international position on this issue. The report also presents the Law Society's statement of principle.

Available at <http://www.lsuc.on.ca/about/b/equity/publications-and-reports/>

Also available in French at <http://www.lsuc.on.ca/media/mar1005antisemitismfre.pdf>

*Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law*<sup>23</sup>

This document is a companion piece to the *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada* and includes interviews with a cross-section of the legal profession about the relationship between their faith/spiritual belief(s) and practices, the rule of law and legal practice.

Available at <http://www.lsuc.on.ca/about/b/equity/publications-and-reports/>

#### IV. LEGAL REQUIREMENTS - AN OVERVIEW<sup>24</sup>

While law firms should take into account economic considerations when developing policies for their professional legal staff and equity partners, they should also consider the value of adopting policies that provide pregnancy and parental leaves and benefits. Catalyst Canada's findings show that "the average total cost of an associate's departure is \$315,000, approximately twice the average associate's salary."<sup>25</sup> Catalyst also notes that numerous studies across industries have shown that "the exit of employees impacts organizations in terms of out-of-pocket expenses, loss of intellectual capital, and, ultimately, an organization's bottom line."<sup>26</sup> Adopting policies to support women during their childbearing years, and to assist women and men in balancing the demands of their career and family responsibilities, have long-term benefits for law firms and legal organizations, and promote equality, human dignity and respect. The following outlines legal obligations in the employment context, and in the context of contractual agreements between equity partners, that relate to pregnancy and parental leaves and benefits.

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<sup>23</sup> *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law* (Toronto: The Law Society of Upper Canada, April 2005).

<sup>24</sup> The legal developments are accurate at the date of writing. However, employment legislation and the accompanying regulations change frequently. It is important that firms monitor legal changes to ensure that the information contained in their policy remains accurate and current.

<sup>25</sup> *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (Toronto: Catalyst Canada, 2005) at 9 [the *Business Case* study].

<sup>26</sup> *Ibid.* at 9. Catalyst refers to the NALP Foundation for Law Career Research and Education, *Keeping the Keepers*, 2003 and Abraham Sagie, Assa Biranti, and Aharon Tziner, "Assessing the Costs of Behavioral Psychological Withdrawal: A New Model and Empirical Illustration" (2002) 51 *Applied Psychology: An International Review* 67-89.

# 1. *Human Rights Obligations*

Law firms and legal organizations have legal obligations under provincial and/or federal human rights legislation and case law, and lawyers are bound by rules that promote human rights under the Law Society's Rules of Professional Conduct. The following provides an overview of these obligations.

## a. Ontario Human Rights Code, Canadian Human Rights Act and Rules of Professional Conduct— Who is Covered?

The *Canadian Human Rights Act (CHRA)*<sup>27</sup> applies to federally regulated employers or service providers. These include federal departments, agencies and Crown corporations, chartered banks, airlines, television and radio stations, inter-provincial communications and telephone companies, buses and railways that travel between provinces, First Nations and other federally regulated industries, such as certain mining operations. The *CHRA* also applies to some private sector employers under federal jurisdiction. Therefore, the provisions of the *CHRA* bind federally regulated legal organizations, such as federally regulated legal clinics.

The *Code* applies to everyone in Ontario with respect to services, goods and facilities, occupancy, contracts, employment, vocational associations and accommodations, unless the *CHRA* applies.<sup>28</sup> All employment relations, including those governed by a collective agreement, are subject to the Code. Therefore, law firms and legal organizations in Ontario are subject to the Code, and the Code applies to all employees of the law firm or legal organization, including associates, salaried lawyers, in-house counsel, and articling students. The Code also applies to partnership agreements or contractual agreements between law firm partners. In addition to the *CHRA* and the *Code*, members of the Law Society of Upper Canada are bound by the obligations outlined in the *Rules*

## b. Discrimination because of Pregnancy is Illegal

The Supreme Court of Canada (S.C.C) has clearly established, in *Brooks v. Canada Safeway*<sup>29</sup>, that discrimination because a woman is, or may become, pregnant is discrimination on the ground of sex and is illegal. In that case, a group of pregnant women were not entitled to receive sickness benefits for the ten-week period before giving birth and ending the sixth week after giving birth. During that seventeen-week period, pregnant women, even if they suffered from an ailment totally unrelated to pregnancy, were not entitled to any compensation under the plan. The S.C.C held that the women's disentanglement during the seventeen weeks of pregnancy leave resulted in unfavourable treatment when compared to other employees' entitlements to receive benefits for other health-related reasons. The Court found that pregnancy, while not properly characterized as a sickness or an accident, is a valid health-related reason to be absent from work and the pregnant employees should have been entitled to benefits under the employer's plan. The Supreme Court of Canada held that discrimination on the basis of pregnancy is sex discrimination.

<sup>27</sup> *Canadian Human Rights Act*, R.S. 1985, c. H-6 [*CHRA*].

<sup>28</sup> Part I, Sections 1, 2, 3, 4, 5, and 6 of the *Code*, *supra* note 5.

<sup>29</sup> *Brooks v. Canada Safeway*, [1989] 1 S.C.R. 1219 (S.C.C)

The decision in *Brooks* was extended in the Alberta Queen's Bench decision *Alberta Hospital Association v. Parcels*<sup>30</sup>, and later in the Ontario Court of Appeal decision *Ontario Secondary School Teachers' Federation, District 34 v. Essex County Board of Education*<sup>31</sup>. The courts in those cases found that pregnancy leaves have both health-related and non-health-related components and that treating the portion that is health-related as though it were different from any other absence from work for a health-related cause is discriminatory. Employers have a duty to compensate employees as they would be compensated if absent for any other health-related cause.

Provincial and federal human rights legislations expressly prohibit discrimination based on pregnancy. The *Code* states "The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant".<sup>32</sup> Therefore, discrimination in employment or in the context of partnerships, because a woman is or may become pregnant is clearly illegal. Discrimination in employment or in the context of partnerships on the grounds of sex, sexual orientation, marital status and family status is also prohibited under the *Code*.<sup>33</sup>

The provisions of the *CHRA* in the context of employment are similar to those found in the *Code*. The *CHRA* specifies that where there is discrimination on the ground of pregnancy or childbirth, the discrimination is deemed to be on the ground of sex.<sup>34</sup> The *CHRA* prohibits discrimination on enumerated grounds, including sex, sexual orientation, marital status, and family status.<sup>35</sup> The *CHRA* also makes employer policies, practices or agreements illegal if they deprive an employee or a class of employees from any employment opportunity on a prohibited ground.<sup>36</sup>

The *CHRA* outlines exceptions to the prohibition to discriminate, including the exception that "it is not discrimination where an employer, employee organization or employer organization grants

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<sup>30</sup> *Alberta Hospital Association v. Parcels*, [1992] A.J. No. 320 (Alta Q.B.) [*Parcels*].

<sup>31</sup> *Ontario Secondary School Teachers' Federation, District 34 v. Essex County Board of Education* [1998] O.J. No. 3368 (C.A.).

<sup>32</sup> *Code*, *supra* note 5, s. 10(2).

<sup>33</sup> *Code*, *supra* note 5, s. 5(1).

<sup>34</sup> Section 3(2) of the *CHRA*, *supra* note 27.

<sup>35</sup> See sections 3(1) and 7(b) of the *CHRA*, *ibid*.

<sup>36</sup> Sections 10(a) and 10(b) of the *CHRA*, *ibid*.

Section 10 provides: It is discriminatory practice for an employer, employee organization or employer organization

(a) to establish or pursue a policy or

(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

a female employee special leave or benefits in connection with pregnancy or childbirth or grants employees special leave or benefits to assist them in the care of their children.”<sup>37</sup> Therefore, employers may adopt workplace pregnancy leave policies that entitle women to special leaves and benefits in the context of pregnancy, childbirth and care of their children.

As mentioned above, the *Rules of Professional Conduct* apply to members of the Law Society of Upper Canada. Rule 5.04 places a special responsibility on lawyers to adhere to the tenets of human rights law and in particular to respect the obligation not to discriminate on a ground enumerated in the *Rules* and the *Code*.<sup>38</sup> Lawyers must not sexually harass or discriminate on the grounds of, for example, sex, sexual orientation, marital status or family status.

A significant number of complaints made to the Discrimination and Harassment Counsel Program each year are complaints of discrimination or harassment on the basis of pregnancy. Between January 1, 2003 and December 31, 2005, nine percent (9%) of harassment and discrimination complaints were made on the basis of pregnancy.<sup>39</sup>

c. Employers Have a Duty to Accommodate

The *Code* imposes a duty to accommodate, to the point of undue hardship, differences that arise from personal characteristics enumerated in the *Code*. Section 11 of the *Code* indicates that where a requirement, qualification or factor exists that results in the exclusion, restriction or preference of a group of persons, the requirement, qualification or factor is not a violation of the *Code* if it is reasonable and *bona fide* in the circumstances.<sup>40</sup> The Human Rights Commission, in its Policy on *Discrimination Because of Pregnancy and Breastfeeding*<sup>41</sup>, explains “In order for a requirement to be reasonable and *bona fide* in the circumstances, it must be shown that

<sup>37</sup> S. 15 (1)(f) of the *CHRA*, *ibid*.

<sup>38</sup> Rule 5.04(1) states “A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the *Ontario Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person”. *Rules*, *supra* note 6.

<sup>39</sup> *The Report of Activities of the Discrimination and Harassment Counsel, January 1, 2005 to December 31, 2005*, *supra* note 15. Available on-line at: [http://www.lsuc.on.ca/media/convfeb06\\_equity\\_report.pdf](http://www.lsuc.on.ca/media/convfeb06_equity_report.pdf)

<sup>40</sup> Section 11(1) of the *Code*, *supra* note 5, provides as follows:

A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
- (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right

<sup>41</sup> (Toronto: Human Rights Commission, revised 2001). Available on-line at [www.ohrc.on.ca](http://www.ohrc.on.ca).



the needs of the particular group protected under the *Code* cannot be accommodated "short of undue hardship". "Short of undue hardship" is a standard that applies to the person required to make the accommodation, and takes into consideration costs, outside sources of funding, and health and safety factors."

The commentary to Rule 5.04 also discusses the duty to accommodate:

The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the applications of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in rule 5.04.

The *CHRA* also imposes a duty on employers to accommodate, to the point of undue hardship, differences that arise from personal characteristics enumerated in the Act.<sup>42</sup>

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law.

Under section 11 of the *Code*, an employer may justify a workplace rule that has the effect of discriminating against a person or group of persons on a prohibited ground by showing that the rule is a *bona fide* occupational requirement and that the needs of the person or group cannot be accommodated without undue hardship.<sup>43</sup>

Section 17 of the *Code* creates an obligation to accommodate persons with disabilities. Section 17 states that there is no violation of the *Code* if a person with disabilities is incapable of performing or fulfilling the essential duties or requirements of a function. However, this defence is not available unless it can be shown that the needs of the person cannot be accommodated without undue hardship.<sup>44</sup>

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<sup>42</sup> See section 15 1 (a) and (2) of the *CHRA*, *supra* note 27.

Section 15. (1) It is not a discriminatory practice if (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a *bona fide* occupational requirement [...]

(2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a *bona fide* occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a *bona fide* justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

<sup>43</sup> *Code*, *supra* note 5.

<sup>44</sup> Section 17 of the *Code*, *ibid.*, imposes a duty to accommodate persons with disabilities:

(1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.

(2) The Commission, the board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Supreme Court applies the following three-step analysis when considering whether a standard is discriminatory<sup>45</sup> :

Once a plaintiff establishes that the standard is *prima facie* discriminatory, the onus shifts to the defendant to prove on a balance of probabilities that the discriminatory standard is a *bona fide* occupational requirement or has a *bona fide* and reasonable justification. In order to establish this justification, the defendant must prove that:

- It adopted the standard for a purpose or goal rationally connected to the function being performed;
- It adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and
- The standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.<sup>46</sup>

In Ontario, the Court of Appeal has adopted the three-step analysis set out by the Supreme Court of Canada.<sup>47</sup>

The Human Rights Commission provides the following examples of how special needs during the pre-natal and post-natal period can be accommodated, short of undue hardship:48

- An employee may be temporarily relocated to another work station or location or re-assigned to alternative duties.
- A flexible work schedule can be provided to accommodate medical appointments, including treatment for infertility.
- Breaks can be allowed as necessary. It is a general human rights principle that persons should not experience disadvantage owing to needs related to prohibited grounds of discrimination. Therefore, employees who require breaks, such as for pumping or breastfeeding, should normally be accorded those breaks, and not be asked to forgo normal meal breaks as a result, or work additional time to make up for the breaks, unless the employer can show undue hardship.

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Section 17 applies to cases involving services as well as employment. See *Youth Bowling Council of Ontario v. McLoed* (1991), 14 C.H.R.R. D/120 (Ont. Div. Ct.).

<sup>45</sup> *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U.*, [1999] 3 S.C.R. 3 (the *Meiorin* case). The test in *Meiorin* was developed in the employment context. In *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (the *Grismer* case), the Supreme Court of Canada confirmed that the unified approach to adjudicating discrimination claims adopted in *Meiorin* applied to all claims of discrimination, including claims related to the provision of services.

<sup>46</sup> See *Grismer*, *ibid.* at par. 20 (the test is applied in the context of the provision of services) and *Meiorin*, *ibid.* at par. 54 (the test is applied in the employment context).

<sup>47</sup> *Entrop v. Imperial Oil Ltd.* (2000), 50 O.R. (3d) 18 (Ont. C.A.).

<sup>48</sup> *Policy on Discrimination because of Pregnancy and Breastfeeding*, *supra* note 41.

- A supportive environment can be provided for a woman who is breastfeeding. Accommodation may mean allowing the care-giver to bring the baby into the workplace to be breastfed, making scheduling changes to permit time to express milk or breastfeed at work, and providing a comfortable, dignified and appropriate area so that a woman can breastfeed, or express and store breast milk at work. In some special cases, it may involve permitting a leave of absence.
- A supportive environment can be created with minimum disruption.

Section 5 of the *Code*<sup>49</sup> prohibits discrimination on the basis of family status within employment, and section 10 of the *Code* defines 'family status' as "the status of being in a parent and child relationship". Case law has interpreted these provisions to include an obligation for employers to accommodate employees' significant family responsibilities. It should be noted however, that not every aspect of care in a parent and child relationship is entitled to accommodation at work, and that the exact accommodation required can vary greatly depending on the exact context. Three cases that have applied provisions related to accommodation for employees with family responsibilities are summarized below.

In *Brown v. Canada (Department of National Revenue, Customs and Excise)*<sup>50</sup>, the complainant could not find a babysitter to look after her newborn child overnight. Both her and her husband were required to work shifts, and her husband could not regularly adjust his shift work to fit in with hers. The complainant requested that she be accommodated by being put on straight day shifts or by being allowed to go on an unpaid care and nurturing leave. The tribunal noted the obvious dilemma facing the modern family where present socio-economic trends find both parents in the work environment, often with different rules and requirements. More often than not, the female parent is the one required to strike a balance between family needs and employment requirements. Family status means a parent's right and duty to strike a balance coupled with a duty on the part of the employer to facilitate and accommodate that balance.

In the case of *Wight v. Ontario (Office of the Legislative Assembly)*,<sup>51</sup> a new mother at the end of her pregnancy leave had difficulty securing a day care placement in the regulated day care centre of her choice. She made no substantial efforts to secure alternate child care arrangements and refused to return to work until getting a day care placement at the facility of her choice. Although the employer offered her another two weeks of leave, it would be months before she could get the daycare placement. The board found that it is not unreasonable for an employer to expect an employee to return to work at the end of a leave, and to expect the employee to do what is necessary to ensure return. In this case, the complainant steadfastly refused to take any alternate steps or change her plans to seek an alternative daycare. The complainant was seeking accommodation that would relieve her of her obligation to return to work at the end of the leave, and this is not required under the law. Accommodation in such a case is meant to assist a person returning to work. There are obligations on the employee, not just the employer, to cooperate in the accommodation process and show some willingness to be flexible.

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<sup>49</sup> *Supra* note 5.

<sup>50</sup> [1993] C.H.R.D. No. 7, No. T.D. 7/93

<sup>51</sup> [1998] O.H.R.B.I.D. No. 13.

Most significantly, a British Columbia Court of Appeal case<sup>52</sup> has confirmed that the protected ground of 'family status' means that at least some family care obligations will be protected under human rights legislation. Therefore, employers have a duty to accommodate parents and children with those family care obligations that are protected.

Although the court in *Campbell River* found that the enumerated ground of 'family status' does not refer only to the status of being a parent or child per se, it also ruled that 'family status' does not necessarily encompass all of the everyday obligations of care in the relationship between parent and child. The appropriate determination of what falls under 'family status' is somewhere between these two extremes. Specifically, the court noted that a prima facie case of discrimination is present where a requirement or standard is imposed that results "in a serious interference with a substantial parental or other family duty or obligation of the employee."<sup>53</sup> The court stated that the determination of whether a family duty meets this standard will vary from case to case, but noted that on the facts of that particular case, the employer had a duty to accommodate the parent whose child had a major psychiatric disorder that required the mother's attendance during after school hours.

These three cases mean that any employee in a parent and child relationship may seek accommodation from their employer with regards to their substantial parental or other family duty or obligation. The exact form of the accommodation however will vary greatly from case to case. Examples of typical accommodation for persons with substantial duties of care may include arrangements such as flexible work schedules, compressed workweeks, reduced hours, and flexible leave policies.

Although an employee may have a right to accommodation on the basis of their substantial care obligations arising from an event such as the care of a newborn, that employee is not necessarily entitled to the accommodation of their choice. As with all other forms of accommodation, the employee has an obligation to remain engaged with the employer in the discussion about the most appropriate form of accommodation. In many cases, the exact terms of the accommodation are often something that will have to be negotiated between the parties.

## 2. *Obligations to Provide Leaves and Benefits*

Employers' obligations to provide pregnancy and parental leaves and benefits are found under the *Employment Standards Act, 2000 [ESA]*<sup>54</sup> and the *Employment Insurance Act, 1996 [EIA]*<sup>55</sup>. The rights and obligations under the *ESA* and the *EIA* are described below.

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<sup>52</sup> *Health Services Assn. of British Columbia v. Campbell River and North Island Transition Society*, [2004] B.C.J. No. 922, 2004 B.C.C.A. 260 [hereinafter *Campbell River*]. Although this case is decided under British Columbia legislation, the wording of the statute with regards to family status is substantially the same as that under the Ontario *Human Rights Code*.

<sup>53</sup> *Ibid.* at para. 39.

<sup>54</sup> S.O. 2000, c. 41.

<sup>55</sup> 1996, c. 23.

a. Employment Standards Act

Employed lawyers are subject to Part XIII ("Benefit Plans") and Part XIV ("Leaves of Absence")<sup>56</sup> but exempt from Parts VII to XI of the *ESA*.<sup>57</sup> Subject to these exceptions, the *ESA* applies to an employee and his or her employer if the employee's work is performed in Ontario, or the work performed outside of Ontario is a continuation of work performed in Ontario. The *ESA* does not apply to employees employed in organizations that fall within the legislative jurisdiction of the Parliament of Canada, and employees of embassies or consulates of foreign nations. Furthermore, the *ESA*<sup>58</sup> exempts persons in Ontario who hold political, judicial or religious office, are members of quasi-judicial tribunals, who hold an elected office in an organization including a trade union.

The *ESA* sets out the minimum threshold for employment standards. It is expressly prohibited to contract out of the standards of the *ESA*.<sup>59</sup>

Part XIV of the *ESA* governs leaves of absence from the workplace, including pregnancy and parental leaves. The purpose of the legislation is to protect an employee's position while on leave. An employer is statutorily obligated to grant qualifying employees a pregnancy and/or parental unpaid leave if such is requested. The employer has no obligation to provide for paid leaves under Part XIV of the *ESA*.

The *ESA* guarantees reinstatement for those returning to work at the end of the leave to the position the employee held prior to taking the pregnancy or parental leave.<sup>60</sup> In *Elementary*

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<sup>56</sup> *Exemptions, Special Rules and Establishment of Minimum Wage*, O. Reg. 285/01 (amended to O. Reg. 401/03) exempts members of the legal profession from Parts VII to XI of the *ESA*. Section 3(2) of the *ESA*, *supra* note 54, exempts employees whose employment is within the legislative jurisdiction of the Parliament of Canada. Section 3(4) exempts Crown employees from many portions of the Act, however, they are subject to Parts XIII ("Benefit Plans") and XIV("Leaves of Absence").

<sup>57</sup> Part VII is Hours of Work and Eating, Part VIII is Overtime Pay, Part IX is Minimum Wage, Part X is Public Holidays, and Part XI is Vacation with Pay. *ESA*, *ibid*.

<sup>58</sup> *Ibid*. Part III, ss. 3 (1)(2)(3)(4) (5) (6) ss 4(1)(2)(3)(4)(5) and 5(1).

<sup>59</sup> See section 5(1) of the *ESA*., *ibid*. Where an employment agreement offers a greater benefit to an employee than the standards set out in the *ESA*, s. 5(2) is paramount to the agreement.

<sup>60</sup> Section 53 of the *ESA*, *ibid*. states the following:  
53(1) Upon the conclusion of an employee's leave under this Part, the employer shall reinstate the employee to the position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not.

The section does not apply if the employment of the employee is ended solely for reasons unrelated to the leave. 2000, c.41, s. 53(2).

Wage rate (3) The employer shall pay a reinstated employee at the rate that is equal to the greater of

- (a) the rate that the employee most recently earned with the employer; and
- (b) the rate that the employee would be earning had he or she worked throughout the leave.

*Teachers Federation of Ontario v. Toronto District School Board*<sup>61</sup>, the Ontario Court of Appeal held that the duty to reinstate an employee to her previous position does not extend to the type of subject she was assigned to teach. In this case, the teacher's position as a Senior French teacher was filled while she was on pregnancy leave. When the teacher returned to work, she was informed that she would teach Senior Science instead of Senior French. Although qualified to teach Science, she declined the assignment and remained on leave until she was reassigned to teach Senior French. The Court held that the *ESA* can be interpreted to mean that, upon the return to work, the employer has a duty to assign the teacher to a position she is qualified to perform, but does not have a duty to assign her to teach the same subject. Because principals of schools generally have the discretion to assign subject matters taught by teachers, an employee on pregnancy leave does not have the right to choose her teaching assignments when other employees do not have that right.<sup>62</sup>

Section 53 of the *ESA* has been interpreted by courts to emphasize the importance of being reassured that by taking a pregnancy or parental leave one's employment is not in danger of being eliminated.<sup>63</sup>

When calculating an employee's seniority, length of service to the employer and length of employment, the employer must include the length of the leave.<sup>64</sup> While on leave under Part XIV ("Leaves of Absence"), an employee continues to participate in benefit plans unless he or she elects otherwise and notifies the employer in writing.

Where employee benefit plans are paid for in part by the employer and in part by the employee, the employer is obligated to continue to pay the employer's contributions for benefit plans unless the employee gives the employer written notice indicating his or her intention to not pay his or her contributions.<sup>65</sup>

### *Pregnancy Leave*

Entitlement to a pregnancy leave under the *ESA* is automatic unless the employee's due date falls fewer than 13 weeks after she began employment.<sup>66</sup>

If also entitled to parental leave, an employee's pregnancy leave will be 17 weeks in length.<sup>67</sup> An employee who is not eligible to parental leave is entitled to pregnancy leave that ends the

<sup>61</sup> *Elementary Teachers Federation of Ontario v. Toronto District School Board*, [2005] O.J. No. 4368 (C.A.).

<sup>62</sup> *Ibid.*

<sup>63</sup> In *Ontario Public Service Employees Union, Local 458 v. Open Hands Inc.*, [2000] O.J. No. 1651, the Ontario Superior Court of Justice held that section 43(1) (as it was then), was not satisfied by returning an employee to the same classification at a different location and facility.

<sup>64</sup> *ESA*, *supra* note 54, s. 52(1).

<sup>65</sup> *Ibid.* s.51 (1)-(3).

<sup>66</sup> *Ibid.* s. 46(1).

<sup>67</sup> *Ibid.* s. 47(1)(a).

later of either 17 weeks after the pregnancy leave began or six weeks after a birth, stillbirth or miscarriage.<sup>68</sup>

Section 46(4) of the ESA provides procedures for giving notice and changing the date of the notice, along with contingent procedures in the event of unforeseen complications related to the pregnancy.<sup>69</sup>

### *Parental Leave*

The following outlines parental leave entitlements under the ESA. An employee who has been employed by his or her employer for at least 13 weeks is entitled to take a parental leave.<sup>70</sup> A parental leave may be taken following either the birth of a child or the coming of the child into the employee's custody, care and control for the first time.<sup>71</sup>

The length of the parental leave is contingent on whether or not the employee took a pregnancy leave. When that is the case, the parental leave is limited to 35 weeks. If no pregnancy leave has been taken, the employer must allow the employee to take up to 37 weeks of leave of absence.<sup>72</sup>

If an employee has taken a pregnancy leave, she must commence her parental leave when the pregnancy leave ends, unless the child has not yet come into her custody, care and control for the first time.<sup>73</sup>

In the event that an employee has not taken pregnancy leave, the commencement of parental leave is restricted to no later than 52 weeks after the day the child is born or comes into the custody, care and control of the employee for the first time.<sup>74</sup>

As with pregnancy leaves, procedures for parental leaves, such as giving notice, changing the date of notice and dealing with unexpected arrivals of the child, are proscribed.<sup>75</sup>

<sup>68</sup> *Ibid.* s. 41(1)(b)(i) and (ii).

<sup>69</sup> S. 47(2) of the *ESA*, *ibid.*, provides: "An employee may end her leave earlier than the day set out in subsection (1) by giving her employer written notice at least four weeks before the day she wishes to end her leave".

<sup>70</sup> S. 48(1) of the *ESA*, *ibid.*

<sup>71</sup> Employees who have step children coming into their custody, care and control may be eligible for parental leave under s. 48(1). The definition of "parent" is found in s. 45 of the *ESA*, *ibid.*, which states that "parent" includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own, and "child" has a corresponding meaning."

<sup>72</sup> S. 49(1) of the *ESA*, *ibid.*

<sup>73</sup> S. 48(3) of the *ESA*, *ibid.*

<sup>74</sup> S. 48(2) of the *ESA*, *ibid.*

An employee may not terminate his or her employment before the end of the parental leave or when it expires without giving the employer at least four weeks written notice, unless the employee is constructively dismissed.<sup>76</sup>

b. Employment Insurance Act<sup>77</sup>

Employees in Ontario that meet the minimum hours requirements of employment under the *EIA* are covered by the Act. It should be noted that the *EIA* does not cover self-employed workers. Therefore, lawyers who are equity partners<sup>78</sup> or sole practitioners are not eligible for parental/pregnancy benefits under the *EIA*. Firms who are drafting pregnancy/parental leave policies should consider the benefits available to employees under the *EIA*.

The *EIA* provides three types of special benefits relevant to birth mothers and/or new parents: pregnancy, parental and sickness benefits.

The *EIA* requires an employee to have accumulated 600 or more hours of insurable employment in order to qualify for the “special benefits” set out in ss. 21 (“Sickness”), 22 (“Pregnancy”) and 23 (“Parental Benefits”). Six hundred hours is the equivalent of 15 weeks, assuming a forty-hour work week.

Pregnancy benefits are available to birth mothers only. Parental benefits are available in addition to pregnancy benefits. Either or both parents of a newborn child or of an adopted child may be eligible for parental benefits.

A birth mother may be eligible for sickness benefits in addition to pregnancy and parental benefits.<sup>79</sup>

Since March 3, 2002, a claimant may be eligible to receive benefits for up to a maximum of 65 weeks.<sup>80</sup> Benefits are paid at a rate of 55% of a claimant’s weekly earnings.<sup>81</sup> Maximum weekly earnings are set out in s. 14.<sup>82</sup>

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<sup>75</sup> Section 48(4) of the *ESA*, *ibid.*, sets out that the employer is entitled to written notice at least two weeks before the leave is to begin. Subsection (5) and (6) govern the procedures for changing the date of commencement of the leave while s. 49(2) and (3) explain how an employee can amend final date of the leave.

<sup>76</sup> *Ibid.* s. 49(4) and (5).

<sup>77</sup> *Supra* note 55.

<sup>78</sup> Non equity partners may be covered by the *ESA* or the *EIA* depending on the agreement with the firm.

<sup>79</sup> Under s. 21 of the *EIA*, *ibid.*, a birth mother may be eligible to claim benefits for up to 15 weeks for either pregnancy or non-pregnancy-related illness.

<sup>80</sup> *Ibid.* s. 23(3.2), (3.21), (3.22), and (3.23). For example, where a birth mother claims benefits for the 15 weeks of pregnancy leave, 35 weeks of parental leave and less than the maximum of 15 weeks sickness benefits, the claimant may claim the unused weeks of sickness benefits. Similarly, where the claimant receives 15 weeks sickness benefits, 15 weeks pregnancy



The following sections describe the benefits available for pregnant employees as well as new parents of either sex.

### *Pregnancy Benefits*

Following a two week unpaid waiting period,<sup>83</sup> a pregnant employee is entitled to 15 weeks of paid pregnancy benefits.<sup>84</sup>

Pregnancy benefits are to be collected within 17 weeks of the later of the week of expected confinement or the actual confinement. Where the newborn child is hospitalized, a claimant can delay receiving maternity benefits for up to 52 weeks.

### *Parental Benefits*

Parental benefits are available for a maximum of 35 weeks.<sup>85</sup> They may be claimed by one of the parents or both may share them. Where the benefits are divided between both parents, only one has to serve the two-week waiting period.<sup>86</sup>

Parental benefits must be taken within 52 weeks of the birth of the child or of the arrival of the child/children into the home. An exception is made in the event of hospitalization of the child, in which case, the benefit period is extended by one week for each week the child is in the hospital, to a maximum of 104 weeks.

Claimants who wish to work part-time while receiving parental benefits may earn the greatest of \$50 or 25% of their weekly benefits without a reduction of benefits.<sup>87</sup> Reductions of earnings are made by matching dollar for dollar.<sup>88</sup>

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benefits and fewer than the 35 weeks parental benefits entitlement; she may apply to receive benefits for the unclaimed portion of maternity benefits. These examples do not reflect the mandatory, unpaid 2 week waiting period set out in s. 13.

<sup>81</sup> *EIA*, s. 14(1), *idid*.

<sup>82</sup> *EIA*, *ibid*, s. 14(1.1) (a) states the maximum weekly insurable earnings is \$750 if the claimant's benefit period begins during the years 1997 to 2000; and s. 14(1.1)(b) states if the claimant's benefit period begins in a subsequent year, the maximum yearly insurable earnings divided by 52

<sup>83</sup> This waiting period is similar to a deductible found in most insurance policies.

<sup>84</sup> The waiting period provision is set out in s. 13 while the maximum number of weeks of paid maternity leave is stated in s. 12(4).

<sup>85</sup> *EIA*, *ibid*, s. 14(1.1)(b).

<sup>86</sup> *Ibid*. s. 23(4) & (5).

<sup>87</sup> *Ibid*. s. 19(2).

<sup>88</sup> *Ibid*. s. 19(3).

### *Sickness Benefits*

Under the EIA a pregnant woman may be entitled to receive up to 15 weeks of sickness benefits in addition to pregnancy and parental benefits.<sup>89</sup>

### *Employer Supplemental Income Benefits*

Since 1993, employers can pay supplemental benefits to the employee, without a reduction of the employee's benefits under the *EIA* (employer supplemental income benefits). The supplemental income benefits paid by the employer are not deemed to be earnings. To avoid a reduction of benefits under the *EIA*, the following two conditions must be met:

- the combined employment insurance benefits plus the supplemental income benefits cannot exceed the employee's normal weekly earnings; and
- the employer supplemental income benefit does not reduce the employee's accumulated sick leave, vacation leave, severance pay or any other accumulated credits.<sup>90</sup>

Additionally, it is essential that the employee's record of employment state that the employer is supplementing the benefits under the *EIA*.

## V. ISSUES TO CONSIDER WHEN DRAFTING POLICIES

### 1. *Firm structure*

When drafting a pregnancy/parental leave policy, the firm should take into account factors such as: firm size, types of partnership agreements (equity vs. non-equity partnerships) and contractual agreements with professional legal staff.

### 2. *Compensation and client work*

When drafting a pregnancy/parental leave policy, law firms should take into account the compensation schemes for equity partners and professional legal staff to ensure that women and men on leave are not disproportionately economically disadvantaged because they are taking leaves.

The pregnancy/parental leave policy may also explicitly list the employment benefits that will be provided to the equity partner or professional legal staff while on leave.<sup>91</sup> In addition to benefits provided under the *EIA* and *ESA*, law firms are strongly encouraged to provide benefits and support during pregnancy and parental leaves that will ensure that the person on leave is

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<sup>89</sup> S. 22 of the *EIA*.

<sup>90</sup> Section 38 of *Employment Insurance Regulations* SOR/96-332.

<sup>91</sup> Examples of benefits can include medical benefits, pension contribution, and other benefits covered under the employment contract of the professional legal staff.

treated with dignity and equality. A maternity/parental leave policy could, for example, include the following:

- Provisions assuring that equity partners and professional legal staff will return to the same level of responsibilities and be reassigned to his or her clients and files;
- Provisions for adequate remuneration/compensation during the leave;
- Provisions for adequate benefits during the leave.

Although a policy should outline minimum entitlements to pregnancy and parental leaves and benefits, employers should also take an individualized approach with each request for leave and benefits. Under human rights legislation, and the *Rules of Professional Conduct*, employers have a duty to accommodate special needs of its equity partners and professional legal staff. Each professional legal staff and equity partner who is entitled to benefits under the pregnancy/parental leave policy has needs that should be considered individually in order to determine the support required to ensure that the person will return to a productive career while balancing work and life demands. The firm should consult with the person to determine what he or she needs and how best to accommodate. The firm should always act in a manner that recognizes the privacy, confidentiality, comfort, autonomy and dignity of the professional legal staff or equity partner. There are also obligations on the professional legal staff and the equity partner covered under the policy to cooperate in the accommodation process and show willingness to be flexible. The firm should discuss and agree upon issues such as:

- a. the process by which client files, if applicable, are transferred and handled during the professional legal staff or equity partner's leave of absence;
- b. the process by which professional legal staff or equity partners will continue to have up-to-date information on the development of files;
- c. the process for the return of client files to the professional legal staff or equity partner upon the return to work;
- d. support or assistance that may be required by the professional legal staff or equity partner during the leave;
- e. support or assistance that may be required by the professional legal staff or equity partner upon return from the leave, such as availability of rooms to breastfeed, flexibility of work schedule, opportunities to work from home;
- f. alternative work schedules;
- g. timelines for partnership considerations if extended leave of absence or repeated leaves of absence are taken<sup>92</sup>;
- h. other reasonable accommodation which would not cause undue hardship, requested by the equity partner and/or professional legal staff returning to work after pregnancy/parental leave;
- i. staffing requirements that would ensure continuity of service during the leave.

When flexible work arrangements are made between the firm and the professional legal staff or the equity partner, the firm and the professional legal staff or equity partner will agree on the following:

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<sup>92</sup> A firm should be aware that it may be illegal to refuse admission to the partnership because a person has taken pregnancy or parental leaves.

- a. length of flexible work arrangement;
- b. target of billable and non-billable hours;
- c. proposed work schedule indicating the days when the professional legal staff or the equity partner will generally be available;
- d. a proposal responding the use of the firm's facilities and resources, including office space and secretarial support, and other relevant administrative matters; and
- e. the economic consequences of the proposed arrangements to the Firm based on overhead, hourly billing rate and targeted billable hours.

3. *Importance of management support*

The successful implementation of any law firm policy is contingent on the support of the firm's senior lawyers and partners. It is their leadership and attitude that influence the values and goals of the firm. A policy drafted with a positive tone signals that the firm promotes work-life balance for its professional legal staff and equity partners. One of the most persuasive rationales for supporting this policy is the retention of lawyers in whose training and education the firm has greatly invested.<sup>93</sup>

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<sup>93</sup> As stated previously, Catalyst has calculated the costs of associates' departure from law firms at an average of \$315,000. See *Business Case* report, *supra* note 25.

## VI MODEL POLICY FOR PREGNANCY AND PARENTAL LEAVES AND BENEFITS FOR PROFESSIONAL LEGAL STAFF AND LAW FIRM EQUITY PARTNERS

### NOTE FOR LAW FIRMS:

The following pages provide a precedent that firms may adapt for their own use. The Model Policy is a precedent for law firms and legal organizations of any size. However, firms and legal organizations should take into account economic considerations, the size of their firm, types of partnership agreements (equity vs. non-equity partnerships) and contractual agreements when adapting this precedent.

The Model Policy addresses the most common legal work environment: a firm composed of partners, associates, articling students and other staff or a professional corporation, not subject to a collective agreement. Where a workplace is governed by a collective agreement, modifications may need to be made to the policy.

The Model Policy incorporates pregnancy and parental leave and benefit entitlements for professional legal staff under the *Employment Standards Act (ESA)* and the *Employment Insurance Act (EIA)*. The Model Policy recommends that law firms adopt standards that are more generous than entitlements under the *ESA* and the *EIA*. The Model Policy explains in the text or in footnotes entitlements that are provided under the *ESA* or the *EIA* and those provided by the firm.

The Model Policy is only up-to-date as at the date of writing. When drafting a policy, one should ensure that it takes into account any legislative or jurisprudential changes.

### PREGNANCY AND PARENTAL LEAVES AND BENEFITS POLICY FOR \_\_\_\_\_ (HEREINAFTER "THE FIRM")

#### APPLICABLE LEGISLATION

1. The Ontario *Human Rights Code*<sup>1</sup> and the *Rules of Professional Conduct* apply to the Firm and prohibit sexual harassment and discrimination based on enumerated grounds, including sex, marital status, family status and sexual orientation. Discrimination because a woman is pregnant or may become pregnant, is prohibited. Unless an accommodation creates undue hardship for the Firm, human rights legislation imposes a duty to accommodate the needs of Professional Legal Staff and Equity Partners that arise from personal characteristics enumerated in the *Code* or the *Rules*.
2. The *Employment Standards Act, 2000 (ESA)* and the federal *Employment Insurance Act (EIA)* outline minimum pregnancy and parental leave and benefit entitlements for Professional Legal Staff. The *ESA* applies to Professional Legal Staff of the Firm who have fulfilled the eligibility requirements under the Act. The *EIA* applies to Professional

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<sup>1</sup> A federally regulated employer is bound by the *Canadian Human Rights Act* and should replace the term Ontario *Human Rights Code* with *Canadian Human Rights Act*.

Legal Staff of the Firm who have fulfilled the eligibility requirements and qualifying period under the *EIA*.

3. This policy outlines the pregnancy and parental leave and benefit entitlements of Professional Legal Staff and Equity Partners that are provided by the Firm, in addition to their rights under the *ESA* and the *EIA*.

## DEFINITIONS

4. "Equity Partners' compensation"<sup>2</sup> is the financial compensation provided under this policy to the Firm's Equity Partners during their parental and pregnancy leaves.
5. "Parent" includes a biological mother or father, or a person with whom a child is placed for adoption or a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own, and "child" has a corresponding meaning.
6. "Partnership parental leave" means, for the purpose of this policy, a leave taken by an Equity Partner who is a parent, including an adopting parent, from his or her practice when a baby is born or a child first comes into their care.
7. "Partnership pregnancy leave" means, for the purpose of this policy, a leave from her practice taken by an Equity Partner because she is pregnant or she has given birth.
8. "Professional Legal Staff" means associates, employed lawyers and articling students of the Firm.<sup>3</sup> Equity Partners of the Firm are not Professional Legal Staff.
9. "Spouse" means either of two persons who, are married to each other, or either of two persons who live together in a conjugal relationship.

## OBJECTIVES

10. The objectives of this policy are as follows:
  - a. to advance the principles of equality and human rights in the workplace and to comply with the Firm's human rights obligations;
  - b. to recognize the Firm's commitment to the family lives of its Professional Legal Staff and Equity Partners;
  - c. to provide for consistent treatment of the Firm's Professional Legal Staff and Equity Partners;
  - d. to clarify the expectations of the Firm and its Professional Legal Staff and Equity Partners regarding pregnancy and parental leave and benefits;

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<sup>2</sup> A firm should use the terminology most commonly used by the firm, such as "income entitlement" or "draw".

<sup>3</sup> A firm could extend this policy to make it applicable to all employees of the firm. Non Equity Partners may, depending on the terms of their contract with the firm, be included under the term Professional Legal Staff.

- e. to minimize the effect of the absence of the Firm's Professional Legal Staff and Equity Partners on client services; and
- f. to create an opportunity for a working environment during transition periods before and after taking a leave, which facilitates the maximum productivity of the Professional Legal Staff and Equity Partner and the objective of pregnancy and parental leaves.

#### APPLICATION OF POLICY

- 11. This policy applies to all eligible Professional Legal Staff and Equity Partners of the Firm.
- 12. This policy applies to the offices of the Firm located in Ontario.

#### PROFESSIONAL LEGAL STAFF

##### *Pregnancy Leave Eligibility and Entitlement*

- 13. The Firm allows 17 weeks<sup>4</sup> pregnancy leave to Professional Legal Staff who are pregnant or who have given birth.
- 14. A pregnant Professional Legal Staff is entitled to pregnancy leave whether she is a full-time, part-time, permanent or contract staff.<sup>5</sup>
- 15. A Professional Legal Staff may begin her pregnancy leave 17 weeks before the baby's due date. The latest a Professional Legal Staff may begin her pregnancy leave is the earlier of either the baby's due date or the day on which she gives birth. Once started, the pregnancy leave has to be taken all at one time.<sup>6</sup>
- 16. If a Professional Legal Staff has a miscarriage or stillbirth, she is eligible for pregnancy leave so long as the miscarriage or stillbirth occurred no more than 17 weeks before the due date.<sup>7</sup>

##### *Parental Leave Eligibility and Entitlement*

- 17. The Firm allows parental leave for a Professional Legal Staff who is a birth parent, an adopting parent (whether or not the adoption has been legally finalized), or a person who

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<sup>4</sup> The *ESA* provides that employees are entitled to 17 weeks pregnancy leave if they are pregnant or have given birth. The *ESA* also specifies that to be eligible for pregnancy leave, employees must have been employed at least 13 weeks before the baby's expected birth date. This Model Policy recommends a more generous entitlement by waiving the "13 week period of employment prior to the baby's expected birth date" as a criteria for eligibility for pregnancy leave.

<sup>5</sup> The *ESA* provides that full-time, part-time, permanent and contract staff are entitled to pregnancy leaves.

<sup>6</sup> This is provided in the *ESA*.

<sup>7</sup> This is provided in the *ESA*.

is in a relationship of some permanence with a parent of a child and who plans on treating the child as his or her own.<sup>8</sup>

18. A parent is entitled to parental leave whether he or she is a full-time, part-time, permanent or contract Professional Legal Staff.<sup>9</sup>
19. The Firm allows parental leaves for the period prescribed by provincial legislation, currently 35 weeks if the person has taken a pregnancy leave, and 37 weeks otherwise.<sup>10</sup> Once a Professional Legal Staff has started parental leave, he or she must take it all at once. A birth mother who takes a pregnancy leave must usually begin her parental leave right after the pregnancy leave ends.<sup>11</sup>
20. Parental leaves, other than the parental leave of the birth mother, must begin and end within the 52 weeks immediately following the date of birth of the child or the date the adopted child comes into the custody and care of the adoptive parents.<sup>12</sup>
21. A Professional Legal Staff who has a miscarriage or stillbirth, or whose spouse has a miscarriage or stillbirth is not eligible for parental leave.<sup>13</sup> However, the Professional Legal Staff is eligible for compassionate leave in accordance with the Firm's policies.<sup>14</sup>

#### *Process to Request Pregnancy and/or Parental Leave*

22. A Professional Legal Staff must provide the [Practice Group Leader<sup>15</sup> ] and/or the [Director of Human Resources<sup>16</sup> ] with reasonable written notice before beginning a pregnancy and/or parental leave. The notice letter includes,

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<sup>8</sup> This is consistent with the *ESA*.

<sup>9</sup> The *ESA* provides that full-time, part-time, permanent and contract staff members are entitled to parental leaves.

<sup>10</sup> The *ESA* provides that employees are entitled to parental leaves if they have been employed at least 13 weeks before the date the leave is going to start. This Model Policy recommends a more generous entitlement by waiving the "13 week period of employment prior to the leave" as criteria for eligibility for parental leaves. Under the *ESA*, law firms have an obligation to provide to eligible employees 35 or 37 weeks of parental leave.

<sup>11</sup> The *ESA* provides that if the baby has not come into her care for the first time by the time the pregnancy leave ends (for example, because the baby was hospitalized and remains in the hospital), she may choose to return to work and start her parental leave once the baby comes home. Law firms may wish to add this provision in their policy.

<sup>12</sup> This is consistent with the *ESA*.

<sup>13</sup> This is consistent with the *ESA*.

<sup>14</sup> The firm may wish to list the policies that apply.

<sup>15</sup> A firm should use the terminology that is most commonly used by the firm.

<sup>16</sup> A firm should use the terminology that is most commonly used by the firm.



- a. the starting date for the pregnancy or the parental leave; and
  - b. on the request of the Firm, a certificate from a medical practitioner stating the baby's due date.<sup>17</sup>
- 23. A Professional Legal Staff may change the start date or the end date of the leave by giving a new written notice to the Firm at least two weeks before the day the requested change will happen.
- 24. Prior to departure on leave, the Professional Legal Staff must make appropriate arrangements to ensure files are adequately covered in their absence. The [Practice Group Leader<sup>18</sup> ] will assist the Professional Legal Staff with reintegration into practice on return from leave, as described in this policy.

*Process when Birth Mother Must Stop Working Earlier than Planned*

- 25. Unless the pregnancy related illness occurs before or after the pregnancy leave period, if the birth mother must stop working earlier than planned because of complications caused by her pregnancy or because of a birth, stillbirth or miscarriage before the baby's due date, she must give the Firm:
  - a. written notice, no later than two weeks after she stops working, indicating the day the pregnancy leave began, or will begin; and
  - b. on the request of the Firm, a medical certificate supporting her inability to work and stating the baby's due date, or a medical certificate stating the due date and the actual date of birth, stillbirth or miscarriage.<sup>19</sup>

*Pregnancy, Parental and Sickness Benefits under the EIA*

- 26. Professional Legal Staff may be eligible for pregnancy, parental or sickness benefits under the EIA. An outline of EIA entitlements is attached to this policy. Professional Legal Staff are encouraged to contact their Service Canada Centre for further information about their entitlements.

*The Firm's Income Benefits for Pregnancy Leave*

- 27. The Firm will provide income benefits as a supplement to EIA pregnancy benefits such that Professional Legal Staff who are on pregnancy leave will continue to receive the equivalent of their [full salary<sup>20</sup> ] for the [duration of the leave<sup>21</sup> ]. The Firm will provide

<sup>17</sup> This is a requirement under the *ESA*.

<sup>18</sup> A firm should use the terminology that is most appropriate for the firm.

<sup>19</sup> This is a requirement under the *ESA*.

<sup>20</sup> The income benefits supplement to full salary is a recommended amount only. Firms do not have an obligation to provide income benefits supplement to their Professional Legal Staff. However, providing income benefits supplement is a practice that promotes equality in the workplace.

Professional Legal Staff with their [full salary<sup>22</sup> ] for the [duration of the leave<sup>23</sup> ] if they are not eligible to receive EIA pregnancy benefits.

28. Benefits for a pregnancy-related illness that occurs before or after the pregnancy leave period are available under the Firm's [sickness and disability plan] and/or through the EIA, but are not covered by this policy.

*Firm's Income Benefits for Parental Leave*

29. The Firm will provide income benefits as a supplement to EIA parental leave benefits such that Professional Legal Staff who are on parental leaves will continue to receive the equivalent of their [full salary<sup>24</sup> ] for [17 weeks<sup>25</sup> ]. The Firm will provide Professional Legal Staff who are not eligible to receive EIA parental benefits with their [full salary<sup>26</sup> ] for [a period of 17 weeks<sup>27</sup> ].

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<sup>21</sup> The firm may provide income benefits supplement for a shorter period than the duration of the leave.

<sup>22</sup> Providing full salary to Professional Legal Staff who are not eligible to receive *EIA* benefits is a recommended amount only. Firms do not have an obligation to provide income to their Professional Legal Staff while on pregnancy leave. However, providing an income to Professional Legal Staff on pregnancy leave is a practice that promotes equality in the workplace.

<sup>23</sup> The firm may provide income to their Professional Legal Staff for a shorter period than the duration of the leave.

<sup>24</sup> The income benefits supplement to full salary is a recommended amount only. Firms do not have an obligation to provide income benefits supplement to their Professional Legal Staff on parental leave. However, providing income benefits supplement is a practice that promotes equality in the workplace. A firm may decide to provide any amount of income benefits supplement to *EIA* parental benefits.

<sup>25</sup> The firm may provide income benefits supplement for a period that is different than the 17 week period recommended in this Model Policy.

<sup>26</sup> Providing full salary to Professional Legal Staff who are not eligible to *EIA* is a recommended amount only. Firms do not have an obligation to provide income to their Professional Legal Staff while on parental leave. However, providing an income to Professional Legal Staff on parental leave is a practice that promotes equality in the workplace.

<sup>27</sup> The firm may provide income supplement benefits to their Professional Legal Staff for a period that is less than the duration of the leave or for a longer period than what is recommended in this policy.

### *Continuation of Professional Legal Staff Benefits*

30. Full and part-time Professional Legal Staff absent on pregnancy/parental leave will be reinstated upon their return to active employment to their most recently held position, if it still exists, or to a comparable position, if it does not exist.<sup>28</sup>
31. To ensure a smooth transition back to work, Professional Legal Staff on leave should contact the [Firm's human resources department or the relevant department] and their [Practice Group Leader] at least 4 weeks in advance of their return so that appropriate arrangements can be made.

### *Group Insurance Benefits*

32. Professional Legal Staff on pregnancy/parental leave continue to participate in the [list of group benefit plans] unless they elect in writing not to do so.
33. [Long term disability<sup>29</sup> ] insurance coverage continues throughout the leave.
34. [Life and accidental death and dismemberment<sup>30</sup> ] coverage continues during the leave. Professional Legal Staff are responsible for continued payment of staff-paid coverage.
35. Access to the [employee assistance program<sup>31</sup> ] continues and Professional Legal Staff are encouraged to use these services to assist with family life transitions, return to work transitions, childcare issues and any other concerns that may arise.

### *Pension*

36. If the Professional Legal Staff on leave chooses to continue contributing to the [pension plan<sup>32</sup> ] during the leave, the Firm will match the contribution.<sup>33</sup>

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<sup>28</sup> This is prescribed by the *ESA*. Under the *ESA*, Professional Legal Staff who wish to resign before their return to work must give the Firm at least four weeks' written notice of their intention.

<sup>29</sup> The Firm may insert the type of disability insurance available at the Firm, if any.  
The Firm may insert the type of disability insurance available at the Firm, if any.

<sup>30</sup> The Firm may insert the type of life and death coverage available at the Firm, if any.

<sup>31</sup> The Firm may insert the title of the employee assistance program used by the Firm, if any.

<sup>32</sup> Insert information about pension plan of the Firm, if any.

<sup>33</sup> This is a legal obligation under s. 51(1)-(3) of the *ESA*.

37. If the Professional Legal Staff on leave chooses not to contribute to the [pension plan], the Firm will not contribute the employer portion during the leave.

#### *Vacation*

38. All accrued vacation must be taken before or after the leave, but may be taken at the beginning or/and end of the leave. Vacation continues to accrue throughout the leave.

#### *Performance Reviews*

39. If the Professional Legal Staff is on leave during a performance review period, a performance review may be conducted prior to the Professional Legal Staff's departure or within two months following their return. The review covers the Professional Legal Staff's performance prior to the leave, but does not include a review of the performance during the one month period preceding the leave.

#### *Salary Administration*

40. If a Professional Legal Staff is on leave under this policy during a salary review process, any applicable salary adjustments will be effective on the date of return from the leave. The Professional Legal Staff will be entitled to the salary she or he would have been entitled to if actively at work during the period of pregnancy/parental leave.

#### *Consideration for Admission to Partnership*

41. The criteria used for eligibility for equity partnership, such as [superior legal and personal skills and potential to develop a sustainable practice<sup>34</sup>], shall not be modified because a Professional Legal Staff has availed himself or herself of leaves or benefits under the Firm's pregnancy/parental leave policy. However, candidates who have taken one or more leaves may require longer periods of time to establish the criteria necessary for admission to partnership.<sup>35</sup>

### **LAW FIRM EQUITY PARTNERS**

42. The Firm is committed to the consistent treatment and equality of its Equity Partners.<sup>36</sup> Therefore, the Firm applies the following principles to grant pregnancy and parental leaves and benefits to its Equity Partners not covered under the ESA or the EIA.

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<sup>34</sup> A firm should include the criteria its partnership uses to consider eligibility to partnership.

<sup>35</sup> Law firms should be aware of human rights obligations in this area. It may be discriminatory to deny partnership to someone because the person took one or more pregnancy or parental leaves.

<sup>36</sup> Some partners (such as non equity partners) may be covered under the *ESA* and *EIA* depending on the partnership agreement.

*Partnership Pregnancy Leave Eligibility and Entitlement*

43. Equity Partners who are pregnant or who have given birth may take up to [17 <sup>37</sup>] weeks partnership pregnancy leave.
44. Partnership pregnancy leave is calculated around the baby's expected due date. An Equity Partner should not begin her partnership pregnancy leave more than 17 weeks before the baby's due date. The latest a partnership pregnancy leave can begin is the earlier of either the baby's due date or the day on which she gives birth. Once started, the partnership pregnancy leave has to be taken all at one time.

*Partnership Parental Leave Eligibility and Entitlement*

45. Partnership parental leave applies to a birth parent, an adopting parent (whether or not the adoption has been legally finalized), and a person who is in a relationship of some permanence with a parent of a child and who plans on treating the child as his or her own.
46. All Equity Partners who are new biological or adopting parents are entitled to take up to [35 weeks if the person has taken a pregnancy leave, and 37 weeks otherwise <sup>38</sup>] of partnership parental leave.
47. Equity Partners who are new biological or adopting parents and who wish to take a longer period of leave, may request such leave to the [Executive Committee<sup>39</sup>] of the Firm. The [Executive Committee], after consulting with the Equity Partner who is requesting the leave, has the discretion to grant, deny or vary the request.
48. Once an Equity Partner has started partnership parental leave, he or she must take it all at one time and can't split it up.
49. An Equity Partners who is a birth mother and took a partnership pregnancy leave should begin her leave right after the pregnancy leave ends.
50. Parents other than the birth mother must begin their partnership parental leave no later than 52 weeks after,
  - a. the date the baby was born; or
  - b. the date the child first came into their care.

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<sup>37</sup> This is the suggested number of weeks for partnership pregnancy leaves based on the length of leave allowed for Professional Legal Staff under the *ESA*.

<sup>38</sup> This period is consistent with the parental leave period entitlement for Professional Legal Staff. A Firm may decide to modify the parental leave period entitlement for Equity Partners.

<sup>39</sup> The firm may wish to use terminology applicable to its organization.

51. An Equity Partner who has a miscarriage or stillbirth, or whose spouse has a miscarriage or stillbirth more than 17 weeks before the due date is not eligible for partnership parental leave. The Equity Partner shall be eligible for compassionate leave in accordance with the Firm's policies.<sup>40</sup>

*Process for Requesting Partnership Pregnancy and/or Parental Leave*

52. Equity Partners are required to give reasonable notice to their [Practice Group Leader<sup>41</sup> ] and the [Director of Human Resources<sup>42</sup> ] of their intention to take a leave under this policy and the expected date of return to work.
53. The Equity Partner may advise the [Practice Group Leader<sup>43</sup> ] and the [Director of Human Resources<sup>44</sup> ] of any changes to the start date or end of the leave by providing the Firm with a reasonable notice of the change.

*Compensation during Partnership Pregnancy Leave*

54. The Equity Partner's compensation will not be affected by the partnership pregnancy leave.<sup>45</sup>
55. If the Equity Partner is on partnership pregnancy leave prior to the assessment of compensation, the compensation in a given year shall be determined without regard to the leave. The Firm is aware of the fact that an Equity Partner who is taking a partnership pregnancy leave will have to wind down her practice prior to the leave and ramp up her practice upon her return from the leave. Therefore, the Firm will not take into account the practice of the Equity Partner during the month prior to the leave or the month following the leave, when assessing the Equity Partner's compensation. The period of one month to wind down and one month to ramp up the practice may be adjusted by agreement between the Equity Partner and the partnership. Consideration should be given to the Equity Partner's type of practice and other relevant circumstances.<sup>46</sup>

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<sup>40</sup> The firm may wish to list the applicable policies.

<sup>41</sup> A firm should use terminology that is most commonly used at the firm.

<sup>42</sup> A firm should use terminology that is most commonly used at the firm.

<sup>43</sup> A firm should use terminology that is most commonly used at the firm.

<sup>44</sup> A firm should use terminology that is most commonly used at the firm.

<sup>45</sup> This is the suggested amount of compensation for a female partner on partnership pregnancy leave. The firm may decide to compensate at a different level than the full 100% of compensation.

<sup>46</sup> Depending on the Equity Partner's practice, the period of one month the wind down the practice and to ramp up the practice may have to be extended. Firms should take that into account when drafting their policy.

- 56. The Equity Partner's contributions to the Firm for the period of the leave shall be based on a comparable period prior to the leave.
- 57. An Equity Partner who takes a partnership pregnancy leave will not be expected to increase her productivity or billable hours to compensate for her absence from practice.
- 58. An Equity Partner who experiences a pregnancy-related illness before or after her partnership pregnancy leave may avail herself of the partnership sickness benefits policy and will receive compensation as though she is on leave for any other health-related reason.

#### *Partnership Parental Leave Compensation*

- 59. An Equity Partner who is a biological or adopting parent is entitled to [17<sup>47</sup> ] weeks of leave with no reduction in the compensation<sup>48</sup> paid to the Equity Partner during that period. The Equity Partner will not be compensated for the remainder of the partnership parental leave.
- 60. If the Equity Partner is on partnership parental leave prior to the assessment of compensation, the compensation shall be determined without regard to the leave.
- 61. An Equity Partner who takes a partnership parental leave will not be expected to increase his or her productivity or billable hours to compensate for his or her absence from practice.

#### *Notice of Return to Work*

- 62. To ensure a smooth transition back to work, Equity Partners on leave should contact the [managing partner of the Firm] at least 4 weeks in advance of their return so that appropriate arrangements can be made.

#### *Group Insurance Benefits*

- 63. Equity Partners on pregnancy/parental leave continue to participate in the [list of group benefits plans] unless they elect in writing not to do so.
- 64. [Long term disability<sup>49</sup> ] insurance coverage continues throughout the leave.
- 65. [Life and accidental death and dismemberment<sup>50</sup> ] coverage continues during the leave. Any Equity Partner paid coverage requires continued payment.

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<sup>47</sup> This is the suggested period of parental leave. A Firm may decide to modify this period for Equity Partners.

<sup>48</sup> This is the suggested amount of compensation for a woman on pregnancy leave. The firm may decide to compensate at a different level than the full 100% of compensation.

<sup>49</sup> Firm may include title of disability insurance applicable to Equity Partners, if any.

<sup>50</sup> Firm may include title of life and death coverage applicable to Equity Partners, if any.

66. Access to the [assistance programs for partners<sup>51</sup> ] continues and Equity Partners are encouraged to use these services to assist with family life transitions, return to work transitions, childcare issues and any other concerns that may arise.

#### *Vacation*

67. All accrued vacation must be taken before or after the leave, but may be taken at the beginning or end of the leave. Vacation continues to accrue throughout the leave.

#### PROVISIONS TO SUPPORT THE PROFESSIONAL LEGAL STAFF OR EQUITY PARTNER

68. In addition to the rights outlined in this policy, the Firm takes an individualized approach with each request for leave and benefits under this policy. The Firm has a duty to accommodate Professional Legal Staff and Equity Partner's special needs arising because of personal characteristics enumerated in the Code or the Rules. Each Professional Legal Staff or Equity Partner who is entitled to benefits under this policy has needs that must be considered individually in order to determine the support required to ensure that the person will return to a productive career while balancing work and life demands. When a request for leave is made, the [Executive Committee<sup>52</sup> ] will consult with the Professional Legal Staff or Equity Partner to determine the Professional Legal Staff's or Equity Partner's needs and how they can best be provided. The Firm will always act in a manner that recognizes the privacy, confidentiality, comfort, autonomy and dignity of the Professional Legal Staff or Equity Partner. The Professional Legal Staff or Equity Partner covered under this policy will cooperate in the accommodation process and show willingness to be flexible. The Firm will discuss and agree upon issues such as:
- a. the process by which client files, if applicable, are transferred and handled during the Professional Legal Staff or Equity Partner's leave of absence;
  - b. the process by which Professional Legal Staff or Equity Partners will continue to have up-to-date information on the development of files;
  - c. the process for the return of client files to the Professional Legal Staff or Equity Partner upon the return to work;
  - d. support or assistance that may be required by the Professional Legal Staff or Equity Partner during the leave;
  - e. support or assistance that may be required by the Professional Legal Staff or Equity Partner upon return from the leave, such as availability of rooms to breastfeed, flexibility of work schedule, opportunities to work from home;
  - f. alternative work schedules;

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<sup>51</sup> Firm may include information of assistance programs available to Equity Partners, if any.

<sup>52</sup> The Firm should insert the title appropriate to its organization, such as section chair, department chair.



- g. timelines for partnership considerations if extended leave of absence or repeated leaves of absence are taken<sup>53</sup> ;
  - h. other reasonable accommodation which would not cause undue hardship, requested by the Equity Partner and/or Professional Legal Staff returning to work after pregnancy/parental leave;
  - i. staffing requirements that would ensure continuity of service during the leave.
69. When flexible work arrangements are made between the Firm and the Professional Legal Staff or the Equity Partner, the Firm and the Professional Legal Staff or Equity Partner will agree on the following:
- a. length of flexible work arrangement;
  - b. target of billable and non-billable hours;
  - c. proposed work schedule indicating the days when the Professional Legal Staff or the Equity Partner will generally be available;
  - d. a proposal addressing the use of the Firm's facilities and resources, including office space and secretarial support, and other relevant administrative matters; and
  - e. the economic consequences of the proposed arrangements to the Firm based on overhead, hourly billing rate and targeted billable hours.

## IMPLEMENTATION GUIDELINES

70. The Firm will communicate and make this policy accessible to all professional legal staffs and partners.

### Attachment to the Pregnancy and Parental Leaves and Benefits Policy for The Firm

#### Outline of Professional Legal Staff's Entitlement under the EIA

Entitlement to pregnancy, parental or sickness benefits under the EIA is governed by that Act. This section sets out some of the basic benefits as at the date of this policy. However, Professional Legal Staff should contact their Services Canada Centre directly for further information about their entitlement and to apply for benefits.

#### *Eligibility for Pregnancy, Parental or Sickness Benefits*

To be eligible for pregnancy, parental or sickness benefits under the EIA, Professional Legal Staff must show that,

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<sup>53</sup> A firm should be aware that it may be illegal to refuse admission to the partnership because a person has taken pregnancy or parental leaves.

- a. his or her regular weekly earnings have decreased by more than 40%; and
- b. he or she has accumulated 600 insured hours in the last 52 weeks or since the last claim. This period is referred to as “the qualifying period”.

The qualifying period is the shorter of,

- a. the 52 week period immediately before the start date of a claim; or
- b. the period since the start of a previous EI claim if that claim had started during the 52 week period.

The eligible Professional Legal Staff must serve a 2-week unpaid waiting period before the EI benefits begin to be paid.

#### *Entitlement to Pregnancy Benefits*

Pregnancy benefits are payable to the birth mother for a maximum of 15 weeks.

#### *Entitlement to Parental Benefits*

To be eligible for parental benefits under the EIA, you must be a biological or adopting parent.

While the biological or adoptive parents are caring for a newborn or an adopted child, they may receive up to a maximum of 35 weeks of parental benefits. Parental benefits can be claimed by one parent or shared between the two parents, but will not exceed a combined maximum of 35 weeks.

Under the *EIA*, parental benefits for biological parents are payable from the child's birth date and for adopting parents are payable from the date the child is placed with the adopting parents. Parental benefits are only available within the 52 weeks following the child's birth, or for adopting parents, within the 52 weeks from the date the child is placed with the adopting parents. If the child is hospitalized during that period, the period is extended by the number of weeks during which the child is hospitalized (up to a maximum of 104 weeks).

#### *Entitlement to Sickness Benefits under the EIA*

Sickness benefits may be paid up to 15 weeks to a person who is unable to work because of sickness, injury or quarantine. The Professional Legal Staff must provide a medical certificate indicating how long the illness is expected to last.

#### *Process to Apply for Pregnancy, Parental or Sickness Benefits under EIA*

To receive pregnancy and/or parental benefits under EIA, the Professional Legal Staff must submit an application on-line or in person at a Service Canada Centre. The Professional Legal Staff should apply as soon as she or he stops working.

## FOR DECISION

## PROMOTING DIVERSITY IN BENCHER ELECTIONS

## Motion

8. That Convocation approves the following recommendations:
  - a. That the Law Society encourage diverse members of the legal profession to run for bencher election by,
    - i. developing a guide on strategies to run for election, based on the results of interviews with elected benchers presented at Appendix 1;
    - ii. communicating the guide on strategies to run for election to members of the legal profession;
    - iii. increasing outreach activities with lawyers associations, and emphasizing the importance of having a Convocation that is representative of the Ontario population;
    - iv. posting announcements and/or sending letters to members encouraging them to run for bencher election, and emphasizing the importance of having a Convocation that is representative of the Ontario population;
    - v. providing information, online and through other media, to members about running for election, the role of benchers in the governance of the profession, and Law Society initiatives to promote public interest;
    - vi. providing information and education sessions for members of the profession about the governance of the profession and the electoral process.

## Background

9. The *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (the Bicentennial Report)*<sup>54</sup> states "Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession."<sup>55</sup> On July 31, 2003, Convocation established the Bicentennial Report Working Group (the Working Group) to review and report on the implementation status of the recommendations contained in the Bicentennial Report.
10. In January 2004, the Working Group proposed that, in its implementation of Recommendation 7, the Law Society undertake an equity analysis to determine whether there are any barriers within the current electoral process that limit the full participation and election of women and members from equality-seeking, Francophone and Aboriginal communities.

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<sup>54</sup> (Toronto: Law Society of Upper Canada, May, 1997).

<sup>55</sup> Recommendation 7 – Participation in the Governance of the Profession, *Bicentennial Report*, *ibid.*

11. Further to the Working Group's proposals, the Equity and Aboriginal Issues Committee is examining the benchers election process to identify strategies to increase the participation and election of lawyers from Francophone, Aboriginal and equality-seeking communities to Convocation.
12. On February 9, 2006, the Committee adopted a proposal to conduct interviews with elected benchers and candidates in the 2003 elections, for the purpose of gaining a better understanding of the benchers election process and the factors that influence participation of members in benchers elections. During the period June – July 2006, the Equity Initiatives Department consulted with elected benchers through one-on-one interviews and questionnaires.

#### Development of Interview Guide and Methodology

13. Staff members in the Equity Initiatives and Communication and Public Affairs departments developed an interview guide. The questions in the interview guide were designed to gain a better understanding of the benchers election process and to solicit feedback from elected benchers about their experiences in running in benchers elections. Development of the questions was guided by the three following objectives:
  - a. to identify key factors that influence members to run for election;
  - b. to understand the different campaign methods of candidates from law firms, governments, education, and those in sole practice and small firms; and
  - c. to identify factors that may influence the success of candidates.
14. The Committee and the Equity Advisory Group reviewed the interview guide, which was presented to Convocation for information on April 27, 2006.
15. In May 2006, the Equity Initiatives Department invited elected benchers to participate in interviews. Twenty elected benchers agreed to participate in the project.
16. Staff members from the Equity Initiatives and Communication and Public Affairs departments conducted one-on-one interviews in person or by phone. Some participants chose to answer the interview questions in writing. The average length of the interviews was 45 minutes.

#### Profile of Participants

17. Participants in the project were elected benchers of the Law Society of Upper Canada representing a broad cross-section of the profession. Half of the participants were benchers elected inside Toronto and the other half were those elected outside Toronto. Benchers who were first elected in the 2003 election made up one-third of the group. Benchers who were first elected in the 1995 election made up another one-third of the group. The rest of the group included benchers who were first elected in either the 1991 or 1987 elections.
18. The interview group was evenly divided by gender. Participants called to the Bar at least 30 years ago represented half of the interview group. Participants called to the Bar between 10 and 20 years ago represented the other half of the group.

19. Sole practitioners and members of small firms<sup>56</sup> made up two-thirds of the interview group. Participants who are partners in law firms (large and medium size firms) represented one-quarter of the group. Two participants in the interview group were employed in government and one participant was employed in education.

#### Findings

20. The consultation with elected benchers has provided a greater understanding of the bencher election process and the factors that influence the participation of lawyers and their success in bencher elections. The participants in the consultation also proposed ways to enhance diversity in bencher elections and gave subjective insights of different campaign methods that were successful. As a result of the consultation, the Equity Initiatives Department drafted a report of the *Results of Interviews with Elected Benchers*, presented at Appendix 1, which provides valuable information about the election process. The report will be used as the basis to develop and communicate a guide on strategies to run for bencher elections.
21. In addition to the *Results of Interviews with Elected Benchers*, the findings of the consultation were used to develop recommendations included in paragraph 1. Benchers were asked to make suggestions on strategies that the Law Society could implement to increase diversity in the election process and the suggestions below were used to develop recommendations for the Committee's consideration.

#### *Role of the Law Society in Candidate Promotion*

22. In advance of each bencher election, the Law Society issues a call for nominations and information about running for election through a variety of information vehicles. Participants were asked if they had suggestions on what the Law Society can do in its communication to members and with the bencher election process to encourage more people from diverse backgrounds to run in bencher elections. The following are suggestions from the participants:
  - a. The Law Society could increase its efforts in doing outreach and education about bencher elections to lawyers associations that represent equality-seeking communities. There could be more communication and outreach outside of the traditional legal publications and forums.
  - b. The Law Society could emphasize the need for diverse candidates. A suggestion was made that the Treasurer could send an announcement/letter to encourage members to run in the bencher election, and to emphasize the need for representation at Convocation.
  - c. The Law Society could contact presidents of law associations and subset/specialized groups representing communities that are under-represented in Convocation, and urge them to speak to their members to run or support candidates.
  - d. The Law Society could provide more information to its members about governance and the role of benchers. The significant time commitment required to be a bencher should be explained and bencher remuneration support for those with financial concerns needs to be emphasized. It is suggested that benchers

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<sup>56</sup> For the purpose of this project, a small firm is defined as a firm of five lawyers or less.

who do not have a conflict or self-interest (i.e., running for re-election) in the election be involved in a dialogue with members who are interested in running for election to provide information about running in bench elections and the role of benchers.

- e. The level of interest and participation of candidates in bench elections might be increased if there is more awareness of what the Law Society is doing on issues affecting the public interest.

#### *Increasing Voter Participation*

- 23. During the election process, the Law Society sends a voters guide with information about the candidates to all Ontario lawyers eligible to vote. The Law Society also publishes information in the Ontario Lawyers Gazette, in the Ontario Reports, on its Website, via broadcast e-mail and issues information to the media. However, over the last few decades, there has been a declining trend in the voter participation rate in bench elections. Participants were asked to comment if there is anything more the Law Society could do to help increase voter participation in bench elections.
- 24. Some participants suggested that it might help to get people to vote if they are engaged in the election process and become more aware of what the Law Society does, as expressed in the comments of some of the participants below. It was also noted that people vote when an issue that is important to them becomes an election issue. The following are examples of comments made by participants:
  - a. The issue is that many people don't know what the Law Society does. It is suggested that the Law Society engage its members and inform its members about its role and work. This may lead to an increased interest in voting.
  - b. Some participants commented that it is not necessary to flood members with more information or to spend more money to get voters out. They indicated that it is the content in existing communication vehicles that can change in order to be more effective in emphasizing the importance of the elections. One participant suggested "spreading the word" about getting the vote out through the local law associations.

#### *Increasing Awareness of the Role of Benchers*

- 25. Recognizing the importance for members to understand the role of the individuals they elect to govern their profession, participants were asked to discuss how awareness of the role of benchers could be increased among members of the profession. The majority of the responses from participants pointed to suggestions for communication and education activities. Some of their suggestions include:
  - a. When calling for nomination of candidates, include the role of benchers in the communication materials. Emphasize the time commitment that is involved and the nature of the work.
  - b. On the Website, the Law Society should have a link to a page that has the description of duties, time requirements for benchers, and mandates.
  - c. Benchers should attend events and do more outreach. Members get engaged by having personal relationships and connection with leaders in the profession.
  - d. Ask benchers who do not have self-interest in the election to inform members about the role of benchers and to talk about their experiences as benchers. The

- Law Society could hold an educational dialogue or forum about thought-provoking issues that relate to the governance of the profession.
- e. Ask benchers to write what they do as benchers and publish the information in the Ontario Lawyers Gazette. Do a series of articles/features in the media such as Law Times/Lawyers Weekly explaining the bencher election process and why lawyers should participate or vote. Encourage benchers to write periodic newsletters for their local law associations.
  - f. Target communication activities to law firms and employers in order to generate more positive encouragement or at least acceptance of the role of bencher.

## APPENDIX 1

## Results of Interviews with Elected Benchers

September 14, 2006

Prepared by the Equity Initiatives Department  
(Rudy Ticzon, Community and Policy Advisor, (416) 947-3314)

## BACKGROUND

The *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report*)<sup>57</sup> states “Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession.”<sup>58</sup>

In light of that recommendation, the Equity and Aboriginal Issues Committee decided to conduct interviews with elected benchers and candidates in the 2003 elections, to gain a better understanding of the bencher election process and the factors that influence participation of members in bencher elections. During the period June – July 2006, the Equity Initiatives Department consulted with elected benchers through one-on-one interviews and questionnaires.

This report is published to provide valuable information about bencher elections and to encourage members of the profession to run for bencher. The report is divided as follows:

1. Development of Interview Guide and Methodology;
2. Profile of Participants;
3. Findings;

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<sup>57</sup> (Toronto: Law Society of Upper Canada, May, 1997).

<sup>58</sup> Recommendation 7 – Participation in the Governance of the Profession, *Bicentennial Report*, *ibid.*

#### 4. Conclusion.

### DEVELOPMENT OF INTERVIEW GUIDE AND METHODOLOGY

Staff members in the Equity Initiatives and Communication and Public Affairs departments developed an interview guide, attached at Appendix 1, with the following objectives:

- to identify key factors that influence members to run for election;
- to understand the different campaign methods of candidates from law firms, governments, education, and those in sole practice and small firms; and
- to identify factors that may influence the success of candidates.

In May 2006, the Equity Initiatives Department invited elected benchers to participate in interviews. Twenty elected benchers agreed to participate in the project.

Staff members from the Equity Initiatives and Communication and Public Affairs departments conducted one-on-one interviews in person or by phone. Some participants chose to answer the interview questions in writing. The average length of the interviews was 45 minutes.

### PROFILE OF PARTICIPANTS

Participants in the project are elected benchers of the Law Society of Upper Canada representing a broad cross-section of the profession. Half of the participants are benchers elected inside Toronto and the other half are those elected outside Toronto. Benchers who were first elected in the 2003 election make up one-third of the group. Benchers who were first elected in the 1995 election make up another one-third of the group. The rest of the group includes benchers who were first elected in either the 1991 or 1987 elections.

The interview group was evenly divided by gender. Participants called to the Bar at least 30 years ago represent half of the interview group. Participants called to the Bar between 10 and 20 years ago represent the other half of the group.

Sole practitioners and members of small firms<sup>59</sup> make up two-thirds of the interview group. Participants who are partners in law firms (large and medium size firms) represent one-quarter of the group. Two participants in the interview group were employed in government and one participant was employed in education.

### FINDINGS

The consultation provided valuable information about running for bencher, insights on successful campaigning and personal motivating experiences about being a bencher. The following is an outline of insights that may encourage members from the profession to run in the bencher election.

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<sup>59</sup> For the purpose of this project, a small firm is defined as a firm of five lawyers or less.



## RUNNING IN BENCHER ELECTIONS

### Becoming a Candidate

Participants were asked to describe the reasons that motivated them to run in benchner elections. Overwhelmingly, they said they wanted to get involved in issues affecting the profession and play a role in influencing the way it is governed. Almost all participants wanted to advance an important issue or cause because they felt very strongly about it, or because they were not happy with how the Law Society was managing an issue. Some participants ran on a single-issue platform.

The majority of participants were encouraged to run by their peers and colleagues in the profession who felt they would make great candidates because of their profile and experience. Some felt their background and the type of work they were involved in, provided them with the qualifications to become a benchner.

The following are samples of comments provided by participants when asked why they ran for election:

*"I've always had a strong interest in issues affecting the profession, and decided to get involved so that I can work on those issues. It was a desire to serve and assist the profession."*

*"The opportunity to serve in the public interest is a natural fit with who I am and the work that I do."*

*"I wanted to make the Law Society more sensitive to sole practitioner and small firm issues and needs."*

*"I wanted to advocate for issues facing solicitors and bring more voices of solicitors to Convocation."*

*"In my previous work, I recognized the important work and role of benchers in regulating the profession, and its importance to the public. I developed an appreciation and respect for benchers and the work they do and the issues they deal with."*

*"I wanted to work on issues affecting the profession, after learning more about the work of the Law Society through other benchers."*

*"I was encouraged to run by my local law association."*

*"The Legal Aid crisis and insurance fiasco in 1994 prompted me to run the first time."*

*"I have done a lot of committee work in my adult life. I knew I would enjoy the committee work, the issues and the people."*

*"Up to the 1995 election, there was the perception among members that the Law Society wasn't being run well and it was costing so much to practise law during economically tough times. I became disenchanted with that. So I identified solutions and was encouraged to run by those who felt I could do something about it if I got elected."*

Participants were also asked if they would run for re-election, and if their reasons for running again were the same or different as they were when they first ran for election. Overwhelmingly, the majority of participants said that they would run in the next election. Among most participants, their motivating reasons to run again remained the same as when they first ran.

After gaining experience as benchers, all of the participants expressed the desire to continue to be involved in the governance of the profession, despite the financial impact on their practice. Most participants felt that they can continue to make a contribution to the governance of the profession and advance the issues that are important to them.

*“I was clear that I wanted to run again to be more focused and to continue to work on the interesting issues that benchers have been working on. I will run again because I feel the experience is worth it and that there is more the Law Society can do with respect to the issues that I think are very important.”*

*“After my first term, I can make a better contribution because I have increased my knowledge and learning about the various important issues affecting the profession.”*

#### Factors to Consider Before Running for Election

Participants were asked to identify the factors that influenced their decision to run, and eventually what impact those factors had on their professional and personal lives once they became benchers.

Prior to running, all participants had a fairly good understanding of the bencher election process and most had a general understanding of the role of benchers in governing the profession. Several participants indicated that they knew there would be a certain amount of time involved in carrying out bencher responsibilities if elected, and were prepared to make the necessary adjustments in their work or personal lives. As one participant noted,

*“I have resigned from some of my other board and community commitments to free up time for bencher responsibilities.”*

The majority of participants considered the impact on their practice and work, with all participants in private practice concluding that those who are thinking of running should be prepared to see a significant drop in their incomes once elected. They also said that in order to make up for the lost income, a person has to be prepared to work overtime and have scheduling flexibility, as demonstrated in one of the participants comments,

*“I have been able to maintain the same level of time commitment in my practice by changing my work schedule and putting in overtime hours.”*

Most participants assessed their work and economic situations, including the attitude of their firms, colleagues or employers towards their candidacy. Other factors that influenced participants' decision to run include the type of support they received from their firm or employer, the cost of running a campaign, impact on other community and volunteer work, impact on family and childcare responsibilities, impact of travel for benchers outside of Toronto, and chances of getting elected.

When asked how the factors that influenced their decision to run in an election impacted their professional and personal lives after being elected, an overwhelming majority of the participants stated that the amount of time that was required to carry out the responsibilities of benchers and how that impacted their practice or work. All benchers in private practice indicated that they experienced a reduction in income.

### Preparing a Successful Campaign

Participants were asked to describe their experiences and general perceptions about their election campaigns. They were asked to comment on various elements of their campaigns and provide their thoughts on what they deemed to be success factors in getting elected.

When asked to identify what they thought was the most important or helpful element in their campaign that got them elected, an overwhelming majority of participants identified having name recognition as a key factor. Participants discussed the importance of having profile and visibility in the profession in order to have name recognition. When asked how they built their profile, many pointed to their legal work and involvement in legal associations such as their local law associations and bar associations as the primary factors that helped them to achieve profile and visibility in the profession. Below are samples of the responses from participants who described how they built their profile.

*“My profile in legal work related to the Law Society was most helpful. Those with higher profiles gained through their legal work have a distinct advantage. Candidates need to be known – and it is equally important what they are known for.”*

*“My profile and name recognition in the media was helpful. I was known for my expertise in a specific area, which gave me the profile in the profession.”*

*“I had a profile before I ran. I had an identifiable constituency of lawyers who knew me – small firms and sole practitioners, legal aid lawyers, and family law lawyers.”*

*“At first I did not have much profile. I worked on a report that got circulated, which enabled people to get behind my campaign. If you are a candidate in a region outside of Toronto, you can generate local name recognition because local bars are small enough to contact everyone.”*

*“I ran in an election in which I lost by a very low margin. I was probably not successful in that election for the reason that I sent out my election materials late in the campaign. The next election I won, and the main reason I think is that I was able to build a profile by sending out my campaign materials much earlier than the first time.”*

*“My profile and name recognition helped in getting me elected. This was as a result of my previous involvement with the CBA, the Francophone community, and other legal associations and organizations. It was also very helpful to be a member of a large firm.”*

*“My profile in the profession and the media, as well as name recognition was the most helpful element in my election. I was active on the executive of prominent lawyers’ associations, and I had political profile because of my positions on certain issues. In one campaign, it was helpful that I did a joint campaign with a couple of other well-known candidates. We did a mailing together.”*

Next to profile and name recognition, participants indicated that support and endorsements from individual lawyers, law firms, and legal associations was an important factor in getting elected. Several participants explained the types of support and endorsements they received and the role that this played in their successful campaigns.

*"My firm provided technical support that enabled me to do an e-mail campaign. This helped me to get my name out there, which is necessary if you don't have a household name. My e-mail campaign made a tremendous difference."*

*"I had supporters who worked in big firms spread the word about my candidacy and asked their colleagues to vote for me. It was also very helpful to be included in a letter that promoted a group of candidates in my area. Part of my success in getting elected was also due to the fact that I was included on a list of candidates that was supported and promoted by a law group."*

*"The support from my local law association was also instrumental in my campaign. The law association provided money to hire a campaign manager for its slate of candidates, and to pay for advertising and mailing."*

*"Local law associations are helpful in being able to provide mailing lists/ e-mail lists. I also received an official endorsement from a major lawyers' association. However, getting endorsements can sometimes be a setback. You should not be beholden to any special interest groups."*

*"Having official endorsements from individual lawyers, firms and legal associations are also important. Local law associations endorsed me and helped spread the word to their mailing lists. I also received support and endorsement from a lawyer's association that I have worked with in the past."*

### Financial Considerations

Participants were asked if financial considerations were a factor in their campaigns and how it influenced the type and scope of their campaign activities. A majority of participants mentioned that the amount of money they had available to spend on their campaigns had a relative impact on the scope of their campaign activities, but it was not a key factor in helping them get elected. They indicated that having resources to pay for development of promotional materials and mailing costs was helpful for them to get the word out and raise their profile.

*"I felt that mailing was most effective and decided to use my financial resources to do a mailing campaign, even though mailing is a costly endeavour."*

*"I could not afford to do a big mailing province wide. I did targeted mailing instead to people who I thought would be sympathetic to my causes. I also informed people that I could not afford to do mailing and asked them if they could help spread the word."*

*"I couldn't afford to produce a brochure, and wasn't prepared to go and spend a lot of money on a glossy brochure. I undertook an e-mail campaign instead. I produced a letter and sent it out by e-mail to as many contacts as I could. I would have done more if I had more resources."*

## Identifying Voters

Participants were asked to identify which voters they targeted in their campaigns to garner support. Most participants targeted lawyers in their local areas, lawyer's associations that they were members of, and different sections of the bar they belonged to. A few aimed their campaign efforts to focus on the general membership of the profession. Some candidates from outside Toronto who made a concerted effort to target voters in Toronto felt that they gained an advantage in doing so. It was also mentioned by some of the participants that it was helpful to target women lawyers as an important constituency.

Participants observed that it was ideal to focus on members of legal organizations and associations in which they had built a profile. Many also felt that associations with large memberships were important to reach, particularly if they were members of those associations with members who tended to support candidates that were backed by the association.

## Communicating to Voters

Participants were asked what their primary methods were in communicating to voters and the various promotional tools they used in their campaigns to raise their profile. The overwhelming majority identified mailing – either in the form of regular mail or e-mail – as their primary method to reach voters. In most cases, mailing and e-mailing campaigns included letters from candidates or campaign brochures, or both.

Most of the participants that conducted mailing pointed out that the help they received from their firms and associations in the distribution of their mailing was very valuable to their campaigns, for the reasons that it helped to reduce costs and gave their candidacy stronger profile and credibility. Some participants also used a chain-letter approach whereby they sent their campaign materials to people they knew and asked them to send it to people they knew, and so on. Some also indicated that doing a joint mailing or joint letter-writing campaign was an effective strategy.

Participants identified mailing as the most costly endeavour in their campaigns. Despite the costs associated with mailing, candidates chose it as an essential element in their campaigns. They noted that targeting more voters by e-mail and doing targeted mailings instead of mass mailing could reduce the costs.

Participants used advertising as the second most popular method to reach voters. Those who indicated the use of advertising purchased advertising space in publications such as The Law Times, Lawyers Weekly, the Ontario Reports, and a community newspaper.

Other methods that were used by participants to reach voters included telephone canvassing, attending all-candidates meetings, and general networking. One participant used fax to target voters. The participants that did telephone canvassing said that they did very little of it because it was time consuming. Those who attended all-candidates meetings all agreed that they were not very useful because they were not very well attended. Only one participant mentioned the creation of a personal Website to use as a promotional tool in the campaign.

## Campaign Support

Participants indicated that support and endorsements from law firms, legal associations, and individual lawyers was an important factor in getting elected. Participants were asked what sources of support they had available to them in their campaigns. Many participants pointed to their firms and legal associations they were associated with, as important sources of support.

Participants who said they received support from their law firms reported different types of support such as mailing, development of brochures and other marketing pieces, technology support to do e-mail communications, promotion of the firm's candidate among lawyers in the firm, and general encouragement. Two participants pointed out that their work and firm provided flexibility in their work arrangements by providing scheduling flexibilities and making arrangements to have administrative support available.

Participants who received support from legal associations said that mailing, official endorsements, and communication to its members were the primary activities that associations offered for support. It was mentioned by two participants that their local law association provided money towards their campaign.

Those who identified receiving support from individual lawyers said that individuals who supported them wrote letters of support and encouraged others in their network to support them. Some participants observed that getting public support from well-known and highly respected individuals in the legal profession is important.

## Campaign Message

Participants were asked to identify the information they highlighted in their campaigns to distinguish themselves from other candidates. All of the participants mentioned different things about themselves to let people know who they were and in many cases, their position on particular issues affecting the profession. The following are examples of what some of the participants noted they highlighted in their campaign literature.

- Reason for running, objectives
- Work experience related to professional regulation and experiences relevant to the work of Convocation
- Involvement in the profession, roles on boards, volunteer work in the community
- Work and expertise on equality issues
- Politics and constituency represented
- Being a sole practitioner
- Being a small firm lawyer and a legal aid lawyer, desire to increase involvement of smaller firms in the governance of the profession
- Position on issues, years of practice, credentials, accomplishments, awards or recognition
- Positions in leadership and being a female candidate
- Vision for the Law Society, governance and management experience
- Accomplishments as a bencher
- Capacity to function in the French language
- Not from Toronto

## INSIGHTS ON SUCCESSFUL CAMPAIGNS

Based on their experiences in bench elections, participants were asked to discuss what they thought made their campaigns successful. One participant summed up what the majority of participants experienced in running for election:

*“Name recognition, profile and visibility are key. Your name is the only thing you have going for you. If you don’t know anybody, you can’t get elected.”*

Participants suggested other key factors that were instrumental in attracting votes in their campaigns. Some felt that taking a clear position on an issue and having a platform that resonated with many members of the profession was a major factor in attracting votes.

*“I think I gained votes because I was very clear about the platform that I stood on that focused on equality and the need to address the fact that the profession is rapidly becoming more diverse. In the next election, I was able to build credibility in Convocation and gained support from other benchers. This translated into votes from different regions of the province.”*

*“My political profile and the progressive positions I took on issues were well known. Many voters were drawn to me because of these factors.”*

Participants who practice as solicitors, sole practitioners and lawyers from small firms noted that they received a lot of their support from colleagues within their respective sections of the bar who recognized their cause to advance the issues of solicitors and sole practitioner and small firm lawyers.

*“I think I gained votes after people knew I was running. People appreciated my experience and understanding of governance issues and the Law Society. I think they realized that I could be an effective voice for solicitors in Convocation.”*

*“I think that as a sole practitioner, you earn votes because lawyers want to see sole practitioners and small firm lawyers in Convocation. However, solicitors don’t have the same opportunity as barristers to get profile because most solicitors don’t know what each other look like for the reason that they rarely see each other, as opposed to barristers who know each other from court. I would never get elected if I had to rely on solicitor votes. I got votes from government and barrister lawyers because I had contacts who helped circulate my information.”*

For some participants, targeting key constituencies of voters such as women, made a big difference in getting votes, as two participants expressed:

*“Gender makes a big difference for women candidates. It is women who vote for women.”*

*“I care about the issues of lawyers who are not on Bay St. I also believe that being a woman earned me votes.”*

Other participants suggested that it was important to make the voting process work to your advantage, by encouraging voters to vote strategically. (Voters are entitled to cast 20 votes for candidates inside Toronto and another 20 votes for candidates outside Toronto.) They pointed

out that voters are not required to cast all their votes, and one of the ways to vote strategically is to vote for one candidate in an electoral region and ensure that they do not dilute their votes. One participant noted how he was able to target his votes under the current voting process:

*“As a candidate outside Toronto, I targeted voters inside Toronto and asked them to give me their votes when they cast their votes for outside Toronto candidates.”*

Some of the participants also commented on the incumbency factor when they ran for re-election, as expressed in the quotes below.

*“I also felt that running as an incumbent was most helpful, in that one’s profile changes. You get to emphasize the time you have committed as a benchers and the work that you have done, including your successes.”*

*“When I first ran, there was a crisis on the issue of insurance. In that election incumbents were at a disadvantage because there was the feeling that we needed to get rid of this group who mismanaged that entire issue. This gave fuel to get new people in.”*

*“In one election, I tapped into anger within the profession. Subsequently, after being part of the group of benchers that resolved those problems that angered the profession, the membership was delighted with the success of the group of benchers. We were credited for improving things and got re-elected.”*

## PERSONAL MOTIVATING EXPERIENCES

Participants were asked to provide their comments about their experiences and what personally encouraged them to become benchers. The following is a compilation of the responses of the participants:

*“Being a bencher is the most gratifying role in comparison to the other roles I have done in other legal associations. You get to meet many people who do great work in the profession. The work that you do and the issues that you deal with have an important effect on the profession and the public. You can really make a difference.”*

*“Benchers, both elected and appointed, are bright, articulate people, and even if you are often not ad idem with most of them, in the exchange of views, you hone your ideas and advocacy skills. It is also personally fulfilling to attempt to democratically change Law Society policies.”*

*“By virtue of being a litigator and a bencher, you are very well known by the profession and the bench. Being a bencher enhances your practice, your profile, and your skills. The benefits outweigh the contributions I have made. It also creates a niche for your practice.”*

*“Shaping broader public or legal policy is rewarding. As a lawyer, it does not hurt to spend some time and gain experience about how your regulator works. It is also interesting to experience the difference between reading case law in law practice versus being in a position to regulate. You can also bring your issues that you are passionate about to Convocation and have a meaningful discussion.”*



*"You get to see the big picture. You get to work with bright and committed people. You get a sense of the profession from both perspectives of being a lawyer and how your profession is governed."*

*"Assisting the profession is rewarding. I like to be engaged in the issues affecting the profession. I like being able to contribute and make a difference. I like to serve in the public interest. I am interested in working on policy issues such as the retention of women in the profession."*

*"It is the best job in town because of the people you get to deal with and the ability to meet people you would never ever get to meet in your lifetime. You are also well-respected and held in high esteem because of the sacrifices you make for the profession."*

*"It is nice to be on the cutting edge of issues and to be able to do something positive. I like participating in discipline hearings because of its remedial nature versus a process that penalizes. I also like the camaraderie and intellectual debates in Convocation."*

*"It is rewarding that your peers have given you their confidence in representing their voices. It is exciting to be in a position to deal with changes such as the issue of paralegal regulation."*

*"The potential to change policies – to make them more inclusive is personally rewarding."*

*"The issues you deal with and some of the changes that I have been involved with, have been very gratifying to know that I played a small role in it."*

*"The Law Society is a top operation and great employer. I have watched the Law Society transform. Law Society has capable staff to support Convocation. It speaks volumes that the Law Society has been a Top 100 Employer 3 times and has a positive working environment."*

*"It is rewarding to help lawyers do a better job for the public by being involved in initiatives like the report on disability issues and the small firm sole practitioners task force report."*

*"I have an interest in equity issues, which reflects on my other work. I have been impressed with the work we have done on anti-terrorism legislation and money laundering and the fact that the Law Society was largely involved. I like working on other issues affecting the profession such as the promotion to ensure the independence of the profession and the work on the protection of lawyers from persecution internationally."*

## CONCLUSIONS

The consultation with elected benchers has provided a greater understanding of the bencher election process and the factors that influence the participation of lawyers and their success in bencher elections. The participants in the consultation also proposed recommendations for ways to enhance diversity in bencher elections and gave subjective insights of different campaign methods that were successful.

The consultation revealed that the most common motivating factor for the participants to run in benchers elections is to advance an issue that was important to them and to get involved in issues affecting the profession. All participants had a desire to play a role in influencing the way their profession is governed. In addition, most participants mentioned that they were actively encouraged by their peers and colleagues to run in the elections.

Participants expressed that, for those who are thinking about running for benchers, they must recognize the significant time commitments that are involved in being a benchers, and how that would impact their practice, work and family life balance. All participants in private practice reported that they experienced a reduction in income.

Participants overwhelmingly identified that the most important factor in helping someone get elected is to have name recognition and profile in the profession. Participants also expressed that support from legal associations, firms, and high-profile lawyers are important to a successful campaign.

When asked which voters were targeted in their campaigns to garner support, most participants indicated that they focused their campaigns on members in their local law associations and legal organizations they belonged to. The overwhelming majority of participants communicated to voters by mail (regular mail/e-mail), while some purchased advertising space in legal newspapers and publications.

### Survey of Elected Benchers

Summer 2006

Thank you for your participation in this survey. The objective of this study is to gather information and obtain advice about running in benchers elections in order to develop strategies to increase the participation of lawyers from Francophone, Aboriginal and equality-seeking communities in the electoral process.

Your feedback will help us gain a better understanding of the benchers election process and help to identify some of the factors that may influence members to run for election.

Your participation in this study is entirely voluntary. You are not obliged to answer any questions that you find objectionable or which make you feel uncomfortable. We assure you of complete anonymity and your individual responses will be kept strictly confidential.

Thank you for your valuable time and important contribution to this study.

#### Part One: Background

The following questions are related to your background and work profile.

Year of call:

Sex:   ☐ Female      ☐ Male

Business location (city/municipality):

In what year/s were you elected as a bencher?

Please select one of the following that describes your employment situation:

- ☐ A sole practitioner, practising alone in Ontario
- ☐ A sole practitioner, practising in Ontario with one or more lawyers as employees
- ☐ A sole practitioner, practising in Ontario with one or more lawyers in shared facilities
- ☐ A partner in a law partnership in Ontario
- ☐ An employee/associate in a law firm in Ontario
- ☐ Employed by Legal Aid Ontario or a community legal clinic
- ☐ Employed in government in Ontario
- ☐ Employed in education in Ontario
- ☐ Employed other, in Ontario
- ☐ A lawyer practising law outside of Ontario
- ☐ Employed other, outside of Ontario
- ☐ Not working or on parental leave or unemployed
- ☐ Suspended
- ☐ In a situation not covered above – Please specify: \_\_\_\_\_

Please indicate your main area or areas of practice.

- ☐ ADR/Mediation Services
- ☐ Administrative Law
- ☐ Bankruptcy & Insolvency Law
- ☐ Civil Litigation – Plaintiff
- ☐ Civil Litigation – Defendant
- ☐ Construction Law
- ☐ Corporate Commercial Law
- ☐ Criminal/Quasi Criminal Law
- ☐ Employment/Labour Law
- ☐ Environmental Law
- ☐ Family/Matrimonial Law
- ☐ Immigration Law
- ☐ Intellectual Property Law
- ☐ Real Estate Law
- ☐ Securities Law
- ☐ Tax Law
- ☐ Wills, Estates, Trusts Law
- ☐ Workplace Safety & Insurance Law
- ☐ Other – Please specify: \_\_\_\_\_

Members of Equality-Seeking Communities: The Law Society has defined members of “equality-seeking communities” as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, gender identity or sexual orientation. Do you consider yourself a member of an equality-seeking community?

- ☐ Yes (Please answer question 8.)
- ☐ No

Are you a member of an equality-seeking community for one or more of the following reasons:

- ☐ Your race
- ☐ Your ethnicity or cultural background
- ☐ Your religion or creed
- ☐ A disability
- ☐ Your language
- ☐ Your gender identity
- ☐ Your sexual orientation
- ☐ Other reason (Please specify) \_\_\_\_\_

## Part Two: Becoming a Candidate/Reasons for Running

This section inquires about your reasons for running for election as well as any factors that you may have perceived as either assisting or hindering your decision to run.

You may also provide more details and comments of your responses after each question.

What motivated you to run in bench elections? Please select one or more answers.

- ☐ Philosophy or position on an issue or issues
  - ☐ Serving in the public interest
  - ☐ Service to the profession
  - ☐ Interest in influencing direction of the profession
  - ☐ Interest in influencing direction of Law Society operations
  - ☐ Encouragement from firm/employer
  - ☐ Encouragement from colleagues/peers
  - ☐ Encouragement from legal or community organizations and associations
  - ☐ Interest in promoting equity and diversity issues in the profession as a member of a Francophone, Aboriginal or equality-seeking community (please specify which community/communities)
- 
- ☐ Career aspirations
  - ☐ Other (Please specify)
- 

Comments:

Were there any factors you had to weigh as part of your consideration to run in the election? Specifically, were there any factors that could have prevented you from running in the election?

- ☐ Cost of running an election campaign
- ☐ I expected a reduction in income from my practice due to the amount of time required in carrying out benchers' responsibilities
- ☐ Travel required in carrying out benchers' responsibilities will impact on my family and personal obligations

- ☐ I am not in private practice and where I work and the work I am doing will need to have flexibility to carry out the responsibilities of a benchers
  - ☐ Other (Please specify)
- 

Comments:

Have any of these factors been as much of an issue as you anticipated? If yes, please explain.

- ☐ Yes
- ☐ No

Comments:

Would you run again in the future?

- ☐ Yes
- ☐ No

If yes, what would be your reasons for wanting to run again? Are your reasons the same as they were when you first ran for election? Have your reasons changed, and if so, how and why?

- ☐ Philosophy or position on an issue or issues
  - ☐ Serving in the public interest
  - ☐ Service to the profession
  - ☐ Interest in influencing direction of the profession
  - ☐ Interest in influencing direction of Law Society operations
  - ☐ Encouragement from firm/employer
  - ☐ Encouragement from colleagues/peers
  - ☐ Encouragement from legal or community organizations and associations
  - ☐ Remuneration for benchers
  - ☐ Interest in promoting equity and diversity issues in the profession as a member of a Francophone, Aboriginal or equality-seeking community (please specify which community/communities)
- 
- ☐ Career aspirations
  - ☐ Other (Please specify)
- 

Comments:

If no, what would be your reasons for declining to run again?

- ☐ Cost of running an election campaign is too high

- ☐ My practice has experienced a reduction as a result of carrying out benchers' responsibilities
- ☐ Amount of time and travel required to be a bencher is taking too much time away from my family and personal obligations
  - ☐ Other (Please specify)

---

Comments:

### Part Three: Campaign process

Through the following questions we are attempting to understand general perceptions concerning what is required to run an election campaign for bencher, what resources are required and the importance of various elements.

You may also provide more details and comments of your responses after each question.

What do you think is the most important or helpful element in a campaign to get elected in bencher elections?

- ☐ Having name recognition, profile and visibility in the profession
- ☐ Financial resources to support campaign activities
- ☐ Position statement and campaign message
- ☐ Official endorsements from individual lawyers, law firms, legal associations
- ☐ Promotional materials and communication tools (mailing, e-mail, Website, pamphlets, etc.)
- ☐ Other (Please specify)

---

Comments:

Who were your constituents or target audiences during the campaign?

- ☐ General membership
- ☐ Lawyers working in a specific region of province
- ☐ Work colleagues, i.e. firm, faculty, government, etc.
- ☐ Section of bar, i.e. criminal lawyers, human rights lawyers, etc.
- ☐ Members of a legal association or organization, i.e. OTLA, WLAO, etc.
- ☐ Lawyers from Francophone, Aboriginal or equality-seeking communities. Which community?
- ☐ Other (Please specify)

---

Comments:

How did you reach your audiences?

- ☐ Mailing (other than Law Society mailing of candidate and election information)

- ☐ Sent e-mail messages
  - ☐ Solicited support through telephone canvassing
  - ☐ Solicited support through in-person canvassing
  - ☐ Attended events
  - ☐ Other (Please specify)
- 

Comments:

What promotional elements did you employ during your campaign to raise your profile with voters?

- ☐ Pamphlets, flyers, brochures
  - ☐ Advertisements
  - ☐ Media (written articles in newspapers, newsletters, magazines, or interviews)
  - ☐ Letters
  - ☐ Personal Website
  - ☐ Work Intranet
  - ☐ Networking and participation in events
  - ☐ Other (Please specify)
- 

Comments:

Were financial considerations a factor in the type and scope of promotions undertaken during your campaign?

- ☐ Yes
- ☐ No

Comments:

What sources of support did you have available to you during your campaign from your firm, employer, colleagues, family and others?

- ☐ Flexible work arrangements
- ☐ Financial support
- ☐ Official endorsements
- ☐ Assistance from colleagues
- ☐ Assistance from other lawyers
- ☐ Assistance from legal or community organizations and associations
- ☐ Marketing support, such as online and print/publication support
- ☐ Media relations support

- ☐ Other (Please specify)
- 

Comments:

What professional and personal achievements or experiences did you emphasize in your campaign?

- ☐ Philosophy or position on issues
  - ☐ Years of legal practice / years since call
  - ☐ Legal credentials
  - ☐ Accomplishments in law
  - ☐ Involvement in profession
  - ☐ Involvement in community
  - ☐ Awards/recognition
  - ☐ Member of a Francophone, Aboriginal, or equality-seeking community
  - ☐ Other (Please specify)
- 

Comments:

#### Part Four: General Topics

Through the following questions we are seeking general perspectives on factors that may impact voting decisions, voter participation, and the participation of lawyers as candidates in benchers elections.

You may also provide more details and comments of your responses after each question.

What do you think were the most influential factors that enabled you to attract the majority of your votes?

- ☐ Name recognition and profile in the legal community and public
  - ☐ Election statement, values
  - ☐ Experience with Law Society matters
  - ☐ Gender
  - ☐ Year of call
  - ☐ Profile as a sole practitioner
  - ☐ Member of a firm
  - ☐ Lawyer from a smaller community
  - ☐ Member of a Francophone, Aboriginal or equality-seeking community
  - ☐ Other (Please specify)
- 

Comments:

In advance of each benchers election, the Law Society issues a call for nominations and information about running for election through a variety of information vehicles including its website, the Ontario Lawyers Gazette, the Ontario Reports and e-mail broadcast. From your



perspective, is there anything more the Law Society could do to help encourage lawyers to run for election?

What recommendations would you offer to other lawyers to encourage them to run for election?

During the election process, the Law Society sends a voters guide with information about all candidates to all Ontario lawyers eligible to vote. The Law Society also publishes information in the Ontario Lawyers Gazette, in the Ontario Reports, on its website, via broadcast e-mail and issues information to the media. From your perspective, is there anything more the Law Society could do to help encourage lawyers to participate in the electoral process and vote?

Do you have recommendations as to how awareness of the position of benchers can be increased?

Based on your experience, what are the positive aspects about being a benchers? What aspects of being a benchers are personally rewarding for you?

Thank you for completing this questionnaire.

#### FOR INFORMATION

#### APPOINTMENT OF EQUITY ADVISORY GROUP ORGANIZATIONAL MEMBER

26. On September 14, 2006, the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones approved a recommendation from the Equity Advisory Group (the "EAG") to appoint the ARCH Disability Law Centre as an organizational member of the EAG.

27. The ARCH Disability Law Centre is a specialty legal aid clinic dedicated to defending and advancing the equality-rights of persons with disabilities. ARCH proceeds on the following premises:
  - a. Persons with disabilities are confronted with unique legal challenges.
  - b. Persons with disabilities must have control over their own lives.
  - c. A cross-disability approach to advocacy issues is essential, but it is equally important to recognize and respect difference.
  - d. Persons with disabilities may also face disadvantage due to other reasons such as their gender, race, age, economic status and sexual orientation, compounding their experience of discrimination or exclusion.
28. ARCH is a not-for-profit charitable organization with a provincial mandate. The membership consists of over sixty disability consumer and service organizations. The staff reports to a consumer-controlled volunteer board of directors. Programs include direct service to callers, test case litigation, public legal education and community development, law reform and library and resource centre.

ADVANCING THE FULL PARTICIPATION IN THE LEGAL PROFESSION OF STUDENTS AND  
LAWYERS WITH DISABILITIES  
ONLINE INFORMATION

29. On December 9, 2005, Convocation approved the report *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession*, which includes recommendations to develop initiatives to increase access for students and lawyers with disabilities in the legal profession.
30. The report recommends that the Law Society make accessible lists of contacts, resources and employment opportunities for students-at-law and lawyers with disabilities. Further, the report recommends that an initiative be created to identify and publicize funding sources to facilitate access of students-at-law and lawyers with disabilities to the legal profession and to assist law firms in providing accommodation for lawyers and students-at-law with disabilities.
31. As part of the implementation of those recommendations, the Equity Initiatives Department developed the resources presented at Appendix 1, to be posted on the website as a component of the online Equity Resource Centre. Because the information provided at Appendix 1 is tantamount to guidelines, the Committee approved the posting of the information on the website.
32. The Equity Initiatives Department consulted with the Disability Working Group and the Equity Advisory Group in drafting the document.

## APPENDIX 1

RECRUITING AND HIRING LAWYERS WITH DISABILITIES  
A GUIDE FOR EMPLOYERS  
ONLINE INFORMATION

### What Lawyers with Disabilities say about Finding Employment

While people with disabilities are becoming more and more included in mainstream society, systemic barriers to the full inclusion of persons with disabilities still exist. Some barriers are physical, as in the lack of a ramp to access a building, but most barriers are subtle and based on inappropriate stereotypes and are so ingrained that they are almost second nature.

In 2005, the Law Society consulted law students and lawyers with disabilities in Ontario to identify and address challenges they face when they join, and while they are, in the legal profession. A significant proportion of those who participated in the consultation reported having had great difficulty in securing work as a lawyer following their call to the Bar. Few of those who participated in the consultation were engaged in the private practice of law, and a number, of those employed elsewhere would have preferred to be in private practice.

See [report entitled \*Students and Lawyers with Disabilities – Increasing Access to the Legal Profession\* \[create link\]](#).

Participants commented on the subtle nature of the discrimination they encountered in the job search process.

*“Everyone wants to hire someone who looks like them. You hire the guy who likes hockey if you do.”*

*“You are refused jobs because of the way you look, the way you sound. It affects your self confidence.”*

*“Firms want people who can fit in.”*

*“There is no way to prove that you’re not getting a job because you’re disabled. Lawyers learn ways to discriminate that can’t be detected.”*

Lawyers with disabilities recognized that lawyers in private practice are subject to financial pressures, such as the requirement to have high billable hours and to maintain a client base, and that these pressures may affect decisions about employing lawyers with disabilities. These pressures are not present to the same extent in the governmental sector. However, several participants suggested that lawyers in private practice also have an incentive that the government does not. A business case can and should be made for the bottom line benefits of hiring lawyers with disabilities: that it will help bring in clients, that a person with a disability is an asset not a liability, and that accommodations won’t hurt the bottom line.

*“The disabled community represents an untapped client base.”*

*“The profession should bear in mind that clients face the same difficulties. Over 1.5 million Ontarians are disabled. Furthermore, disability and age go together and our population is aging so there will be lots coming into the market. Failing to be accommodating is a huge example of market failure. Ideally, your workplace reflects your market.”*

*“[...], private firms have much more flexibility to answer accommodation needs than government does. Technology has made things easier and therefore accommodation should be much easier.”*

Success Stories – Ontario Lawyers Gazette article about the Disability Working Group

To consult the Ontario Lawyers Gazette article about the Disability Working Group see:

<http://www.lsuc.on.ca/news/b/olg/winter-2006-vol-10-no-1/disability-working-group/>

#### RECRUITING AND HIRING TIPS TO ENSURE EQUAL RIGHTS OF LAW STUDENTS AND LAWYERS WITH DISABILITIES

The tips are based in part on the following:

Ontario Human Rights Commission guide entitled *Hiring? A Human Rights Guide* at  
<http://www.ohrc.on.ca/english/publications/hiring-guide.pdf>

Ontario Human Rights Commission guide entitled *Human Rights at Work* at  
<http://www.ohrc.on.ca/english/publications/hr-at-work.pdf>

Ontario Human Rights Commission guide entitled *Policy and Guidelines on Disability and the Duty to Accommodate* at  
<http://www.ohrc.on.ca/english/publications/disability-policy.shtml>

Nova Scotia Barristers' Society, *Hiring Practices for Equity in Employment* at  
<http://www.nsbs.ns.ca/diversity/InterviewEquityGuide.pdf>

The legal profession and society in general need to adapt their structures and attitudes to include persons with disabilities. This requires a shift in our approach, one that focuses on human dignity and equality. This is also a shift that is required in private practice. This online resource centre provides tips and best practices to attract, hire and retain law students and lawyers with disabilities.

#### Objectives of Recruiting and Hiring Tips

The objectives of the following tips are to ensure that law firms and legal organizations:

- hire the best qualified person;
- adopt recruitment and selection policies, programs and practices that are inclusive, job-related, reliable, valid and fair;
- follow recruitment and selection policies, programs and practices that do not exclude a student or lawyer because he or she has a disability;
- provide a fair system for identifying reasonable, genuine and directly related competencies to the job;

- base hiring decisions on the applicant's ability to do the job rather than on factors unrelated to job requirements, qualifications or performance;
- achieve equality in the workplace.

Law firms and legal organizations have a legal obligation to treat every person equally with respect to employment without discrimination because of the grounds outlined in the *Human Rights Code* and the *Rules of Professional Conduct*, including disability and perceived disability. This obligation includes respecting the substantive equality of every person during the recruitment process.

Substantive equality does not mean treating everyone the same. A substantive equality approach examines the impact of law within its surrounding social context to make sure that laws and policies promote full participation in society by everyone, regardless of personal characteristics or group membership. Substantive equality requires ensuring that important differences in life experience, as viewed by the equality seeker, are taken into account.

See the Ontario *Human Rights Code*

[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90h19\\_e.htm#BK6](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90h19_e.htm#BK6)

See also the *Rules of Professional Conduct*

<http://www.lsuc.on.ca/regulation/a/profconduct/>

### Establishing Requirements for the Position

Before advertising a position, law firms and legal organizations should compile an inventory of the essential knowledge, skills, abilities, education and experience to be competent in the position.

The knowledge, skills, abilities, education and experience should be reasonable, genuine and directly related competencies to the job. Only competencies required for a position should be used as criteria for recruitment and selection.

Members involved in recruiting and hiring should be conscious of assumptions, stereotypes, and personal biases that may have direct or indirect adverse impact on decisions made regarding recruitment and hiring.

While generally selection criteria should be applied consistently for all candidates, flexibility should be maintained. Those involved in the recruitment process should be sensitive to the differences in life experience of individuals and ensure that they respect the substantive equality of candidates. Recruiters should know and comply with their duty to accommodate differences based on the grounds enumerated in the *Human Rights Code*, including disability.

According to the Ontario Human Rights Commission, the following examples are criteria that are not considered reasonable:

- if they relate to incidental duties rather than essential components of a position;
- if they are based on a client or colleague's preferences and exclude individuals because of grounds protected in the Code, such as disability;

- if they rely on stereotypical assumptions to assess an individual's capacity to perform the job duties;
- if they state that the job be performed only in a certain way where reasonable alternatives may exist so that persons are not excluded because of grounds protected in the Code, such as disability;
- if they reinforce role-modeling based on traditional or stereotypical ideas about the appropriate roles of men and women.

### Advertising a Position

When advertising a position, law firms and legal organizations should,

- ensure that the position is advertised broadly and not only in mainstream publications. In doing so, law firms and legal organizations should actively recruit law students and lawyers with disabilities and consult with the disability community, in law schools and in society.
- ensure that job advertisements are in accessible formats. For example, if a job advertisement is available in electronic format, the advertisement should be made available in electronic text format or transmitted via email. For general information regarding accommodation for persons with disabilities, consult [Providing Legal Services to Persons with Disabilities \[include link to Chapter 11, Professional Responsibility 2005 BAC materials\]](#).
- ensure that requirements or duties for employment are reasonable, genuine and directly related to the performance of the job.

Job advertisements should not contain statements, qualifications or references that relate either directly or indirectly to disability.

When designing a job advertisement, please consider,

- whether the wording used is non-discriminatory;
- whether the essential duties of the job are explained clearly;
- whether the language is neutral.

### Application Forms

In application forms, a law firm or legal organization may not ask,

- questions that relate directly or indirectly to a person's disability.
- questions about someone's health, illnesses, mental disorders, physical or intellectual limitations, developmental disabilities, intellectual impairment, medical history, learning disability, injuries, workplace accidents or medication.
- a listing of disabilities, limitations or health problems.
- whether a candidate drinks alcohol or uses drugs, whether they have ever received psychiatric care, and if they have ever been hospitalized for emotional problems.

### Interview Process

Law firms and legal organizations are encouraged to ensure that those involved in interviewing potential candidates are trained in disabilities issues. In particular, interviewers should know about the duty of confidentiality and the importance of respecting the privacy of candidates, that they should not ask about personal health matters that are not related to the position and that they should respect the dignity of the candidate.

Candidates should be informed of policies that may be applicable to them, such as accommodation policies.

A law firm or legal organization may ask job-related questions to determine the applicant's qualifications or his or her ability to perform the essential duties of the job. A law firm or legal organization should not ask other questions concerning an applicant's disability.

Candidates do not have to disclose a disability and some candidates will not disclose during the recruitment process.

If a candidate discloses a disability prior to or during a job interview, or if an applicant's disability is evident, you must accommodate the candidate's needs, up to the point of undue hardship, if required for any part of the interview or test screening process. For example, interviews should be conducted in accessible locations. Firms or legal organizations may encourage applicants to request accommodations in advance if required to participate in the interview.

If the candidate chooses to talk about his or her disability during an interview, or if the candidate's disability is evident, the only inquiry that the interviewer may make is whether the candidate has needs that require accommodation. Such inquiries should be limited to the applicant's ability to perform the essential duties of the job. You should not ask, for example, how long the person has had a disability or how the person became disabled. The aim of the questions should be to ascertain the applicant's ability to perform essential duties of the position.

A legal employer should not request a driver's licence number or a copy of the licence on an application or during an employment interview because it may screen out applicants without consideration of whether the individual may be accommodated. Having a valid driver's licence should only be a requirement for employment if it is an essential job duty and if individual accommodation is not possible.

You should be aware that the traditional cues that often impress interviewers, such as a quick and articulate responses, eye contact and steady handshake, do not necessarily reflect potential job success. Consider the quality of responses.

In conducting interviews, you should be careful to avoid misconceptions, such as,

- stereotyping, which occurs when someone develops a preconceived image of a person based on, for example, his or her disability;
- the candidates similarity with the interviewer, which occurs when someone judges a candidate more highly if the person is similar to himself or herself including having similar experiences, hobbies and attitudes;
- reliance on intuition which may lead to incorrect evaluations about candidates' suitability for the job;
- Incorrect interpretation or misunderstanding of responses.

What is the Duty to Accommodate?

The duty to accommodate refers to an employer's obligation to ensure that employees or prospective employees with disabilities are not adversely affected by a rule, policy, practice or physical barrier in the workplace. A law firm or legal organization is responsible for

accommodating the needs of persons with a disability to the point at which the accommodation would create undue hardship.

For an outline of the duty to accommodate see the Ontario Human Rights Commission's *Policy and Guidelines on the Duty to Accommodate* at:

<http://www.ohrc.on.ca/english/publications/disability-policy.shtml>

#### Legal Obligations to Accommodate a Student or Lawyer with Disabilities

Law firms and legal organizations are encouraged to adopt accommodation policies and to communicate the policies to all members of the firm and prospective members of the firm. A precedent for such policies is available on the Law Society website at <http://www.lsuc.on.ca/media/guide1.pdf>

The *Ontario Human Rights Code (Code)* imposes a duty on Ontario employers, including law firms and legal organizations, to promote equality rights of persons with disabilities and to accommodate persons with disabilities up to the point of undue hardship.

Accommodations must be provided in a manner that most respects the dignity of the person. For example, a person who uses a wheelchair and has to use a service elevator near a loading dock or garbage room to gain access to his or her office has not been accommodated in a manner that respects his or her dignity.

Law firms and legal organizations must respect the privacy, confidentiality, comfort, autonomy, individuality and self-esteem when accommodating students and lawyers.

Because everyone has unique individual needs, each person who requires an accommodation must be accommodated individually.

#### Law Firms or Legal Organizations and the Student or Lawyer with Disabilities have Responsibilities when it comes to Accommodations

The accommodation process is a shared responsibility between the law firm or legal organization and the student or lawyer with disabilities. Everyone involved should cooperatively participate in the process, share essential information, and try to find mutually agreeable accommodation solutions.

#### Responsibilities of student or lawyer requesting an accommodation

To make a request for an accommodation, students or lawyers with disabilities have the following responsibilities, which should be undertaken in a prompt manner:

1. The student or lawyer should make a request for accommodation.
2. Whenever possible, the student or lawyer should provide notice of the request in writing and allow a reasonable time for reply.
3. The student or lawyer is encouraged to identify the ground or grounds under which he or she is requesting the accommodation.
4. The student or lawyer should explain why the accommodation is required and provide enough information to confirm the existence of a need for accommodation and the type(s) of accommodation required.



5. The student or lawyer should provide suitable verifiable information concerning the ground(s) at issue (e.g. appropriate documentation and assessment of a disability), as requested by the law firm or legal organization.
6. A student or lawyer who requests an accommodation because of a disability and believes that he or she is capable of doing the essential requirements of the position should indicate this.
7. The student or lawyer should cooperate in obtaining necessary information and should participate in discussions about solutions.
8. The student or lawyer should meet agreed upon performance standards once accommodation is provided.

#### Responsibilities of law firm or legal organization when considering a request for accommodation

When a student or lawyer requests an accommodation, the law firm or legal organization has the responsibility to assess the need for accommodation on an individual basis. The law firm or legal organization has the following responsibilities, which should be undertaken in a prompt manner:

1. The law firm or legal organization should respect the dignity of the student or lawyer requesting the accommodation. This means acting in a manner that recognizes the privacy, confidentiality, comfort, autonomy, and self-esteem of the student or lawyer.
2. The law firm or legal organization should presume that a request for accommodation is made in good faith unless there are legitimate reasons for believing otherwise.
3. The law firm or legal organization should consult the student or lawyer and consider any suggestions offered by him or her in arriving at a strategy for accommodation.
4. The law firm or legal organization should request only information that is reasonably necessary to enable the law firm or legal organization to consider the request for accommodation.
5. The law firm or legal organization should deal with accommodation requests in a timely way.
6. The law firm or legal organization should consider alternatives if the request cannot be fully accommodated.
7. The law firm or legal organization should obtain expert opinion or advice when required.
8. When a student or lawyer with a disability indicates that he or she is capable of satisfying the essential requirements of the position, the law firm or legal organization, with the input of the student or lawyer, should determine what is "essential" to the position and identify possible alternatives to enable the student or lawyer to perform the job duties in a satisfactory way. The law firm or legal organization should establish on an objective basis whether the person's disability renders the student or lawyer incapable of fulfilling the essential requirements of the position. If the student or lawyer cannot satisfy the essential requirements without accommodation, the law firm or legal organization will explore how to accommodate him or her to enable satisfaction of the essential requirements of the position.
9. The law firm or legal organization must take all necessary protection to maintain confidentiality.

10. When the law firm or legal organization is of the view that the request for accommodation should be granted, he or she should provide the accommodation required.
11. The law firm or legal organization should consult with the student or lawyer regularly to determine whether the accommodation is appropriate or should be modified.

#### Undue hardship

Law firms and legal organizations have an obligation to reasonably accommodate students or lawyers up to the point where accommodation would result in undue hardship.

In determining undue hardship, the law firm or legal organization should only consider the following factors:

1. Cost;
2. Outside sources of funding; and
3. Health and safety requirements.

The Code sets out only three factors. When assessing whether an accommodation amounts to undue hardship, a law firm or legal organization may not take into account factors such as business inconvenience created by the accommodation, its affect on employee morale, client preferences, or the fact that the accommodation contravenes a collective agreement or contract.

For more information about the concept of “undue hardship” see *Policy and Guidelines on Disability and the Duty to Accommodate*

<http://www.ohrc.on.ca/english/publications/disability-policy.shtml>

See also

Guide to developing a law firm policy regarding accommodation requirements

Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities Legal Developments and Best Practices

If the law firm or legal organization concludes that a requested accommodation would impose undue hardship on the organization, it should prepare a written report including,

1. the nature of the accommodation sought and refused, and
2. the factors that support the view that the accommodation would lead to undue hardship (including evidence showing the financial cost of the accommodation or health and safety risks).

The decision should be explained clearly to the student or lawyer and reasons for the decision should be provided.

For case law on the duty to accommodate to the point of undue hardship, see *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, [1999] 3 S.C.R. 3, (“the Meiorin case”) at <http://www.canlii.ca/ca/cas/scc/1999/1999scc48.html> and *British Columbia (Superintendent of*

*Motor Vehicles*) v. *British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (the Grismer case) at <http://www.canlii.ca/ca/cas/scc/1999/1999scc82.html>

Additional Legal Obligations of Law Firms and Legal Organizations

*Accessibility for Ontarians with Disabilities Act*

In 2005, Ontario adopted the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA, 2005). To consult the AODA, 2005 see

<http://www.canlii.ca/on/laws/sta/2005c.11/20060517/whole.html>

The AODA, 2005 applies to the public and the private sectors, including law firms and legal organizations.

The AODA, 2005 establishes tangible objectives and an enforcement mechanism to enhance full accessibility for persons with disabilities in Ontario.

Accessibility standards will apply to a person or organization that provides goods, services or facilities to the public, employs persons in Ontario, offers accommodation to the public, owns or occupies a building, structure or premises that is open to the public, or is engaged in a prescribed business, activity or undertaking or meets such other requirements as may be prescribed.

Industry or sector- specific standards for accessibility will be developed. The standards will set out measures, policies, practices or other requirements for the identification, removal and prevention of barriers faced by persons with disabilities. This will include architectural, information and communication, attitudinal, technological and policy and practices barriers.

The standards, once defined, will be implemented over a five-year period. The target date for achievement of accessibility is 2025.

*Canadian Human Rights Act*

Law firms and legal organizations regulated by federal statutes also have a duty to accommodate under the *Canadian Human Rights Act* and the *Employment Equity Act*. To consult these statutes, please go to:

*Canadian Human Rights Act*

<http://www.canlii.ca/ca/sta/h-6/>

*Employment Equity Act*

<http://www.canlii.ca/ca/sta/e-5.401/>

## TERMINOLOGY AND COMMUNICATION TIPS

Law firms and legal organizations who work with students and lawyers with disabilities are encouraged to use terminology that focuses on the person and not the functional limitation.

Terminology should always enhance the dignity of the person with the disability and it should not reinforce outdated stereotypes. For example, put the person first by saying, *persons with disabilities* or *women with disabilities*. These are preferable to *disabled persons* or *the disabled*.

The following tips for communicating with a person with a disability are taken from Word Choices” (Government of Ontario)

<http://www.mcass.gov.on.ca/accessibility/en/main/preferredterms.htm>

and “A Way with Words and Images” (Government of Canada) at

[http://www.sdc.gc.ca/en/hip/odi/documents/wayWithWords/00\\_toc.shtml](http://www.sdc.gc.ca/en/hip/odi/documents/wayWithWords/00_toc.shtml)

For general information regarding accommodation for persons with disabilities, consult Providing Legal Services to Persons with Disabilities [include link to Chapter 11, Professional Responsibility 2005 BAC materials].

*Disabled* is an adjective, not a noun.

Generally, *disabled* is preferred to the term *handicapped*.

*Non-disabled* is more appropriate than *able-bodied*.

Persons with a strong commitment to Deaf culture capitalize the word *Deaf*.

*Wheelchair user* is preferable to saying that someone is *confined* or *bound* to a wheelchair.

It is not appropriate to say someone is *suffering* from a disability or is *afflicted* with it. Similarly, it is inappropriate to say that someone is a *victim* of a disability, except in particular cases. Persons who were affected by Thalidomide refer to themselves as *Thalidomide victims*.

It is preferable to use *intellectual disability* over *developmental disability*. Avoid using the term *mental retardation*.

The terms *partial vision*, *low vision*, or *no useful vision* are preferable to *legal blindness*.

Persons with psychiatric disabilities may choose to refer to themselves as *consumers*, or where there is a lengthy history of hospitalization or treatment and they are of the view that the psychiatric system is oppressive, they may refer to themselves as *survivors*.

It is appropriate to use words like *see* as you would normally when speaking to a person who is blind. People who use wheelchairs also go for *walks*.

#### INFORMATION ABOUT FUNDING and RESOURCES for LAWYERS and LAW STUDENTS with DISABILITIES

The following provides information about external funding sources for the disability community and/or employers

Government of Canada  
Social Development Canada Programs

The Office for Disability Issues (ODI) is the central office that coordinates the federal government programs and initiatives for the full participation of Canadians with disabilities in learning, work and community life. For information about the ODI, see

[http://www.sdc.gc.ca/en/gateways/nav/top\\_nav/program/odi.shtml](http://www.sdc.gc.ca/en/gateways/nav/top_nav/program/odi.shtml)

The ODI has two divisions: Policy Coordination and Knowledge Management Division and Programs and Network Development Division.

The following two funds are aimed at assisting unemployed persons with disabilities:

a. *Opportunities Fund for Persons with Disabilities*

The objective of the Opportunities Fund (OF) is “to assist unemployed persons with disabilities in preparing for, obtaining, and keeping employment or becoming self-employed.” OF funding-eligible activities include assisting individuals to set up their own businesses and providing individualized services to assist with integration into a workplace.

Eligibility for OF financial assistance is limited to individuals who self-identify as having a disability and who do not qualify for employment insurance benefits under the Employment Insurance Act.

Businesses, band/tribal councils, municipal governments, public health and educational institutions may qualify for financial assistance..

Individuals may make an application to the program through their local Service Canada Centre and project proposals for promoting the employability of persons with disabilities should also be submitted to the local Service Canada Centre. For information about Service Canada Centres in Canada see [http://www.hrsdc.gc.ca/en/gateways/nav/top\\_nav/our\\_offices.shtml](http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/our_offices.shtml)

For further information about the Opportunities Fund for Persons with Disabilities see:

[http://www.sdc.gc.ca/asp/gateway.asp?hr=en/epb/sid/cia/grants/of/desc\\_of.shtml&hs=oxf](http://www.sdc.gc.ca/asp/gateway.asp?hr=en/epb/sid/cia/grants/of/desc_of.shtml&hs=oxf)

b. *Social Development Partnerships Program - Disability Component.*

The Social Development Partnerships Program - Disability Component (SDPP/D) provides funding to not-for-profit organizations and professional associations “working to meet the social development needs of persons with disabilities...and promoting their full participation as citizens in all aspects of Canadian society.” SDPP/D funding is available for a variety of activities that support the government’s disability agenda.

Contributions may be provided for the following eligible activities:

- Generating knowledge on emerging social issues, by exploring and testing innovative solutions, best practices and tools and methodologies; creating relevant data bases, information management and retrieval systems; developing appropriate progress indicators and outcome measures;
- Disseminating information and knowledge and increasing public awareness through publications, newsletters, Web sites, public education materials, and media; organizing conferences, workshops and symposia;

- Establishing and maintaining sustainable partnerships, alliances, networks and collaboration through joint initiatives, agreements, protocols, Memoranda of Understanding, and information sharing; and,
- Participating in public dialogue/consultations on Canada's social policies and programs; conducting internal consultations with constituent communities, organizations and individuals; engaging in consultations with other stakeholders.

Disability-related, not-for-profit organizations may apply to the SDPP/D Accommodation Fund for funding to permit persons with disabilities to participate in key policy, program and knowledge development events. The funding is not available for capital projects (such as renovations) but could be used for such activities as providing sign language interpretation, real time captioning or scribes. The 2006 Calls for Intent for this program are currently closed.

For further information see:

<http://www.sdc.gc.ca/asp/gateway.asp?hr=en/hip/odi/sdppd/sdppd.shtml&hs=pyp>

#### Federal Income Tax Incentives for Business Owners

Law firms and legal organizations may consult the federal *Income Tax Act* to identify income tax incentives for business owners that make renovations or alterations to a building to enable individuals who have a mobility disability to access the building or to be mobile within it. The cost of other disability related devices, such as Braille panels or audio signals for elevators or visual fire alarms, may also be eligible.

See *Income Tax Act* at <http://www.canlii.ca/ca/sta/i-3.3/>

See also: <http://www.cra-arc.gc.ca/menu.html>

#### Government of Ontario

The Ontario Government provides information for businesses, employers and community organizations that may assist in making organizations more accessible. Please see:

[http://www.mcass.gov.on.ca/mcass/english/pillars/accessibilityOntario/business/fin\\_assis\\_busacces.htm](http://www.mcass.gov.on.ca/mcass/english/pillars/accessibilityOntario/business/fin_assis_busacces.htm)

#### Ministry of Community and Social Services - Accessibility Directorate of Ontario

The Directorate of Ontario carries out responsibilities that are specific to the Accessibility for Ontarians with Disabilities Act, 2005 (AODA).

The Directorate functions include:

- advising the Minister of Community and Social Services on the establishment and composition of the standards development committees and how the proposed standards will be developed, made into law, and enforced.
- consulting with people and organizations who have to comply with the law on how to do their accessibility reports and how to follow the standards.
- assisting and supporting the work of the Accessibility Standards Advisory Council and the standards development committees.
- educating people on accessibility issues and the provisions of the act.

- providing information, tools and resources to help organizations meet their obligations under the acts.
- providing specialized knowledge, research and support in the implementation of the act.
- supporting public and private organizations through partnerships.
- providing public education and information and developing educational resources.
- consulting with organizations who are required to prepare accessibility plans 2 and policies.

For information about the Directorate see:

[http://www.mcass.gov.on.ca/mcass/english/pillars/accessibilityOntario/what/about\\_ado.htm](http://www.mcass.gov.on.ca/mcass/english/pillars/accessibilityOntario/what/about_ado.htm)

#### Ministry of Health and Long Term Care - Assistive Devices Program

The Ministry of Health and Long Term Care offers financial assistance for individuals acquiring personalized disability-related equipment to enhance independent living through its Assistive Devices Program. Ontario residents with a disability lasting more than six months can obtain competitively priced equipment such as wheelchairs, hearing aids, visual and communication aids, as well as respiratory equipment through the program. Generally, individuals purchase the assistive device through a registered vendor and the government reimburses either a fixed amount or a percentage of the cost. Most information on this program may be found at

[http://www.health.gov.on.ca/english/public/program/adp/adp\\_mn.html](http://www.health.gov.on.ca/english/public/program/adp/adp_mn.html)

#### Provincial Tax Incentives for Employers

The Workplace Accessibility Tax Incentive (WATI) was introduced by the Ontario government in 1999 for businesses who have qualifying expenditures as a result of accommodating new employees with disabilities. The expenditures have to have been made since July 1, 1998. The WATI supports two types of expenditures: those required during job interviews, such as sign language interpreters, note-takers, etc. and those to accommodate an employee. More information on qualifying expenditures may be found at

<http://www.fin.gov.on.ca/english/tax/1999/tb99-1.html>

#### Ontario Trillium Foundation

Not-for-profit organizations may qualify for a capital grant from the Ontario Trillium Foundation (Ministry of Culture) to make structural renovations to a building to enhance accessibility to people with disabilities. The Trillium Foundation makes two types of grants: community and province-wide. Funding for both grants aims to strengthen the voluntary sector by supporting community-based initiatives. Capital grants may also be available to purchase equipment that would enhance accessibility. Further information may be found at

<http://www.trilliumfoundation.org/>

The following is a list of additional websites that provide resources to the disability community:  
 Government of Canada  
 Persons with Disabilities Online

The website organizes its information under general headings such as accessibility, employment, assistive devices, reference library, etc. Clicking on one of the general topic headings links the reader to information about programs and services for persons with disabilities. Some of the general topic headings link to a map, which allows the researcher to limit the geographic scope of the search.

See [www.pwd-online.ca](http://www.pwd-online.ca)

#### Disability WebLinks

The website provides links to over 15,000 federal, provincial and territorial government programs and services for persons with disabilities. Social Development Canada maintains the site, in consultation with the government ministers responsible for social services and stakeholders from the disability community. The site is searchable by topic and by geographical region. See

[www.disabilityweblinks.ca](http://www.disabilityweblinks.ca)

#### Social Development Canada On-Line Directory of Federal Government Programs and Services Available to Persons with Disabilities

The “Bridging the Gap” directory is organized by general topic (accessibility, education, employment and income support, rights, transportation, etc.) Although the information made available through the website is mostly current, some links lead to government programs that are no longer in existence or that have been replaced.

[http://www.sdc.gc.ca/asp/gateway.asp?hr=en/hip/odi/documents/bridgingTheGap/00\\_toc.shtml&hs=pyp](http://www.sdc.gc.ca/asp/gateway.asp?hr=en/hip/odi/documents/bridgingTheGap/00_toc.shtml&hs=pyp)

#### Accessible Procurement Toolkit (APT)

Employers who wish to purchase office equipment that meets universal design standards may use Industry Canada's free, web-based *Accessible Procurement Toolkit* (APT). Employers may choose from the following categories: documentation, instruction and technical support; hardware; media and content; office furniture; software; telecommunications and products; training; and websites and web applications. Each category is further broken down into subcategories for easier access. The subcategories contain a general definition of the product and outline universal requirements. Additional information within the subcategories indicates specific features that are desirable in the product or pitfalls to avoid.

<http://www.apr.gc.ca/dListProdsE.asp?Id=1>

#### Workplace Accommodation Toolkit (WAT)

Industry Canada offers an online resource for employers, the Workplace Accommodation Toolkit (WAT). This website is organized by category of disability and by product categories. Where an employer knows the general category of disability that an employee has, the employer may consult the “disability by category” section for a brief definition and description of that particular type of disability. The product category section assists employers in determining



which products would help achieve the necessary accommodations for an employee with a disability.

See <http://www.apr.gc.ca/WATindexE.asp>

#### Industry Canada's Assistive Devices Industry Office

Industry Canada's Assistive Devices Industry Office has compiled a comprehensive database of assistive devices and technology companies providing products for persons with disabilities. Each database entry provides the location and contact information for the company, as well as a synopsis of the company's products and services. The database is organized alphabetically and by type of disability and there are also entries for accommodation consultants and web accessibility consultants.

See [http://strategis.ic.gc.ca/epic/internet/inict-tic.nsf/en/h\\_it06119e.html](http://strategis.ic.gc.ca/epic/internet/inict-tic.nsf/en/h_it06119e.html)

#### Ministry of Natural Resources

The Ministry of Natural Resources maintains a website that includes tactile and audio maps to assist blind and vision impaired persons. There are a limited number of maps that may be printed from the internet onto capsule paper and carried by the blind or vision impaired person. (For example, there is a map of downtown Toronto, including Bay Street. There are also neighbourhood maps for Kensington Market, the area surrounding Union Station, the University of Toronto and Central Toronto, as well as for Ottawa, Windsor and Woodstock, Ontario). Also available are instructions for sighted individuals who wish to make tactile maps for a blind or vision impaired individual.

See [http://tactile.nrcan.gc.ca/page.cgi?url=mobilite\\_mobility/index\\_e.html](http://tactile.nrcan.gc.ca/page.cgi?url=mobilite_mobility/index_e.html)

#### Canadian Human Rights Commission

The Canadian Human Rights Commission publishes an online resource entitled *Barrier Free Workplace: Practical Guide for Employment Accommodation for People with Disabilities*. In addition to setting out employers' legal obligations, this document includes definitions for some common categories of disabilities, practical examples of workplace accommodation, and provides answers to accommodation questions frequently asked by employers.

See [http://www.chrc-ccdp.ca/discrimination/barrier\\_free-en.asp](http://www.chrc-ccdp.ca/discrimination/barrier_free-en.asp)

#### Working Together: An Employer's Resource for Workplace Accommodation

##### Government of Ontario

##### Accessibility Directorate of Ontario

The Directorate publishes the *Directory for Accessibility* on its website. Compiled in collaboration with the Ontario March of Dimes, the *Directory* is a comprehensive, searchable database of services for persons with disabilities in Ontario. The information is organized by category (assessment, design, direct services, equipment, recreation, resources, and training) and within each are links to relevant service providers. Looking at the category, "design", and the subcategory, "barrier free", there are entries for 71 service providers. Each entry provides a

brief overview of the nature of the services in addition to the location and contact information for the provider.

See <http://www.accessibilitydirectory.ca/>

#### Paths to Equal Opportunity

The Ontario government's Paths to Equal Opportunity website is a portal for links to information about workplace diversity and creating accessibility for persons with disabilities.

See <http://www.equalopportunity.on.ca/>

#### Canada Business Service Centre

The Canada Business Service Centre, which is sponsored by Industry Canada and three other government departments, provides assistance for entrepreneurs. Although not specifically aimed at providing information and services to persons with disabilities, the information on this website is an invaluable resource for lawyers and law students wishing to set up their own practice. In addition to providing practical suggestions for starting and running a business, the site also provides sector-specific information collected by the government.

See <http://www.cbsc.org/>

#### Other

##### Canadian Association of Professionals with Disabilities (CAPD)

The Canadian Association of Professionals with Disabilities (CAPD) is a national, Victoria-based not-for-profit organization founded to address employment issues faced by professionals with disabilities. The association has identified, among other topics of interest, a lack of information about professionals with disabilities; invisibility in the job market; hiring practices that exclude professionals with disabilities from a workforce; glass ceilings; poverty; the duty to accommodate; and advocacy on behalf of professionals with disabilities. An interesting aspect of the website is the narratives provided by professionals with disabilities about their employment experiences.

See <http://www.canadianprofessionals.org/>

#### WORKink!

The "employer's section" on the WORKink! website provides information about employers wanting to create an inclusive workplace. Employers may access Diver!T.ink, which is an on-line recruiting tool designed to assist employers in achieving a diverse workforce. WORKink! is affiliated with the Canadian Council on Rehabilitation and Work (CCRW) which offers cross-disability training for lawyers. See [http://www.workink.com/display.asp?Page\\_ID=29](http://www.workink.com/display.asp?Page_ID=29)

REPORT OF THE ACTIVITIES OF THE  
DISCRIMINATION AND HARASSMENT COUNSEL, JANUARY 1, 2006  
TO JUNE 30, 2006

### Background

33. Subsection 5(1) (b) of By-law 36 – *Discrimination and Harassment Counsel* provides that, unless the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) directs otherwise, the Discrimination and Harassment Counsel (the DHC) shall make a report to the Committee not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.
34. Subsection 5(2) of By-law 36 provides "The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting".
35. On September 14, 2006, the DHC presented the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period January 1, 2006 to June 30, 2006 to the Committee, pursuant to Subsection 5(1)(b) of By-law 36 (Appendix 2). The Committee presents the report to Convocation for its information, pursuant to Subsection 5(2) of By-law 36.

### Summary of Report

36. During the reporting period, 81 individuals contacted the DHC with new matters.
37. During the reporting period, 2 individuals communicated with the DHC in French. One caller spoke Spanish and communicated with the DHC through an interpreter.
38. Twenty-six (26) individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department or legal clinic in Ontario. Of the 26 new complaints against lawyers or law firms, 18 were from the public and 8 were from members of the legal profession.
39. Of the 8 complaints made by the legal profession, an articling law student made 2 of the complaints. Women made 7 of the 8 complaints. Seven complaints arose in the context of the complainant's employment or in the context of a job interview. The complaints were based on the following prohibited grounds of discrimination: sex (4 complaints), family status (2 complaints), ethnic origin (1 complaint), disability (1 complaint) and age (1 complaint).
40. Of the 18 lay individuals who contacted the DHC, 13 were women. Seven complaints arose in the context of the complainant's employment or job interview. The number of public complaints can be summarized under the following grounds: sex (11 complaints), race (3 complaints), disability (2 complaints), religion (1 complaint) and ethnic origin (1 complaint).
41. No formal mediation was conducted during this reporting period. However, the DHC informally intervened and communicated with respondents in several cases. In each case, the matter was resolved.

## APPENDIX 2

REPORT OF THE ACTIVITIES  
OF THE DISCRIMINATION AND HARASSMENT COUNSEL  
FOR THE LAW SOCIETY OF UPPER CANADA  
(for the period from January 1 to June 30, 2006)

Prepared by:  
Cynthia Petersen  
Discrimination and Harassment Counsel

OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

During this reporting period (January 1 to June 20, 2006), 81 individuals contacted the DHC Program with a new matter.<sup>1</sup> The volume of new contacts was distributed as follows:

(See graph in Convocation Report)

Of the 81 individuals who contacted the DHC during this reporting period, 56 (69%) used the telephone to make their initial contact and 24 (30%) used email. One individual contacted the Program by fax.

The DHC provided services to two callers in French. The remaining contacts with the Program were all in English, with the exception of one caller who spoke Spanish and communicated with the DHC through the use of an interpreter.

SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

Of the 81 new contacts with the Program, 26 individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department or legal clinic in Ontario.

Of the 26 new discrimination and harassment complaints against lawyers, 18 involved members of the public and 8 involved members of the legal profession.

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

## COMPLAINTS FROM WITHIN THE LEGAL PROFESSION

Two of the complaints from within the profession were made by an articling student. The same student made both complaints, but they involved discrete matters that arose months apart. All other complaints from within the profession were made by lawyers already called to the bar.

Of the 8 complaints from within the legal profession, 7 were made by women (including two by a female articling student) and only one was made by a male lawyer.

Of the 8 complaints from within the legal profession, one was about a lawyer working for LSUC. It involved an allegation of discrimination in the provision of services. The other 7 complaints all arose either in the context of the complainant's employment or in the context of a job interview.

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

Four (4) of the complaints were based on sex as a ground of discrimination or harassment. Specifically:

- a female articling student complained about sexual harassment by a male partner in her law firm;
- the same female articling student complained about workplace reprisals that she suffered when she reported to a male partner in her firm that another male partner had sexually harassed her;
- a female associate complained about sexist verbal abuse by a male partner in her law firm; and
- a female lawyer working in a government department complained about employment discrimination resulting from her pregnancy.

Two complaints were based (in whole or in part) on family status:

- a lawyer who had just returned from a maternity leave complained that her child care obligations were not accommodated by her employer and that she was being discriminated against based on her parental status; and
- a lawyer complained that she was asked inappropriate questions about her family status in a job interview.

One complaint was based on ethnic origin. A Portuguese lawyer complained that a lawyer working for LSUC discriminated against her in the provision of services.

One complaint was based in part on disability. A female lawyer complained that she was asked inappropriate questions about whether or not she had a disability in a job interview. (This was the same woman who was asked whether she had children in a job interview.)

One complaint was based on age. A male lawyer reported that he was asked about his age in a job interview.

In summary, the number of complaints<sup>2</sup> in which each of the following prohibited grounds of discrimination was raised are as follows:

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<sup>2</sup> These numbers do not add up to 8 because some complaints involved multiple grounds of discrimination.

- sex 4 (2 sexual harassment and 1 pregnancy)
- family status 2
- disability 1
- age 1
- ethnic origin 1

(See graph in Convocation Report)

## PUBLIC COMPLAINTS

Of the 18 complaints by members of the public, 13 involved women<sup>3</sup> and 5 involved men.

Of the 18 public complaints:

- 8 involved clients complaining about their own lawyer or about a lawyer they had sought to retain;<sup>4</sup>
- 7 arose in the context of the complainant's employment or a job interview;
- 2 involved litigants who were complaining about the conduct of opposing counsel in their cases; and
- 1 involved a person who was a social acquaintance of the lawyer who was the subject of the complaint.

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

Eleven (11) of the public complaints were based on sex as a ground of discrimination. Of these:

- one was based on pregnancy (a legal assistant complained about employment discrimination);
- one female litigant complained about sexist harassment and verbal abuse by her ex-husband's male lawyer; and
- nine (9) complaints involved allegations of sexual harassment and/or assault.

Of the 9 sexual harassment complaints, 4 involved clients and 5 arose in the context of the complainants' employment or a job interview. Specifically:

- one gay man complained that his male criminal defence counsel was sexually harassing him;

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<sup>3</sup> One of these complaints was reported to the DHC by a male lawyer who was acting on behalf of his female client. She had instructed him to contact the DHC Program on her behalf. This complaint is therefore registered as a "public" complaint in the DHC data, even though the contact with the Program was made by the complainant's lawyer.

<sup>4</sup> One of these client complaints was reported to the DHC by a psychiatrist who was calling on behalf of a patient.

- one psychiatrist reported that a female patient had been sexually assaulted by her male lawyer;
- two female clients complained that their male lawyer / former lawyer was sexually harassing them;
- an Aboriginal woman who worked as a support staff person in a law firm reported to her employer that she had been sexually assaulted by a male co-worker who grabbed her breast and tried to kiss her; she complained to the DHC that the management of the law firm was not following its own internal policy regarding the investigation and resolution of her complaint;
- two female legal assistants complained about sexual harassment by their employers (male lawyers);
- a woman who applied for a legal assistant's position complained about sexual harassment by the male lawyer who interviewed her; and
- a female law clerk reported that she was sexually harassed and physically assaulted by a male associate in the law firm where she worked.

Three complaints were based on race. Specifically:

- a Black woman reported that a male lawyer whom she had dated made racist remarks in discussing litigation in which he was involved;
- a Iranian woman complained that her lawyer was discriminating against her on the basis of race; and
- a white male office manager complained about "reverse" race discrimination in the workplace – he worked in a small law firm that employed many lawyers of colour and felt that he was treated disadvantageously by the managing partner (a woman of colour) because he is caucasian.

Two complaints were based on disability:

- a legal assistant complained that her employer failed to accommodate her disability and terminated her employment because of her disability; and
- a visually impaired litigant complained that opposing counsel refused to accommodate his disability and was exploiting his disability.

One complaint was based on religion. A man complained that an lawyer he had consulted made offensive anti-Muslim remarks.

A man from the former Yugoslavia complained that he was denied legal services by a clinic based on his ethnic origin.

In summary, the number of complaints in which each of the following grounds of discrimination was raised are as follows:

• sex	11 (9 sexual harassment, 1 pregnancy)
• race	3
• disability	2
• religion	1
• ethnic origin	1

(See graph in Convocation Report)

### EXAMPLES OF RECENT COMPLAINTS

The following are examples of some elements of some of the discrimination and harassment complaints received by the DHC during this reporting period:

- A male lawyer reported that he was asked “how old are you?” in a job interview.
- A female lawyer reported that she was asked whether she had any children in a job interview.
- A man reported that an immigration lawyer made offensive remarks to him, equating muslims with terrorists. The man had consulted the lawyer with the intention of retaining his services.
- An female articling student reported that she was asked to accompany a male partner on an overnight trip to attend an out-of-town hearing. During the trip, the male partner insisted on socializing together (eg. eating meals, drinking wine), stood and sat very close to her, gave her leering looks, and used “double entendres” to flirt with her. The student was warned by other women in the firm that this partner had a history of “hitting on” young female lawyers and articling students.
- A recently hired legal assistant reported that her employment was terminated without cause (by a male lawyer) shortly after she disclosed that she was pregnant.
- A woman attended a job interview for a legal assistant's position with a sole practitioner. The interview was conducted in the (male) lawyer's home. She reported that the lawyer touched her arm suggestively during the interview and asked her for her bra size during a subsequent phone conversation.
- A legal assistant, who was a recent immigrant, reported that she was fired from her job after she refused to have sex with her male boss. She suspected that her boss exploited her status as a newcomer to Canada, believing that she would have few other employment opportunities available to her. The lawyer had frequently asked her out for drinks, had photographed her at firm events, had put his arm around her shoulders, and had ultimately told her that he wanted to have sex with her and to be her “boyfriend”.
- A gay male client, who was accused of committing a criminal act of indecency, reported that his male defence counsel always insisted on meeting in his (the lawyer's) home, despite the client's objection and expressed preference to meet in the lawyer's office. The lawyer's overly “friendly” demeanour made the client uncomfortable.
- A female legal assistant with a repetitive strain injury complained that her employer refused to provide her with modified duties to accommodate her disability and terminated her employment because she was no longer able to perform all of the duties of her position.
- A woman complained that her male lawyer was pressuring her to have sex with him. She reported that he told her she could not change lawyers because she had retained him on a Legal Aid certificate.
- A woman lawyer complained that her law firm was refusing to accommodate her with flexible hours of work upon her return from a maternity leave. She also complained that she was getting “substandard” files to work on since her return to the office. She attributed this discriminatory treatment to her family status as a new mother.



- A female client reported that her male lawyer asked her whether she was a virgin. He also called her at home, very late at night, and asked “are you alone?”
- A woman complained that her former lawyer sent her pornographic images by email, with sexually explicit messages indicating that he was interested in pursuing a sexual relationship with her.

### DEMOGRAPHIC SURVEY OF COMPLAINANTS

Individuals who communicated with the DHC by telephone about complaints of discrimination or harassment were asked to participate in a short demographic survey to enable the DHC to record anonymous statistical data about them.

During this reporting period, 25 surveys were conducted. The complainants self-identified as follows:

Gender	19 female 6 male
Age	4 50-64 years old 10 35-49 years old 7 25-34 years old 2 8-24 years old 2 did not disclose
Race / Ethnicity	17 White / Caucasian 2 Iranian 2 Southeast Asian 1 Aboriginal 1 Black 1 Chinese 1 Latin American
Sexual Orientation	17 heterosexual 1 lesbian 1 bisexual 6 did not disclose
First Language	19 English 2 Farsi 1 French 1 Portuguese 1 Russian 1 Mandarin
Disability	7 identified as disabled
Region of residence	8 Greater Toronto Area 6 Southwestern Ontario 4 Eastern Ontario 4 Central Ontario 1 National Capital Region

- 1 Northern Ontario
- 1 United States

### SERVICES PROVIDED TO COMPLAINANTS

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

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

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

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

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

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

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

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

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

No formal mediation sessions were conducted during this reporting period. However, at the request of complainants, the DHC intervened informally and communicated with respondents in several cases in an effort to facilitate a resolution of the complaint. In each case, a resolution was reached.

## SUMMARY OF GENERAL INQUIRIES

Of the 81 new contacts with the DHC during this reporting period, 16 (20%) involved general inquiries relating to equity issues within the Program's mandate. These inquiries included:

- questions about whether lawyers have an obligation to report to the Law Society any information or knowledge that they have about another lawyer engaging in discrimination or harassment;
- questions about the scope of the DHC Program's mandate;
- questions about the mediation services offered by the DHC;
- requests from the public for promotional materials about the DHC Program;
- requests for educational seminars on discrimination and harassment issues; and
- inquiries about the data collected by the DHC.

## PROMOTIONAL ACTIVITIES

During this reporting period, the DHC was invited to speak about the Program and about professional responsibility to the 1st year class of students at the Faculty of Law at Windsor University.

Periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program. The DHC website was also maintained.

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

## MATTERS OUTSIDE THE DHC MANDATE

During this reporting period, the DHC received 39 calls/emails relating to matters outside the Program's mandate.

These contacts included complaints about workplace harassment or discrimination in non-legal settings, discrimination and harassment complaints against judges, and complaints against lawyers that did not involve any human rights issues (eg. allegations of breach of confidentiality, client billing disputes, etc.) In addition, several individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.

All of these individuals were referred to other agencies, including the LSUC's Lawyer Referral Service. An explanation of the scope of the Program's mandate was provided to each person. Although there is a relatively high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

EQUITY ADVISOR'S REPORT ON THE  
IMPLEMENTATION OF THE BICENTENNIAL REPORT  
JANUARY 2005 – JUNE 2006

Background

42. In May 1997, the Law Society of Upper Canada unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the "*Bicentennial Report*").<sup>5</sup> The *Bicentennial Report* reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians and transgender individuals and persons with disabilities in the profession and the initiatives the Law Society had taken to promote equality and diversity. The Report made sixteen recommendations that have since guided the Law Society as it seeks to promote equality and diversity within the legal profession.
43. On July 31, 2003, Convocation established the Bicentennial Report Working Group (the "Working Group") to review and report on the implementation status of the recommendations contained in the *Bicentennial Report*. Members of the Working Group were: Joanne St. Lewis (Chair), Andrea Alexander, Constance Backhouse, Thomas G. Heintzman, W.A. Derry Millar and Beth Symes.
44. In January 22, 2004 the Working Group presented to Convocation an information report, the *Bicentennial Implementation Status Report and Strategy* (the "*Bicentennial Implementation Report*"). The report details the programs, services and policies created by the Law Society as a result of the recommendations of the *Bicentennial Report*, analyzes the implementation status of each recommendation and proposes strategies to be examined and further implemented.
45. The *Equity Advisor's Report on the Implementation of the Bicentennial Recommendations – January 2005 to June 2006* (Appendix 3) presents background information about the activities undertaken by the Law Society between January 2005 and June 2006 to implement the proposals contained in the *Bicentennial Implementation Report*. In preparing the report, the Senior Management Team provided input on activities undertaken by each department that relate to the implementation of the *Bicentennial Report*. On September 14, 2006, the report was presented to the Committee for its consideration.

APPENDIX 3

Equity Advisor's Report on the  
Implementation of the Bicentennial Recommendations  
January 2005 – June 2006

September 14, 2006

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<sup>5</sup> *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997).

Benchers' Dining Room  
1:30 p.m.

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

Committee Members  
Joanne St. Lewis (Chair)  
Paul Copeland (Vice-Chair)  
Marion Boyd  
Richard Filion  
Thomas Heintzman  
Holly Harris  
Tracey O'Donnell  
Mark Sandler

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

## Acronymes

AJEFO: Association des juristes d'expression française de l'Ontario

CABL : Canadian Association of Black Lawyers

DHC : Discrimination and Harassment Counsel

EAG: Equity Advisory Group

NALP: The Association for Legal Career Professionals

OBA: Ontario Bar Association

ORA: Ontario Regulators for Access

PBLO: Pro Bono Law Ontario

Rotiio> taties: Rotiio>taties Aboriginal Advisory Group

SALCO: South Asian Legal Clinic of Ontario

## Background

1. In May 1997, the Law Society of Upper Canada unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (the "Bicentennial Report")*.<sup>6</sup> The *Bicentennial Report* reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians and transgender individuals and persons with disabilities in the profession, and the initiatives the Law Society had taken to promote equality and diversity. The Report made sixteen recommendations that have since guided the Law Society as promotes equality and diversity within the legal profession.
2. On July 31, 2003, Convocation established the Bicentennial Report Working Group (the "Working Group") to review and report on the implementation status of the recommendations contained in the *Bicentennial Report*. Members of the Working Group were Joanne St. Lewis (Chair), Andrea Alexander, Constance Backhouse, Thomas G. Heintzman, W.A. Derry Millar and Beth Symes.
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4. The *Equity Advisor's Report on the Implementation of the Bicentennial Recommendations – January 2005 to June 2006* (the "*Equity Advisor's Report*") presents background information about the activities undertaken by the Law Society between January 2005 and June 2006 to implement the proposals contained in the *Bicentennial Implementation Report*. In preparing this report, the Senior Management Team provided input on activities undertaken by each department that relate to the implementation of the *Bicentennial Report*. This report is presented to the Committee for its consideration. The report is divided based on the sixteen recommendations of the *Bicentennial Report*.

## Bicentennial Report Recommendation 1: Policy Development

The Law Society should ensure that the policies it adopts:

- (a) *Actively promote the achievement of equity and diversity within the profession; and*
- (b) *Do not have a discriminatory impact.*

## Bicentennial Working Group Proposed Strategy

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

5. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee consider the following strategies to further implement recommendation 1:
  - a. That a definition of “equity and diversity” and an equity decision-making template be developed to guide the Law Society in its policy development activities.
  - b. That a process be created by which all policy development activities undertaken by staff, committees (including working groups, task forces and sub-committees) and Convocation are judged against the equity template and that reports contain a specific section to indicate how equity principles were considered.
  - c. That a guideline be developed to provide direction and a consultation framework to committees and staff on issues that require input from equality-seeking, Francophone and Aboriginal communities.

#### Adopted Initiatives

##### *Equality template*

6. On March 10, 2005, the Equity and Aboriginal Issues Committee adopted definitions for the terms “equality” and “diversity”, recognized the unique position of Aboriginal and Francophone communities, and approved an Equality Template to be applied by staff and benchers of the Law Society to the development of policies, programs and initiatives.
7. The Equality Template assists in identifying the potential impact, positive or negative, of policies, projects and initiatives on Aboriginal, Francophone and equality-seeking communities and to determine whether there are alternative ways to proceed that would alleviate negative impacts on Aboriginal, Francophone and equality-seeking communities and promote equality. The Equality Template also provides that, in the elaboration of programs and policies, the Law Society should consider whether any additional research or consultation is desirable or essential to better appreciate the impact of initiatives, projects or policies.
8. The Senior Management Team has integrated the Equality Template into its Initiatives Proposal Process, which is consistently applied when considering new initiatives or programs.

##### *Adopted policies for the legal profession*

9. Policy development initiatives that promote equality and diversity in the legal profession are on-going. The Law Society is increasingly integrating an equality and diversity analysis within its policy development process. The following are examples of Law Society equity and diversity policies and publications that were released between January 2005 and June 2006:
  - a. *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada* ;<sup>7</sup>
  - b. *Frequently Asked Questions about the Tsunami* ;<sup>8</sup>

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<sup>7</sup> Available on line in English and French at: <http://www.lsuc.on.ca>.

- c. *Update of Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices*;<sup>9</sup>
  - d. *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession*.<sup>10</sup>
10. Other policy development initiatives integrate an equality and diversity analysis. For example, the Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms (the “Sole Practitioners and Small Firms Task Force”) prepared a report entitled *Sole Practitioners and Employees/Associates from Equality-Seeking Communities* and recommended that the Equity and Aboriginal Issues Committee consider the report and make further recommendations to Convocation, if appropriate.
  11. Convocation also established the Employment Opportunities for Articling Students Task Force, which focused on ways to help articling students, including those who belong to diverse communities, find suitable positions.
  12. In 2006, Convocation created the Human Rights Violations against Members of the Legal Profession and the Judiciary Monitoring Group with a mandate to:
    - a. review information about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
    - b. determine if the matter is one that requires a response from the Law Society;
    - c. and prepare a response for review and approval by Convocation.
  13. In the development of its Licensing Process, the Law Society consulted extensively with members of the legal profession, including groups such as EAG, AJEFO, the Canadian Association of Black Lawyers (CABL) and Rotiio> taties. The Law Society involved a broad cross-section of members of the legal profession, including a high representation of members from the Francophone, Aboriginal and equality-seeking communities, in the development of the Licensing Process. The Law Society considered the submissions of associations that represent members from Francophone, Aboriginal and equality-seeking communities.

#### Bicentennial Report Recommendation 2: Study and Research

*To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence.*

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<sup>8</sup> Available online in English, French, Tamil and Somali at: <http://www.lsuc.on.ca>.

<sup>9</sup> Available on line at: <http://www.lsuc.on.ca>.

<sup>10</sup> December 2005.



### Bicentennial Working Group Proposed Strategy

14. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee consider the following strategies to further implement recommendation 2:

- a. That guidelines be developed to ensure that an equity analysis, including an intersectionality analysis that identifies heightened vulnerabilities to discrimination is integrated within studies.
- b. That a strategic research plan be developed in consultation with EAG, AJEFO and Rotiio> taties. The research plan should, on a biennial basis, identify issues facing members of equality-seeking, Aboriginal and Francophone communities. The plan should recommend a budget for Convocation's consideration.
- c. The following three research areas merit particular and urgent attention and should be identified as priorities:
  - i. Studies on barriers faced by students and members with disabilities;
  - ii. Studies on barriers faced by Aboriginal students and members of the profession;
  - iii. Studies to identify the factors that may constitute barriers to entering, remaining and re-entering the profession for members from equality-seeking, Francophone and Aboriginal communities.
- d. The Equity Advisor should be responsible for monitoring the implementation of the research plan.

### Adopted Initiatives

15. In consultation with the EAG, AJEFO and Rotiio> taties, the Committee developed its strategic research plan for 2005-2007.
16. Between January 2005 and June 2006, the Law Society conducted the following studies on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence. Studies on the demographics of the profession inform the work of the Equity and Aboriginal Issues Committee when developing strategies and policies to promote equality and diversity in the legal profession.

### *Small Firm and Sole Practitioner Task Force*

17. The Small Firm and Sole Practitioner Task Force (Small Firm Task Force) studied means to assure access to legal services in small communities and to address the financial viability of small firms and sole practices. It also included specific attention to the experience of lawyers from equality-seeking, Francophone and Aboriginal communities practising in small firms. Following extensive consultations, the Sole Practitioners and Small Firms Task Force published two reports, including the *Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practicing in the Small Firm Environment*.<sup>11</sup>

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<sup>11</sup> (Toronto: The Strategic Communications, , October 6, 2004).

### *Disability Working Group*

18. The Disability Working Group, created in September 2004, retained The Strategic Counsel to do in-depth interviews with law students, law graduates and members with disabilities. The research was designed to consult with persons with disabilities from all regions of Ontario, practising in all areas of law and types of practice or working in other environments. The Strategic Counsel produced a report of its findings to the Law Society, which provided the foundation for the report *Students and Lawyers with Disabilities - Increasing Access to the Legal Profession*. On December 2005, Convocation adopted the Working Group's recommendations, which include the development of a mentoring and peer support program, online resources and other initiatives to increase access to the legal profession for law students and lawyers with disabilities.

### *Consultation with the Aboriginal Bar*

19. The Aboriginal Issues Coordinator, in collaboration with the Aboriginal Working Group, has undertaken a province-wide consultation with Aboriginal law students and lawyers to develop strategies to support Aboriginal members of the profession and students. The consultation is proceeding in two phases, the first phase consists of a quantitative survey with Aboriginal members of the bar, and the second consists of qualitative interviews with members of the Aboriginal bar.

### *Consultation with Students who are Seeking Articling Placements and Students who have withdrawn from the Process*

20. In 2005, the Law Society undertook a consultation with students who are seeking articling placements, and those who have withdrawn from the process, to identify the barriers they face and develop strategies to alleviate these barriers. In-depth interviews are being conducted with students and the findings of the study are expected by the end of 2006.

### *Retention of Women in Private Practice Project*

21. At a 2005 planning session, benchers identified the issue of retaining women in private practice as a core issue. As a result, in early 2006, the Equity and Aboriginal Issues Committee created the Retention of Women in Private Practice Working Group.
  22. In March 2006, the Law Society decided to undertake a comprehensive consultation with the legal profession aimed at identifying successful tools, resources and practices to promote the retention of women in private practice. The consultation will consist of three phases. In the first two phases, the Working Group will consult with female lawyers and law firms to identify solutions and develop recommendations for Convocation's approval. In the third phase, the Working Group will work with law firms to implement the recommendations.
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*Factors that Influence Career Choices Survey*

23. In May 2006, the Law Society decided to conduct a survey of its 2006 Licensing Process students and lawyers called to the Bar in 2005 and 2006 to identify factors that influence the career choices of law students and lawyers. It is anticipated that the survey will be conducted in the fall 2006.

*Support for a study conducted by the University of Ottawa, French Common Law Program*

24. In April 2005, the Committee approved support for a study undertaken by the French Common Law Program of the University of Ottawa. The study includes a survey of all French Common Law Program graduates since the inception of the program (approximately 1000 individuals), to determine to what extent lawyers who have studied the common law in French offer services in French. The Vice Dean, French Common Law Program of the University of Ottawa, presented an interim report of findings at the conference 2006 AJEFO conference, and the final report is expected in the fall, 2006.

*Discrimination and Harassment Counsel*

25. The Discrimination and Harassment Counsel (DHC) continued to publish her semi-annual reports<sup>12</sup>, which provide an overview of frequency and method of contact with the DHC program, the types of inquiries and complaints, and statistics relating to the complainants and respondents. Since January 2005, the DHC produced two reports for the periods of January to June 2005 and July to December 2005. The *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period from July 1, 2005 to December 31, 2005 includes a summary of data since January 1, 2003.
26. The Committee also conducted a review of the DHC program and released a report, which provides an overview of frequency and method of contact with the DHC and types of inquiries since the inception of the program in 1999. The Equity and Aboriginal Issues Committee noted that the program provides an important service and is effective.

*Studies about students-at-law in the Licensing Process, including articling*

27. The Law Society continues to publish reports on its programs and initiatives, such as *Articling Placement Reports*<sup>13</sup>, which provide placement statistics for students enrolled

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<sup>12</sup> *Discrimination and Harassment Counsel Semi-Annual Reports* (Toronto: Law Society of Upper Canada). The first semi-annual report was published for the period beginning in September 1999 and ending in December 1999. Reports are available semi-annually following the first report. Reports are also available in French.

<sup>13</sup> The Law Society publishes the *Articling Placement Report* annually and maintains ongoing statistical information about articling placements. The *Articling Placement Reports* are available on line at [www.lsuc.on.ca](http://www.lsuc.on.ca).

in the Licensing Process, describes programs and initiatives in place to assist students with their articling job search and includes placement rates for self-identified students (Aboriginal, Francophone, gay, lesbian, mature and racialized students and students with disabilities).

Bicentennial Report Recommendation 3: Equity and Diversity  
Audit of the Law Society Programs and Services

*The Law Society should evaluate its programs and services on an ongoing basis to ensure that they operate so as to promote the achievement of equity and diversity within the legal profession.*

Bicentennial Working Group Proposed Strategy

28. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee report annually to Convocation on whether the Law Society's programs and initiatives are promoting equity and diversity.

Adopted Initiatives

*Operations of the Law Society*

29. The Law Society evaluates its programs and services on an ongoing basis as follows:
- a. The Equity Advisor reports annually to the Equity and Aboriginal Issues Committee on the activities of the Law Society that promote equality and diversity and on whether Law Society programs and services operate so as to promote the achievement of equity and diversity within the profession. The report is prepared with the input of the Senior Management Team and includes an overview of equity and diversity initiatives and programs in place throughout the Law Society;
  - b. The EAG advises the Equity and Aboriginal Issues Committee about equity and diversity initiatives at the Law Society and provides submissions to Law Society committees and task forces. For example, EAG has made submissions to the Task Force on Paralegal Regulation and the Continuum of Legal Education Task Force.
  - c. The CEO of the Law Society provides semi-annual reports to Convocation on the activities of the Law Society, including activities that promote equality and diversity;
  - d. Information about Law Society equality and diversity initiatives is provided to members in the Annual Report;
  - e. The Discrimination and Harassment Counsel produces semi-annual reports about its activities.

Bicentennial Report Recommendation 4: Monitoring and  
Evaluation of Equity and Diversity Initiatives

*The Law Society should formally monitor and evaluate the effectiveness of current and future equity and diversity initiatives.*

### Bicentennial Working Group Proposed Strategy

30. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee report annually to Convocation on the effectiveness of its equity initiatives.

### Adopted Initiatives

31. Equity and diversity initiatives are monitored and evaluated through the processes mentioned under Recommendation 3, and are also formally evaluated. For example, the following programs are evaluated by participants:
  - a. Mentoring Program: online evaluation by mentors and mentees;
  - b. Public Education Series: formal evaluations by participants;
  - c. Professional Development Program: formal evaluation by participants;
  - d. Discrimination and Harassment Counsel: online evaluation by participants;
  - e. Aboriginal initiatives: formal evaluations by participants.
32. The Equity Initiatives Department also developed a process to maintain data about its programs and initiatives. The department now has the capacity to evaluate its programs based on qualitative and quantitative information.
33. The programs outlined above have received positive evaluations and, as noted in this report, are effective programs to promote equity and diversity in the legal profession.

### Bicentennial Report Recommendation 5: Resource for the Profession

*In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.*

### Bicentennial Working Group Proposed Strategy

34. In January 2004, the Bicentennial Working Group proposed that the Law Society continue to effectively implement this recommendation.

### Adopted Initiatives

#### *Networking with other law societies, law schools and law firms*

35. In 2005, the Equity Initiatives Department strengthened its relationship with other law societies by working with provincial equity advisors in organizing the first national meeting of law society equity advisors. The objective of the meeting was to exchange information about initiatives undertaken by provincial law societies and to establish network and collaborative opportunities. Issues such as the role of law societies in promoting equality and diversity, education programs for the legal profession, mentoring programs and policy development were discussed. The equity advisors of law societies continue to exchange information about successful initiatives and programs via teleconference calls, emails and meetings.

36. The Equity Initiatives Department works more closely with the six Ontario law schools. In addition to the annual visits to law schools to discuss available resources at the Law Society and exchange information about law schools and the Law Society, staff of the department have held a number of meetings with career officers and staff involved in equity initiatives and academic support programs in law schools. The Aboriginal Issues Coordinator also coordinated Elders sessions with Licensing Process students in Toronto and Ottawa and, in conjunction with the Native Law Student Association of the University of Toronto and the Aboriginal Law Student Association of Osgoode Hall, York University, hosted its second career symposium giving Aboriginal students an opportunity to meet with Aboriginal members and leaders of Ontario's legal profession. The symposium was also offered at the Faculty of Law of the University of Ottawa. The symposia were offered to Aboriginal students from all Ontario law schools.
37. Networking opportunities with law firms have increased through the department's membership in NALP, the Association for Legal Career Professionals, and participation at the NALP diversity conferences in Toronto and Chicago. Networking with law firms continues through ongoing dialogue with professional development directors and directors of students and associates.

*Equity and Diversity Professional Development Program*

38. The Equity Advisor and other staff members, in partnership with the DHC, provide support and assistance to law firms and legal organizations in the area of policy and program development, and offers custom-designed training programs to law firms. The Equity Initiatives Department promotes the program broadly by distributing a bilingual (French/English) brochure and promoting the program on the website. Since January 2005, the department and the DHC delivered custom-designed training programs and presentations to more than 500 lawyers, law students and staff of legal organizations.
39. Topics of training programs delivered since January 2005 have included:
  - a. Creating an inclusive and positive workplace environment;
  - b. Transformation of the legal profession and how to increase diversity;
  - c. The duty to accommodate family responsibilities;
  - d. Diversity in the legal profession;
  - e. Addressing issues of harassment and discrimination in the provision of services;
  - f. Addressing harassment and discrimination in the legal workplace;
  - g. The duty to accommodate persons with disabilities;
  - h. Law as a career for Aboriginal communities;
  - i. Women and diversity in the legal profession;
  - j. Developing programs and initiatives to promote equality and diversity in the legal profession.
40. CLE, presentations and public education programs include information about the current demographics of the legal profession, barriers experienced by lawyers, impact of these barriers on organizations, the responsibilities of individuals to ensure that barriers do not exist and/or are addressed.

*Information about harassment and discrimination and the Discrimination and Harassment Counsel*

41. The Law Society continues to make information relating to Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct* and the Discrimination and Harassment Counsel program readily available to the legal profession, the public and to Licensing Process students. The Law Society advertises the program in the Ontario Report on a monthly basis, publicizes the program online, includes information about the program in various Licensing Process application forms and handbooks, includes information about the program in training materials for lawyers and law firms, and in model policies on harassment and discrimination<sup>14</sup>. The DHC program provides semi-annual reports to Convocation that are made available to the legal profession and the public in hard copy and online, in French and English.

*Public Education Series*

42. The Law Society continues to work in partnership with legal associations and communities to educate members of the public and the profession on equality and diversity issues. Each year, it hosts and participates in a number of public education events. The number of public education events and the overall participation rate at these programs has increased considerably in the last few years. In 2004, the Equity Initiatives Department decided that it would web broadcast all public education forums. This has increased access to the information provided in public education programs.

Event	Workshop Attendees - 2004	Reception Attendees 2004	Workshop Attendees 2005	Reception Attendees 2005	Workshop Attendees 2006	Reception Attendees 2006
Louis Riel Day	175	200	125	150	N/A	N/A
Black History Month	150	175	90	120	300	200
International Women's Day	70	110	95	130	150	160
International Day for Elimination of Racial Discrimination	n/a	n/a	n/a	300	200 (Ottawa)	170 (Ottawa)
Law Week Great Debate	40	40	40	40	100	100
National Holocaust Memorial Day	n/a	n/a	230	110	130	110
South Asian Heritage Month	120	180	100	140	130	150
National Access Awareness Week	60 (Ottawa)	n/a	155	120	N/A	N/A

<sup>14</sup> Law Society model equity policies and guidelines often include an analysis of Rules 5.03 and 5.04 and legal developments in the area of harassment and discrimination. Available on Law Society website at: [www.lsuc.on.ca](http://www.lsuc.on.ca)

National Aboriginal Day	135	150	155	150	75	75
Pride Week	95	200	N/A (international conference)	200	150	250

43. The Equity Initiatives Department also sponsored and participated in a number of external equality and diversity events, such as,
- The Equality: The Heart of a Just Society – Looking Back, Looking Forward, a conference organized by the Department of Justice and the University of Toronto, Faculty of Law, to celebrate the 20th anniversary of the coming into force of section 15 of the *Canadian Charter of Rights and Freedoms*;
  - The 2005 and 2006 annual AJEFO conferences;
  - The annual conference of the Indigenous Bar Association.
44. The Equity Initiatives Department has broadened its network of partners and community engagements. Since January 2005, partners have included: Pro Bono Law Ontario, AJEFO, Rotiio > tities Aboriginal Advisory Group, Aboriginal Legal Services of Ontario, Métis National of Ontario, Association for Native Development in the Performing and Visual Arts, City of Toronto, Sexual Orientation and Gender Identity Committee of the Ontario Bar Association (OBA), Feminist Legal Analysis Committee of the OBA, Official Languages Committee of the OBA, ARCH Disability Law Centre, South Asian Legal Clinic of Ontario, Canadian Association of Black Lawyers, B'nai Brith Canada, Women's Future Fund, the Women's Law Association of Ontario, the Faculty of Law of the University of Ottawa, the Human Rights Research and Education Centre, Fife House and many others.

*Model policies and publications*

45. Model policies and publications are released on an ongoing basis and are widely circulated to the legal profession. Since January 2005, the Law Society adopted the following model policies and publications:
- Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada* ;<sup>15</sup>
  - Frequently Asked Questions about the Tsunami* ;<sup>16</sup>
  - Update of Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices* ;<sup>17</sup>

<sup>15</sup> Available on line in English and French at: <http://www.lsuc.on.ca>.

<sup>16</sup> Available online in English, French, Tamil and Somali at: <http://www.lsuc.on.ca>.

<sup>17</sup> Available on line at: <http://www.lsuc.on.ca>.



- d. *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession*.<sup>18</sup>

#### *Mentoring program*

46. The Law Society offers a structured mentoring program, which promotes law as a career choice and assists law students and recent calls to the bar by matching mentors – experienced members of the bar – with new lawyers, students-at-law, students in law school as well as university and high school students.<sup>19</sup>
47. Since 2003, the number of lawyers available as mentors and the number of mentees has steadily increased. In 2005, 145 members of the Law Society volunteered for mentorship. This is a nearly 50 per cent increase from 2004 and a more than 100 per cent increase from 2003. The program was also expanded and now includes the Greater Toronto Area, Ottawa, Windsor, Kitchener, Lindsay, Barrie, Bancroft, Trenton, Oakville, London and Hamilton.
48. Staff members also coordinate student outreach initiatives to promote law as a career. Equity Initiatives staff work with school boards from across the province, bring lawyers into the classroom, make presentations to high school and university students, and participate in career fairs and community events. Examples of events include:
- a. Presentations in high schools (Toronto District School Board, York Region District School Board, Peel Region District School Board and Durham Region District School Board), reaching over 200 students considering law as a career.
  - b. Attendance at a number of student career fairs involving more than 1,500 high school Aboriginal, Francophone and equality-seeking students.
  - c. Promotion of the program in French and English in the context of Law Week.
  - d. Promotion of the program at university career fairs and in law schools.
  - e. Organizing symposia for Aboriginal law students at which the program is promoted.

#### *Discrimination and Harassment Counsel Program*

49. In June 2001, the Law Society adopted the permanent DHC Program. Funded by the Law Society, the program operates at arms-length, and is available free-of-charge to the Ontario public and lawyers.<sup>20</sup> Since its creation, the person who has held the position of DHC has been bilingual (French and English). In 2005, the Committee evaluated the program to determine trends since its inception. The Committee noted that the program provides an important service and functions effectively.
50. The *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* – July 1, 2005 to December 31, 2005 provides a summary of data since January 1, 2003. There has been a total of 594 new contacts with the DHC

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<sup>18</sup> December 2005.

<sup>19</sup> Information available on Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca).

<sup>20</sup> Minutes of Convocation, June 22, 2001.

program since January 1, 2003. The DHC dealt with a total of 204 complaints against lawyers between January 2003 and December 2005. Complaints from the public have constituted on average 57% of all discrimination and harassment complaints. Most discrimination and harassment complaints made by lawyers and law students arise in the context of the complainant's employment or in the context of a job interview. There is consistently a higher proportion of complaints from women than men within the legal profession. Since 2003, women made 77% of complaints. There was a total of 204 discrimination and harassment complaints in the last three years, of which, 54% were on the ground of sex, 19% on the ground of race, 19% on the ground of disability, 6% on the ground of sexual orientation, 3% on the ground of age and 3% on the ground of religion. Other grounds were also raised, such as family status, national or ethnic origin, ancestry and records of offences.

51. In 2004, the position of Alternate DHC was created. In 2005, the Law Society appointed two Alternate DHC. The Alternate DHC assume the functions of the DHC when she is unable to perform the function. The Alternate DHC may also provide mediation services.

#### *Communications resources*

52. The Communications & Public Affairs Department provides comprehensive communications support to all areas of the Law Society, including the Equity Initiatives Department. This support includes the following key activities
  - a. media relations;
  - b. website management;
  - c. production of public materials, such as brochures and fact sheets;
  - d. production of member publications, such as the Ontario Lawyers Gazette, the Quick Reference Card, Ontario Reports advertising;
  - e. translation services in French and English;
  - f. employee communications.
53. Communications strategies encompass all of the above. Therefore, in most instances when the Law Society is developing and implementing communications strategies for initiatives that promote equity and diversity, all the tools mentioned above are used. For example, for each Law Society public education forum and reception, the event and speakers are featured in media releases (often produced in more than one language) and posted online on the public website and intranet. In addition to promoting events and initiatives in advance, the Law Society provides comprehensive coverage of such events on its website (including webcasts) and in the Ontario Lawyers Gazette.
54. To date, in 2006, the Communications and Public Affairs Department has produced seven media releases regarding public education events. Two more are scheduled for the fall for the access awareness event and Louis Riel Day. The Law Society also jointly promotes Annual Law Day with a number of other legal organizations, to celebrate democracy, diversity and freedom.
55. The Law Society has enjoyed extensive call to the Bar media coverage in recent years, with an increased focus on the growing number of women, Aboriginal, Francophone and equality-seeking members entering the legal profession.

56. The Law Society has focused on developing and expanding partnerships with media. For example, many equity and diversity initiatives are promoted through ethno-cultural press. The Law Society has also created good working relationships with members of the Francophone, Aboriginal, the Chinese and the gay and lesbian press, to name a few.
57. In June 2005, the Law Society hosted a reception to which more than 300 ethno-cultural media contacts were invited. Some 40 outlets, including those serving the Chinese, Greek, Caribbean, Japanese, South Asian, Filipino, German, Hispanic, Jewish, Gay and Lesbian communities, attended/or covered the reception. The purpose of the reception was to determine how best to work together and more closely. The department regularly shares information about the Law Society and upcoming events with these media and has generated further interest in topics such as ways for the public to find a lawyer, the Law Society's complaints process and the increasing diversity of new calls to the bar.
58. The Law Society also regularly responds to issues and articles raised in various media on equity issues.

#### *Accessibility of website*

59. In 2005, the Law Society implemented a number of enhancements to make the website easier to use and to comply with internationally recognized guidelines for accessibility by persons with disabilities. Enhanced navigation guides user more efficiently through the content. The new text zoom function allows user to choose different font sizes to view content on the site. The Law Society also offers a separate text-only website that can help users with disabilities or users who rely on a screen reader or text browser to access all the information published on the site. In 2005, 1.3 million visitors and 8.2 million pages were viewed. The text only website has W3C Web Accessibility Conformance Ranking priority 3 (out of a total of 3). This rating system is used world wide to measure organizational accessibility conformance and is mandatory in some jurisdictions and workplaces such as government.

#### *Communications in different languages*

60. The Law Society issues most of its press releases in English and French and sometimes other languages. The *Ontario Lawyers Gazette* continues to feature a special section for Francophone readers entitled "Tour D'Horizon". In addition to producing its brochures in English, French and Chinese, the Law Society has also recently produced its corporate brochures in three additional languages – Spanish, Tamil and Farsi.
61. The Communications & Public Affairs Department continues to offer a range of translation services for other departments of the Law Society. For example, in 2005, 143 documents were translated into French, many of which were large translation projects (from 13,700 words to 80,000 words each). During the first half of 2006, some 106 documents were translated into French and two were translated into English..
62. To explain the Law Society's wide variety of services to the public, and thus make them more accessible, the Communications & Public Affairs Department continues to regularly develop and distribute public brochures in English and French. In 2006 the Law Society made the following brochures available in Chinese, Tamil, Farsi and Spanish: *What the Law Society Can Do for You*, *The Lawyers Fund for Client Compensation and Making a Complaint*.

63. The Law Society has developed close relationships with local organizations such as the Toronto Chinese Community Services Association, the Centre for Information and Community Services and Chinese Bereavement Services.
64. Several years ago, the Law Society launched its Member Reference Card. It has become very popular with lawyers and is an opportunity to promote the services offered by the Equity Initiatives Department. In 2004, it was distributed to 45,000 lawyers and stakeholders in the province. The Law Society includes a half page dedicated to promoting the Equity Initiatives Department and its programs and services.
65. The Ontario Lawyers Gazette continues to be a forum in which the Law Society promotes equity and diversity programs, services and events. Every issue features some articles that promote equity and diversity and the popular "Just Cause" feature has often profiled lawyers dedicated to promoting equity and diversity.
66. The Law Society's Annual Report Performance Highlights describes how the Law Society is promoting equity and diversity. The document is available in English and French and is distributed to numerous key stakeholders including many community and equality-seeking partners.

#### *The Client Service Centre and Membership Services*

67. The Client Service Centre is the front line, one-stop access point to the Law Society. Staff members effectively deal with a range of requests from both the public and the legal profession. In 2005, the Centre handled 493,888 contacts from members and the public, via letters, e-mails, faxes, calls and in-person inquiries.
68. The Call Centre of the Client Service Centre has bilingual (English and French) staff at all times and it can accommodate caller in other languages as well.

#### *Lawyer Referral Service*

69. The Lawyer Referral Service is a service that has been offered over 31 years. The program supports the Law Society's role in governing in the public interest by promoting greater access to legal services. In December 2005, 1,701 lawyers were subscribers to the Lawyer Referral Service. Clients may request the Law Society to refer them to a lawyer that speaks a language other than English.
70. Callers who are incarcerated, institutionalized, in domestic abuse crises, under the age of majority or are calling regarding child protection issues can phone the crisis line.
71. In 2005, the Lawyer Referral Service received 58,243 calls, of which 34% (or 20,075) were calls to the crisis line.

#### *Accessibility of Law Society*

72. The Law Society is committed to providing services and a working environment in which all individuals are treated with respect and dignity. A key part of this is ensuring that our building is accessible to those with disabilities. In 2006, the Law Society completed extensive renovations to the North Wing of the Law Society. The renovations,

- a. maximizing usage of space throughout the building;
- b. improve workflow and processes to make the delivery of Law Society services more effective and efficient.
- c. enhance the professional look and feel of the building's interior while respecting the historical elements of the site.
- d. significantly improves accessibility for those with disabilities, as recommended by the *Bicentennial Report*. For example, all areas of the Law Society are accessible by elevator.

73. The Law Society also provides the following:

- a. Materials in formats that may be read by recognition/playback software;
- b. Accessible website;
- c. Information technology for distance learning and wireless communication;
- d. An AT & T language telephone line and translation services for clients of the Client Service Centre;
- e. A TTY telephone line for persons with hearing impairments.
- f. Specialized hardware and software such as:
  - i. 21-inch screens for individuals with visual impairments,
  - ii. Special Braille keyboard,
  - iii. Speech to text software (Dragon),
  - iv. Ergonomic keyboards,
  - v. Special mice for individuals with hand or wrist injuries or carpal tunnel syndrome.

*Tsunami relief initiative*

- 74. In 2005, the Law Society worked with the South Asian Legal Clinic of Ontario (SALCO) and Pro Bono Law Ontario (PBLO) to assist members of communities in Ontario who have been affected by the South and Southeast Asian tsunami disaster of December 26, 2004.
- 75. Representatives of the Law Society and SALCO attended a number of community meetings and contacted various lawyers and organizations to identify the needs of the communities affected by the tsunami. The Law Society also established a telephone line (including a toll-free line) and an e-mail address for members and the public wishing to participate in this initiative. A list of lawyers willing to do *pro bono* work for people affected by the tsunami was compiled and referrals provided to the public on a case-by-case basis. The pro bono lawyers assessed potential cases and assisted those whose families were affected by the tsunami with immigration assistance.

Bicentennial Report Recommendation 6: Institutional Resources

*In order to facilitate and further the advancement of equity and diversity goals, the Law Society must dedicate appropriate human and financial resources specifically to those goals.*

### Bicentennial Working Group Proposed Strategy

76. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies to further implement Recommendation 6:
  - a. The effectiveness of the current structure of the Equity Initiatives Department should be re-evaluated in December 2006. At a minimum, an effective equity initiatives unit should be maintained, and fully staffed, with the following elements:
    - i. The Equity Advisor's direct reporting relationship to the CEO;
    - ii. The Equity Advisor's membership on the senior management team;
    - iii. Current staffing level and budget.
  - b. The Law Society services should be delivered to French and English speaking members and the public in a manner consistent with the intent of the *French Language Services Act*.

### Adopted Initiatives

77. Since 1997, the Law Society has established the Equity Initiatives Department, a department that has grown from a unit of 2 employees (the Equity Advisor and the Program Administrator) to 5 permanent full-time positions. In 2003, the Equity Department became part of the Policy and Tribunal Department, increasing its influence within the organization and the legal profession. It is now fully included within the operations of the Law Society and is part of an influential department.
78. The Equity Advisor is responsible for ensuring that policies and initiatives of the Law Society promote equity and diversity principles. The position of the Equity Advisor has direct access and a reporting relationship to the CEO and is a full member of the Senior Management Team.
79. All positions in the Equity Initiatives Department are staffed and the budget for the department has been maintained.
80. As shown in this report, the CEO and the Senior Management Team have the responsibility, and are committed to, promoting equality and diversity within all operations of the Law Society. All departments and divisions have developed and implemented policies, programs and initiatives that promote equality and diversity.

### *Services in French*

81. Services to the public and members of the profession are offered in French consistent with the principles of the *French Languages Services Act*. There are 21 designated bilingual (French/English) positions. The Call Centre in the Client Service Centre, the reception, the Professional Regulation Unit, the Communications & Public Affairs and the Equity Initiatives Department offer services in French and English. The Professional Development and Competence Department offers the Licensing Process in French and English and has a bilingual office at the University of Ottawa. The Tribunals office has created a roster of bilingual lawyers competent to sit on Hearing Panels for bilingual proceedings, hence increasing the Law Society's capacity to hold bilingual discipline hearings.

Bicentennial Report Recommendation 7: Participation in the  
Governance of the Profession

*In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession:*

*(a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28 [now Rule 5.04]; and*

*(b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession.*

Bicentennial Working Group Proposed Strategy

82. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
  - a. That an equity analysis be undertaken to determine whether there are any barriers within the current electoral process that limit the full participation and election of women and members from equality-seeking, Francophone and Aboriginal communities.
  - b. That a report and strategic plan be presented to Convocation by June 2006 to address the following:
    - i. The burden of committee time placed on benchers which may be a barrier to suitable candidates standing for bencher election.
    - ii. Non-bencher participation in bencher committees.
  - c. That By-law 9, Committees, be amended so that EAG, AJEFO and Rotio> taties each have a voting representative on the Equity and Aboriginal Issues Committee.

Adopted Initiatives

83. It was noted in the *Bicentennial Implementation Report* that a number of initiatives were adopted by the Law Society to increase the representation of equality-seeking, Francophone and Aboriginal members in the governance of the profession. For example, EAG advises the Law Society's Equity and Aboriginal Issues Committee, and other committees, on issues affecting Aboriginal peoples, Francophones and equality-seeking communities. EAG is composed of lawyers from across Ontario with expertise in various areas of law and legal analysis. Effective January 2005, EAG implemented its new terms of reference to ensure equal representation of individual and organizational members, therefore diversifying the representation of EAG's membership.

84. Members of EAG, AJEFO and Rotiio> taties are also invited to participate in the work of the Committee and of its working groups.
85. In 2005-2006, the Governance Task Force considered whether there should be a designated seat at Convocation for candidates who satisfy bilingualism criteria. The Task Force considered whether this approach would partially address the issue of availability of Francophone or bilingual (French/English) elected benchers competent to sit on the Hearing Panels for a bilingual proceeding. The Task Force recognized the importance of ensuring French-language capability for Law Society hearings; however, it did not believe that guaranteeing a seat for a Francophone bencher would resolve the issue of sufficient numbers of Francophone benchers for hearings.
86. The Governance Task Force also considered a proposal that EAG be permanently represented as a voting member of the Equity and Aboriginal Issues Committee. The Task Force noted its support of the role fulfilled by the EAG but did not agree that it should become a permanent and voting member of the Committee because EAG need not be a member to fulfill its advisory function. The Equity and Aboriginal Issues Committee, as a standing committee of Convocation, is composed of elected and lay benchers who are required to make policy recommendations in the public interest for Convocation's consideration and who have fiduciary responsibilities to the Law Society as an organization. Members of EAG are not bound by these obligations.
87. Since January 2005, some initiatives have been undertaken to alleviate demands on benchers. For example, in 2005, Convocation approved the implementation of Convocation's decision to remunerate elected benchers, former treasurers and ex-officio benchers, at \$300 per half day and \$500 per full day. Benchers may also attend Convocation and committee meetings via teleconference call.

*Consultation with benchers about electoral process*

88. In 2005, the Equity and Aboriginal Issues Committee approved a consultation with elected benchers who ran in the 2003 election. The purpose of the consultation is to gain a better understanding of the bencher election process and the factors that may determine the participation of Aboriginal, Francophone and equality-seeking members in bencher election. Over half of the elected benchers were interviewed and a report is expected in the fall, 2006.

Bicentennial Report Recommendation 8: Licensing Process

*The Law Society should continue to ensure that Licensing Process:*

- (a) *Includes material designed to increase the profession's understanding of diversity/equity issues;*
- (b) *Encourages the participation of equality-seeking groups in its design, development, and presentation;*
- (c) *Uses material that is gender neutral;*
- (d) *Uses audio visual material that includes the faces and voices of equality-seeking groups;*
- (e) *Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).*



### Bicentennial Working Group Proposed Strategy

89. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee examine, with the Professional Development, Competence and Admission Committee and/or the Task Force on the Continuum of Legal Education, the following strategies to further implement recommendation 8:
  - a. That members from equality-seeking, Francophone and Aboriginal communities be involved in the design and delivery of the Licensing Process.
  - b. That Licensing Process students be informed of the role of the Discrimination and Harassment Counsel (DHC) and options available to students and lawyers who experience harassment and/or discrimination.
  - c. That the Licensing Process continue to be offered in both official languages.
  - d. That the effectiveness of the Repayable Allowance Program be assessed and improved if required.

### Adopted Initiatives

#### *New Licensing Process – Reforming the way we license lawyers*

90. Development of the key components of the new Licensing Process was substantially completed in 2005. Over 1,800 Ontario Lawyers contributed 7,500 hours providing input into its design.
91. Francophone, Aboriginal and equality-seeking lawyers were involved in each stage of development of the new Licensing Process and statistics related to this involvement is included in Professional Development, Competence and Admission Committee's report to Convocation in the months of September 2004 and November 2004. The reports relate to the development of the competencies for the new process, the development of blueprints for the new system and the survey of members on articling term issues. For each component of the development, the Professional Development & Competence Department specifically encouraged members of Francophone, Aboriginal and equality-seeking communities to participate and provide input. In the case of focus groups and face-to-face interactions, the incidence of equality-seeking participation is high relative to the percentage of the legal and general population. In the case of random survey work, for which the Law Society has no control over the final response rates, the Aboriginal, Francophone and equality-seeking representation is relative to the general population or better.
92. In addition, the advisory groups that have been established to continue to assist the Society in the evaluation and quality assurance functions of the ongoing process include representatives from the Aboriginal, Francophone and equality-seeking communities.
93. All the components of the Licensing Process focus on the entry-level competencies required providing legal services effectively and in the public interest and including guidance on ethical issues and the *Rules of Professional Conduct*. The Licensing Process includes:
  - a. a mandatory five-week Skills and Professional Responsibility Program;

- b. two licensing examinations: a barrister examination and a solicitor examination;
  - c. a 10-month articling term.
94. Administration for the Licensing Process has moved toward a Web-enabled electronic environment and the new online application system was successfully launched in November 2005, to support the first group of Licensing Process students.
  95. Fees for the Licensing Process are \$2,600, a reduction of \$1,800 from 2005, when the fees for the Bar Admission Course Program were at \$4,400. The length of the program has also been shortened from 14.5 months (including articling) to 11.5 months (including articling), therefore reducing the financial burden on students.
  96. The Law Society also enhanced its online Member Resource Centre including resources available to students in the Licensing Process. To consult online resources, see <http://mrc.lsuc.on.ca/jsp/licensingprocess/index.jsp>.

#### *New Licensing Process in French*

97. All components of the Licensing Process are provided in the French language. This includes all written materials used, and instructions delivered, in the Skills and Professional Responsibility Program, examinations and assessments, the e-Learning Site supports and resources, all policies, applications and forms, all communications with students in any format or medium and all student support services including special needs supports.

#### *Equity in the Licensing Process*

98. Since the adoption of the *Bicentennial Report*, the Law Society has enhanced its initiatives to promote equality for students. One indicator of the success of the Licensing Process is the diversity of the student population. In 2006, there was the following representation of students in the Licensing Process: 55% of students were women, 17% were racialized, 5% were Francophone, 1.7% were Aboriginal, 12% were mature students, 2% were persons with disabilities and 1.8% were gay/lesbian.
99. The following provides an overview of programs, initiatives and products that focus on the promotion of equity and diversity in the Licensing Process.

#### *Licensing Process materials*

100. The Licensing Process materials include information designed to increase the profession's understanding of equity and diversity issues. Topics include Aboriginal law, addressing harassment and discrimination, the duty to accommodate and providing legal services to clients with disabilities. The materials, exams and other resources have been revised to ensure the use of gender-neutral language and audiovisual materials include the faces and voices of equality-seeking communities. Advisory Groups members, content writers (practitioners) and students provide input on materials through student course evaluations.<sup>21</sup>

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<sup>21</sup> PD&C maintains statistical data on student numbers and success rates for some of the student equity groups such as Aboriginal students, Francophone students and students with disabilities or those requiring accommodations. During the Licensing Process, students at large

### Training for instructors.

101. All new instructors attend a workshop on effective teaching methodologies, including inclusive pedagogy. The workshop includes a discussion on the meaning of harassment and discrimination, methods of inclusive teaching methodologies and resources available to instructors and students.

### *e-Learning website*

102. E-learning continued in 2005 to be an important tool for students in the admissions process. The Law Society's e-Learning site offers a flexible, accessible and user-friendly learning support system through which students can access online resources anywhere, anytime. In 2005, there were over 63,000 visits to the website. Using the site helps familiarize students with the learning formats they will encounter throughout their careers as they participate in various continuing legal education programs
103. The e-learning site continues to be enhanced and provides students with 24-hour access to information and supports on the Licensing Process, including practical guides and other resources to support them in the articling term.

### *Support Services*

104. Support Service offers students a range of supports and services to improve the learning environment for all students, and includes providing accommodation to students in the Licensing Process with special needs.<sup>22</sup> Accommodations have also included exams in alternative forms such as enlarged exams and scan sheets, audiotape, Braille and text-to-speech for persons with visual and auditory impairments. In 2006, 61 students in

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provide evaluations on the course, the course materials, instructors and skills assessments. The evaluations are not specifically based on equity issues or concerns. They focus on evaluation of the content, the teaching and the value of attendance.

<sup>22</sup> The Law Society adopted a *Policy and Procedures for Accommodations for Students in the Licensing Process 2006* (Toronto: Law Society of Upper Canada, updated for the 2006 Licensing Process). Ongoing accommodations provided to students include:

- For students with a visual impairment: Optical Character Recognition software for scanning documents; Information made available in alternate formats and alternate fonts; software such as ZoomXtra 7.0 and Dragon Speaking Software.
- For students with a hearing impairment: real time captioning and sign language assistants.
- For students with learning disabilities: extra time to hand in assignments and read materials and tutors for assistance and additional access to faculty.
- For French students: access to a bilingual assessor when doing assessments; pairing of French students to do the presentations in French; French markers provided to mark exams.

Additional examinations accommodations include invigilation services for distance learners, computers with adaptive technology, extra time for writing the examinations, tape-recording of exam answers, height adjustable desks, ergonomic chairs and supervised breaks.

Toronto, Windsor, London and Ottawa received exam-related accommodations through Support Services for impairments related to chronic pain, learning disabilities including dyslexia, pregnancy, hearing and vision impairment, anxiety and other medical conditions.

105. Accommodation practices have included permission to use a laptop with special software to assist the visual and hearing impaired, private rooms, additional examination time, assistive devices, one-on-one American Sign Language interpretation and real-time captioning and scribes during exams
106. The Education Support Services also offers tutoring. Education Support Services provides assistance to students that have difficulties with exams or assessments. There is no cost to the student for the first five hours of tutoring and where financial difficulty exists further tutoring is arranged at no cost. In 2005, 86 students requested and received tutoring assistance.

#### *Mentoring Program*

107. The Mentoring Program is available to students in the Licensing Process. The program provides matches for students-at-law with members of the bar, and offers a range of supports, from academic and career advice to job shadowing opportunities. The Mentoring Program is provided free of charge.

#### *Elders' Program*

108. The Elders' Program provides Aboriginal and non-Aboriginal students in the Licensing Process with various teachings and counseling services. The program provides, cleansing ceremonies, traditional teachings, talking circles, meditations and pipe ceremonies, and is also available for one-on-one time with students in need of assistance. The program was launched in the fall of 2000 and is offered on a flexible schedule as requested by students during the Skills and Professional Development Program.

#### *Partnerships with Aboriginal Bar*

109. The Law Society works with members of the Aboriginal Bar to support Aboriginal students in their legal education, foster a sense of community among the students and the Aboriginal Bar, and develop mentoring relationships, professional development and articling opportunities. In 2005-2006, the Law Society organized two symposia for Aboriginal students (in Toronto and in Ottawa). Aboriginal students from every law faculty were invited to participate in the symposia. The objective of the symposia was to provide networking opportunities between Aboriginal students and members of the bar.

#### *Information about the DHC*

110. Licensing students are informed of the role of the DHC and options available to students in the following manner:
  - a. Through the law school tours when the Registrar, Associate Registrar and the Aboriginal Issues Coordinator visit third year law students;

- b. Brochures are provided to the students and the law schools' Career Development Officers;
- c. Information on the DHC appears on the Licensing Process website, in the Student's Admissions Handbook and in a number of the policies;
- d. Licensing Process staff may also make direct referrals.

#### *Repayable Allowance Program*

- 111. The Law Society continues to offer financial assistance through its Repayable Allowance Program to Licensing Process and articling students who demonstrate a need in meeting their educational and living expenses during the process. In 2005, the Law Society approved a total of \$212,482 to assist 66 students. This is a slight decrease from 2004, when 87 applications were approved for a total of \$290,295 awarded. In 2003, 37 applications were approved for a total of \$117,167, in 2002, 57 applications were approved for a total of \$213,395, and in 2001, 47 applications were approved for a total of \$170,700.
- 112. Promotion of the program is widely spread. The program is discussed with law school students who attend the staff tour of the law schools. Also, information about RAP appears on the e-learning centre, in the Student Admissions Handbook, and is provided to students in their licensing materials, including application and registration packages.

#### Bicentennial Report Recommendation 9: Articling

*The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).*

#### Bicentennial Working Group Proposed Strategy

- 113. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee and the Professional Development, Competence and Admission Committee and/or the Task Force on the Continuum of Legal Education examine the following strategies and, if required, make recommendations to Convocation:
  - a. That the current articling structure be assessed to determine whether equality-seeking, Aboriginal and Francophone students face systemic barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers.
  - b. That research be undertaken to determine why some students who have successfully completed the Licensing Process do not seek or cease to seek articling positions. Strategies should be developed to address this issue.
  - c. That the CEO or delegate provide annual reports to the Equity and Aboriginal Issues Committee about strategies and progress on addressing the needs of equality-seeking, Aboriginal and Francophone students for suitable articles.
  - d. That services and learning supports to assist students and principals throughout the articling process be maintained and enhanced based on needs.

### Adopted Initiatives

114. The Associate Registrar coordinates the articling program and provides support to students, and the Aboriginal Issues Coordinator provides support to Aboriginal students in the Licensing Process. As a consequence, the Law Society has increased its efforts to provide support to students during the articling term. Students have options and flexibility in completing all the necessary requirements of articling. Placement initiatives provide assistance to students by offering job search skills workshops and counselling services. The job search skills workshops include topics such as how to do electronic job searches, winning interviews, creating impressive resumes, writing compelling covering letters, building useful contact lists and finding opportunities.
115. Articling position postings are advertised on the Law Society's website, workshops are held on job search skills and the mentoring program matches students with lawyers for career mentoring.
116. The Registrar and Associate Registrar attend annually at all law schools to provide students with information about the Licensing Process and the articling opportunities.

### *New Licensing Process and Articling Program - additional resources*

117. Candidates in the new licensing process have access to a wide range of educational resources to support them in their learning, including written materials, professional development programs and online practical guides.
118. In addition to comprehensive reference materials, the Law Society provides resources online on how to study for and write the competency-based licensing examinations.
119. In addition to an online bulletin board of program updates, reminders, announcements and FAQ's about the Licensing Process, the Law Society's e-Learning site will also feature a variety of resources to assist candidates in their articles and in their first year of practice.
120. A series of online "How-To Briefs" will give candidates quick and easy access to information on how to perform entry-level tasks in the following areas: Business Law, Civil Litigation, Criminal Law, Wills & Estates, Family Law, Real Estate and Public Law, and how to meet their professional responsibility obligations. Each How-To Brief will be designed as an efficient, practical resource for candidates, with a step-by-step outline of the task, and links to rules, forms, checklists, precedents, and video demonstrations or illustrative vignettes.
121. These online resources will be particularly useful for the candidates with articling experiences that do not include a full rotation, and who wish to expand their options for future practice.
122. For example, a candidate articling at the Crown Law Office - Criminal, can learn the techniques involved in conducting an effective civil motion. A candidate articling for a family law practitioner can learn how to draft an agreement of purchase and sale and obtain relevant checklists and precedents.

123. It is anticipated that in the first year of the program, candidates will have access to How-To Briefs on 28 topics. In addition to information on substantive, procedural and skills subjects, students will also be able to obtain valuable online help on such "Articling survival" topics as establishing and keeping an effective time-docketing system, eliciting constructive feedback and dealing with difficult people.
124. The Law Society's Education Support Services department will continue to serve and support Articling candidates and Principals by providing resources such as education plans, Articling assignment checklists, information on stress management, and placement support. Placement support includes job search skills workshops, one-on-one career counseling and résumé consultation, the Articling Mentor Program and online job postings.
125. The Law Society is committed to providing candidates with the professional development resources and support they require to be successful in the Licensing Process and in their future careers in law.

*Consultation with students seeking articling positions and those who have withdrawn*

126. At the end of 2005, the Equity and Aboriginal Issues Committee approved a consultation with students seeking articling positions and students who have withdrawn from the process, to identify, and develop strategies to address, the barriers faced by individuals from Francophone, Aboriginal and equality-seeking communities when entering the legal profession. The study will also take into account the unique experience of internationally trained lawyers, the value they bring to the Ontario legal profession and barriers faced by them when seeking employment in the Ontario legal profession. The consultation with between 40 and 50 students seeking articling positions and those who have withdrawn from the process is underway and an interim report expected in the fall 2006.

Bicentennial Report Recommendation 10: Continuing Legal Education

*The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:*

- (a) *Includes material designed to increase the profession's understanding of diversity/equity issues;*
- (b) *Encourages the participation of equality-seeking groups in its design, development, presentation, and attendance;*
- (c) *Uses material that is gender neutral;*
- (d) *Uses audio visual material that includes the faces and voices of equality-seeking groups;*
- (e) *Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).*

Bicentennial Working Group Proposed Strategy

127. In January 2004, the Bicentennial Working Group proposed that the Professional Development, Competence and Admission Committee examine the following strategies and, if required, make recommendations to Convocation:
  - a. That the bursary program for CLE be expanded and aggressively advertised to those who cannot afford to,

- i. members re-entering the profession;
  - ii. members from equality-seeking, Aboriginal and Francophone communities.
- b. That there be representation of members from equality-seeking, Aboriginal and Francophone communities within the CLE Faculty, including “core” CLE programs.

#### Adopted Initiatives

##### *Equity Initiatives Department programs*

128. The Law Society has developed affordable, accessible and relevant continuing legal education programs through various Equity Initiatives Department programs that include its Public Education Series, Professional Development Programs – Promoting Equality and Diversity in the Workforce and CLE programs on human rights. Public education events are usually open to the public and are free of charge. Other CLE programs are offered on a cost recovery basis and are affordable.
129. Each year, the Law Society hosts and participates in 10 to 15 public education events. A number of those events include a continuing legal education component. The following are examples of programs:
  - a. Black History Month workshop on Assisting At-Risk Youth -- Lawyers and Communities Working Together;
  - b. International Women’s Day event workshop on Trafficking in Women and Children;
  - c. International Day for the Elimination of Racial Discrimination panel discussion on Canadian Legal Response to Torture – Promoting Human Rights;
  - d. National Holocaust Memorial Day panel discussion on Eliminating Online Propaganda of Racial and Religious Hatred;
  - e. South Asian Heritage Month panel discussion on How the Law Recognizes Culturally Diverse Family Structures;
  - f. National Aboriginal Day conference on Aboriginal Perspectives on Access to Justice.
130. The Equity Initiatives Department and the DHC Program offer Professional Development Programs to promote equality and diversity in the workplace. Programs are custom-designed for law firms and legal organizations, are interactive and provide opportunities for exchanging ideas and discussing up-to-date topics relevant to the legal profession.

##### *Professional Development and Competence CLE programs*

131. To fulfill its mandate to ensure that lawyers meet high standards of learning, competence and professional conduct, the Law Society refocused its continuing legal education (CLE) programming and made a transition to a quality assurance, curriculum-based model of professional development.
132. Both the content and the format of the Law Society’s programs are now specifically designed to serve the needs of lawyers at the essential, intermediate and advanced levels of experience in a variety of practice areas.



133. In addition to traditional lecture programs for lawyers and law clerks, the Law Society offers problem-solving workshops (Case Files Series), advanced level discussion group opportunities (Advanced Roundtable Series), essential seminars on practice basics (Practice Gems) and practice management skills workshops.
134. The Law Society offers CLE programs specifically designed for junior lawyers, including lawyers who have just entered the profession, and those who are transferring from one practice area to another. These “essential level” programs include the Case Files Series in a variety of practice areas, as well as the new Practice Gems series (e.g. 2nd Annual Title & Off-Title Searching (January 11, 2006) and Conduct of the Wrongful Dismissal File (May 9, 2006)).
135. In 2005, the Law Society offered 72 CLE programs through a variety of formats and delivery methods to improve accessibility and assist lawyers in meeting their professional development goals. Attendance was 16,300 -- down 19% from the previous year as a result of a corresponding increase in usage of interactive and online learning formats.
136. The Interactive Learning Network, launched in 2003, enables lawyers to attend live programs without incurring the costs associated with absence from the office and long distance travel. CLE programs are transmitted in real time to between 10 and 20 sites across the province. The sites have been chosen to allow members to travel no more than one and a half hours to attend.
137. Current Law Society CLE programs with content tailored to the needs of members from equality-seeking communities include the following:
  - a. Advanced Roundtable in Employment Law (March 1, 2006) “Termination, Frustration and Accommodation – Dealing with Employees with Disabilities”
  - b. Wrongful Dismissal – New Defendants and Expanded Heads of Damage (March 30, 2006) Long Term Disability, Mandatory Retirement
  - c. Annotated Executive Employment Contract (Disability?) (April 25, 2006) “What happens if the CEO/CFO or other senior executive is disabled?”
  - d. Elder Law – Your Growing Clientele (May 24, 2006) Elderly
  - e. Six-Minute Employment Lawyer (June 1, 2006) Harassment, disability
138. The Law Society provides administrative and other support for a series of Colloquia initiated by the Chief Justice of Ontario’s Advisory Committee on Professionalism and sponsored by a variety of law associations. The goal of the joint venture is to produce over a period of years a collection of high quality papers about legal professionalism in its broadest sense. Colloquia topics covered in the 6th Colloquium (March 10, 2006) included “Law, Lawyers, and Judges in Film”, “Law, Lawyers, and Judges in Literature” and “When the Lawyer Knows the Client is Guilty: Legal Ethics and Popular Culture.”
139. Law Society counsel and staff in both the Equity and Professional Development & Competence departments contributed to the development of content and provided

administrative support for the Spring Symposium of the l'Association des juristes d'expression française de l'Ontario ("AJEFO") in June 2004.

#### *Reduced rates for CLE*

140. The Law Society also provides reduced rates for registration to CLE programs, in any format or medium, for members who meet the Bursary Criteria. Bursaries have increased with the increase of CLE attendance, in the past 5 fiscal periods. Between 140 and 243 bursaries were provided per annum between 2001 and 2005. On average, over the past 5 years, the Society has provided 155 bursaries per year.
141. The Bursary Program allows lawyers with annual incomes below \$35,000 to qualify for a 50% reduction off the regular price of Law Society CLE programs and Law Society CLE publications. To be eligible for a reduction in price, applications must be submitted a minimum of 10 days before the date of any live or video replay program for which a bursary is sought. Application information is held in strict confidence. Students at law and lawyers employed by legal clinics are also entitled to the 50% discount on fees for most Law Society CLE programs and CLE publications.

#### Bicentennial Report Recommendation 11: Rules of Professional Conduct

*The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession.*

#### Bicentennial Working Group Proposed Strategy

142. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee consider working with the CEO, or his delegate, and the Discrimination and Harassment Counsel, to determine the effectiveness of programs aimed at eliminating harassment and discrimination within the legal profession and discuss strategies for improvement.

#### Adopted Initiatives

##### *Discrimination and Harassment Counsel Program*

143. The Discrimination and Harassment Counsel Program (DHC) was established in 1999 as a pilot project, and in 2001 as a permanent program, to confidentially assist anyone who may have experienced discrimination or harassment by a lawyer or within a law firm. This service, funded by the Law Society, operates at arms-length, and is available free-of-charge to the Ontario public and lawyers.
144. As mentioned earlier in this report, the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada – July 1, 2005 to December 31, 2005* provides a summary of data since January 1, 2003. There has been a total of 594 new contacts with the DHC program since January 1, 2003. The DHC dealt with a total of 204 complaints against lawyers between January 2003 and December 2005. Complaints from the public have constituted on average 57% of all discrimination and harassment complaints. Most discrimination and harassment complaints made by lawyers and law students arise in the context of the complainant's employment or in the context of a job interview. There is consistently a higher proportion of complaints from

women than men within the legal profession. Since 2003, 77% of complaints were made by women. There was a total of 204 discrimination and harassment complaints in the last three years, of which, 54% were on the ground of sex, 19% on the ground of race, 19% on the ground of disability, 6% on the ground of sexual orientation, 3% on the ground of age and on the ground of religion. The following grounds were also raised: family status, national or ethnic origin, ancestry and records offences.

#### Bicentennial Report Recommendation 12: Accreditation of Foreign-Trained Lawyers

*The Law Society should facilitate the participation of minority groups in the legal profession by liaising with other groups to ensure that the accreditation requirements for foreign-trained lawyers or Quebec non-common law trained lawyers to practise in Ontario do not represent an unreasonable barrier.*

#### Bicentennial Report Working Group Proposed Strategy

145. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
  - a. A joint initiative should be developed with the Professional Development, Competence and Admission Committee and the Access to Justice Committee to develop strategies to assist foreign-trained lawyers to qualify as lawyers in Ontario.
  - b. Information should be gathered about the success rate of NCA candidates in the BAC and in articling placements and strategies should be developed to address unfair elements, if any.
  - c. NCA students or recently called foreign-trained lawyers should be invited to provide input into the development and implementation process of the new BAC.

#### Adopted Initiatives

146. In 2004, the Law Society of Upper Canada joined the Ontario Regulators for Access (ORA). The ORA is comprised of senior staff from a number of regulators of self-regulated professions in Ontario. Its goal is to improve access to professions by internationally educated or trained professionals while maintaining standards in the public interest. Over the past few years, ORA has become a leader within the regulatory community, serving as a catalyst to encourage regulatory bodies to share information and learn from each other to increase access for internationally educated and trained professionals. The Law Society works with other regulators to develop strategies that enhance access to internationally educated professionals.
147. Bill 124, *An Act to provide for fair registration practices in Ontario's regulated professions*, passed first reading on June 8, 2006. The purpose of the Bill is to help ensure that regulated professions and individuals applying for registration by regulated professions are governed by registration practices that are transparent, objective, impartial and fair. The Law Society is following the progress of the Bill.

### Bicentennial Report Recommendation 13: Requalification

*In implementing its requalification policy the Law Society should continue to develop a process that is fair and equitable to all members of the profession.*

#### Bicentennial Working Group Proposed Strategy

148. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
  - a. That the effectiveness of the Private Practice Refresher Program and its impact on members of equality-seeking, Francophone and Aboriginal communities be examined after five years of implementation.
  - b. That strategies be developed to ensure truly equal opportunities for women returning to the practice of law and for members of equality-seeking, Francophone and Aboriginal communities.

#### Adopted Initiatives

149. The Law Society's Private Practice Refresher Program was designed to ensure that lawyers who have not been in private practice for five years or more undergo a refresher program prior to re-entry into the profession. The Program was adopted in early 2002, but will not be effective until 2007. Lawyers will be required to take only the program modules and related assessments that reflect gaps in their experience during the absence from private practice: file management, financial management, client relationships and communication, technology and equipment, professional management, personal management and professional responsibility.

### Bicentennial Report Recommendation 14: Fees

*The Law Society should examine the impact of and the barriers presented by its current annual fee structure and consider options for revising its fee structure, if warranted.*

#### Bicentennial Working Group Proposed Strategy

150. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee consider the following strategy and, if required, make recommendations to Convocation to establish a working group and/or task force composed of members of the Equity and Aboriginal Issues Committee, the Finance Committee and other members as determined by Convocation, to review the impact of the fee structure on members who practice part-time or have a low income, or who work in public interest areas.

#### Adopted Initiatives

151. Between 1984 and 1988, the Law Society considered the issue of membership fee categories a number of times before it determined to move from one fee for all members to three main fee categories. Between 1988 and 2006, various Law Society committees, including the Finance and Audit Committee, the former Admissions & Equity and

Aboriginal Issues Committee and the Equity and Aboriginal Issues Committee, have reviewed a number of possible approaches to revising the membership fee categories and their financial impact on membership fees. The Equity and Aboriginal Issues Committee considered this issue in 2002 and decided not to proceed with a further study of the fee structure unless otherwise instructed by Convocation. Since that time, the Law Society has not created a task force to address this issue.

#### Bicentennial Report Recommendation 15: Law Society as Employer

*The Law Society should continue to set and monitor equity standards for its own staff that will make it a model for the profession as an employer.*

#### Bicentennial Working Group Proposed Strategy

152. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
  - a. That the CEO compile data on the diversity of the workforce of the Law Society and develop strategies to promote equality in the workplace.
  - b. That the CEO or designate provide an in person annual report to the Equity and Aboriginal Issues Committee regarding the implementation status of equality in the workplace initiatives.

#### Adopted Initiatives

##### *Recruiting*

153. Since January 2005, the Law Society has continued to include a notice in job postings encouraging applications from persons from Francophone, Aboriginal and equality-seeking communities. Recruitment interviews include questions that relate to the candidates awareness of equity and diversity principles.

##### *Workforce Census*

154. The Law Society's workforce of approximately 400 employees is comprised of more than 65% women, approximately 60% of whom are in managerial positions. The number of women in the Law Society's workforce exceeds provincial labour force diversity demographics by more than 20 per cent, as determined by Statistics Canada in its 2001 census.
155. In 2005, the Law Society decided to conduct an anonymous voluntary survey of its workforce. The census was modeled on the categories listed in the *Employment Equity Act*<sup>23</sup>, which aims at correcting the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities<sup>24</sup>. The Law Society decided to limit the census to these four

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<sup>23</sup> 1995, c. 44.

<sup>24</sup> The Law Society decided to use the term "visible minorities" instead of "racialized" because focus group results indicated that employees were more familiar and preferred the term visible

categories, as they are the only categories on which employment-relevant and reliable data on the workforce is available.

156. The census was conducted between February 20, 2006 and March 3, 2006. The participation rate from staff was very high at 63% of the workforce.
157. The results show that the Law Society's efforts to promote a workforce that is reflective of Ontario's diversity are working. Of the respondents in the census,
  - a. 73 per cent are women;
  - b. 1 per cent self-identified as Aboriginal;
  - c. 25 per cent self-identified as a visible minority;
  - d. 6 per cent self-identified as having a disability.
158. In comparison, the Statistics Canada 2001 census reveal the following information about the demographics of Ontario's labour force:
  - a. 47 per cent are women;
  - b. 1 per cent are Aboriginal;
  - c. 18 per cent are visible minorities.
159. Numbers collected by the Participation and Activity Limitation Survey, which tracks statistics related to disability in Ontario, indicate that 6 per cent of Ontario's labour force is persons with disabilities – the same as respondents in the Law Society census.
160. In conclusion, not only is the Law Society's workforce representative in each category, it exceeds provincial labour force diversity demographics in two categories: women and visible minorities.

*Designated bilingual (French and English) positions*

161. A total of 21 positions have been designated bilingual French and English. The Law Society also has significant and growing representation of employees from other equality-seeking groups who can communicate in a range of languages such as Mandarin, Cantonese, Farsi, Spanish, Portuguese, Italian, Tamil and Tagalog.

*Top 100 Employer*

162. The Law Society was included, for the third consecutive year, as one of Canada's Top 100 Employers by Maclean's magazine. Finalists are graded in several categories, including performance management, training and skills development, physical workplace and internal communications, and community involvement.

*Workplace policies*

163. The Equity Initiatives Department continues to work with the Human Resources department to ensure that all internal workplace policies are regularly updated. For example, the Accommodation Policy, the Preventing Harassment and Discrimination

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minorities. The term visible minorities is the term used in the *Employment Equity Act* and in the Canadian Census.

Policy, the Maternity and Parental Leave Policy and the Religious Observance Policy of the Law Society were all recently updated to reflect recent case law development.

*Advisors appointed under the Harassment and Discrimination Policy*

164. A group of advisors is in place to assist employees who may have questions about harassment and discrimination in the workplace. All advisors have attended intensive training programs on preventing and addressing harassment and discrimination, the Law Society policies, and their roles as advisors. Advisors meet four times a year with the Director of Human Resources and the Equity Advisor, to discuss recent case law and maintain up-to-date on developments in this area.

*Education programs for Law Society staff*

165. As part of the commitment to promoting diversity and equity, all employees attend training sessions to assist them in being more culturally sensitive in dealing with each other and with persons from diverse backgrounds. For example, all new employees attend training on the prevention of harassment and discrimination. All managers attend extensive training on those issues. The Equity Initiatives Department now delivers the education programs on harassment and discrimination to new employees and managers. Training programs are also delivered to specific department on demand.

Bicentennial Report Recommendation 16: Law Society as a Contractor for Legal Services

*The Law Society should:*

- (a) *Develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession; and*
- (b) *Examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.*

Bicentennial Working Group Proposed Strategy

166. In January 2004, the Bicentennial Working Group proposed that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:
- a. That the CEO report to Convocation by the end of 2004 with respect to:
    - i. The implementation of a contract compliance program for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession, including
      - a. a provision by which law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession.
      - b. a provision by which suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.

### Adopted Initiatives

167. In April 2005, the Committee approved Equality Guidelines to be applied to purchasing agreements between the Law Society and suppliers or organizations providing legal services to the Law Society. The Guidelines also promote equality and diversity practices by suppliers retained to provide services to the Law Society.
168. The Guidelines apply to law firms located in Ontario with more than 50 lawyers and to suppliers with a workforce of more than 50 employees, other than law firms, for contracts above \$100,000.
169. The Equality Guidelines make it a condition of agreements that suppliers or law firms comply with all relevant Law Society policies and procedures, including the Law Society's Harassment Policy. A breach of this condition may result in cancellation of the agreement. This clause ensures that suppliers and law firms that are bound by the Guidelines follow practices that promote equality and diversity, and provides an enforcement mechanism for the Law Society in cases of breach.

### EQUITY PUBLIC EDUCATION SERIES – Fall 2006

47. Louis Riel Day  
 Event date: November 16, 2006  
 Topic: TBD  
 Time, Location: 4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre  
 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall
48. CLE in Partnership with the Ontario Association for the Deaf and Pro Bono Law Ontario  
 Event date: November 21, 2006  
 Topic: *Recruitment and Training of Lawyers for the Provision of Legal Services to the Deaf Community*  
 Time, Location: 2:00 p.m. – 5:00 p.m.: Donald Lamont Learning Centre
49. International Day of Disabled Persons  
 Event date: November 30, 2006 (TBC)  
 Topic: *E-Accessibility – Access to Information and Communication Technologies*  
 Time, Location: 4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre  
 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall
50. CLE in Partnership with Nishnawbe-Aski Legal Services Corporation, Pro Bono Law Ontario and Bar Ex  
 Event date: TBD  
 Topic: *Telejustice Project CLE - First Nations Issues in Family and Criminal Law*  
 Time, Location: 9:00 a.m. – 12 p.m.



Re: Pregnancy and Parental Leaves and Benefits for Professional Legal Staff and Law Firm Staff and Law Firm Equity Partners – Model Policy

It was moved by Ms. St. Lewis, seconded by Ms. Alexander, that Convocation approve the model policy for law firms and legal organizations entitled *Pregnancy and Parental Leaves and Benefits for Professional Legal Staff and Law Firm Equity Partners*, set out at Appendix 1 to the Report.

Carried

Re: Promoting Diversity in Benchers Election

It was moved by Ms. St. Lewis, seconded by Mr. Heintzman, that Convocation approve the following recommendations:

- a. That the Law Society encourage diverse members of the legal profession to run for benchers election by,
  - i. developing a guide on strategies to run for election, based on the results of interviews with elected benchers presented at Appendix 1;
  - ii. communicating the guide on strategies to run for election to members of the legal profession;
  - iii. increasing outreach activities with lawyers associations, and emphasizing the importance of having a Convocation that is representative of the Ontario population;
  - iv. posting announcements and/or sending letters to members encouraging them to run for benchers election, and emphasizing the importance of having a Convocation that is representative of the Ontario population;
  - v. providing information, online and through other media, to members about running for election, the role of benchers in the governance of the profession, and Law Society initiatives to promote public interest;
  - vi. providing information and education sessions for members of the profession about the governance of the profession and the electoral process.

Carried

*Items for Information*

- Appointment of Equity Advisory Group Organizational Member
- Advancing the Full Participation in the Legal Profession of Students and Lawyers with Disabilities – online information
- Report of the Activities of the Discrimination and Harassment Counsel
- Equity Advisor's Quarterly Report
- Public Education Series and Professional development Programs – 2006

DRAFT MINUTES OF CONVOCATION OF JUNE AND JULY, 2006

The Draft Minutes of Convocation of June 22, July 11, 12, 17, 20 and 21, 2006 were confirmed.

## REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS COMMITTEE

The Professional Development, Competence and Admissions Committee Report was deferred.

### *REPORT FOR INFORMATION*

Lawyers Fund for Client Compensation Committee

- Referee Panel
- Identified for Further Discussion
- Current Fund Status and Levy Issues for 2007
- Grants Paid by the Fund

Report to Convocation  
September 28, 2006

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Lawyers Fund For Client Compensation  
Committee

Committee Members  
Bradley Wright, Chair  
Marshall Crowe, Vice-Chair  
Robert Aaron  
Richard Filion  
Allan Gotlib  
Holly Harris  
Alan Silverstein  
Gerald Swaye

Purpose of Report: Information

Prepared by the Lawyers Fund for  
Client Compensation Department

### COMMITTEE PROCESS

1. The Committee met on August 2, 2006. Members in attendance were Bradley Wright (Chair), Allan Gotlib, Alan Silverstein and Gerald Swaye. Staff and others in attendance were Zeynep Onen, Dan Abrahams, Maria Loukidelis, Fred Grady and Craig Allen (LawPRO VP & Actuary).

## FOR INFORMATION

## REFEREE PANEL

2. At the meeting on February 8, 2006, the Committee authorized the recruitment of new Referees to conduct Compensation Fund hearings. By way of update, the Committee was informed that the position was advertised in the Ontario Reports and a number of resumes were received. Staff are in the process of reviewing the résumés and generating a short list of qualified individuals who could be considered by the Committee.

## ISSUES IDENTIFIED FOR FURTHER DISCUSSION

3. The following issues were discussed and have been identified for further research and discussion:
  - *Condominium Act* Deposit Requirements - The Committee reviewed materials prepared by Alan Silverstein concerning the possible impact on the Fund of the requirements in the Act that condominium deposits be held in lawyers' trust accounts. It was determined that additional research and further consultation is required in order to inform a more in-depth discussion of this issue.
  - Per Claimant Limit - Additional statistical analysis as well as information concerning the impact of the National Mobility Agreement is required in order to continue the discussions of the Committee about the possibility of raising the per claimant limit from the current \$100,000.
  - Guideline 2 - Staff were instructed to prepare materials for the Committee concerning Guideline 2 (a) and (b) to inform the Committee's ongoing review of the Guidelines.

## CURRENT FUND STATUS AND LEVY ISSUES FOR 2007

4. Craig Allen, Vice-President and Actuary at LawPRO, reported that the Fund's balance was \$19.5 million as of June 30, 2006. This is an improvement on the Fund balance as of December 31, 2005, which was 17.9 million. The improvement is attributable to favourable development with respect to prior-year claims, recoveries greater than budgeted and an increase in capital gains in the investment portfolio.
5. The Committee also considered an actuarial analysis prepared by Craig Allen setting out projections for the Fund Balance as at December 31, 2007 under a number of 2007 claims scenarios. In particular, the Committee reviewed issues surrounding the member levy, the optimum Fund surplus and the impact of a catastrophic claim or series of claims.
6. Materials considered by the Committee are attached as Appendix "1".
7. Notwithstanding the fact that the Fund is in a healthy position, but given the inherently uncertain environment in which the Fund operates, the Committee approved a motion not to change the levy from the current \$200.

## GRANTS PAID BY THE FUND

8. The Committee wishes to report that the following grants were approved and paid from the Fund between January 23, 2006, and July 13, 2006, in the amounts shown. (Only members whose discipline proceedings are completed or who are deceased are identified by name.)

Member (Status if Disciplined)	Number of Claimants	Total Grants Paid (\$)
Adler, Edwin W. (Disbarred July 27, 2005)	2	3,500.00
Codina, Angelina M (Disbarred October 17, 2002)	1	4,500.00
DeCosimo, Michael (Disbarred March 25, 1999)	2	60,000.00
Dickson, John D. (Suspended May 20, 2005)	2	4,500.00
Feldman, Paul M. (Disbarred February 21, 2006)	1	56,920.44
Fraser, Bruce W. (Suspended April 5, 2005)	1	1,000.00
Gahan, Jeffrey M (Disbarred June 2, 2004)	1	750.00
Greenglass, Morton (Disbarred April 7, 2006)	2	177,698.00
Howard, Graham I. (Disbarred May 1, 2003)	1	98,331.98
Lewis, Donald C. (Disbarred October 26, 2004)	1	90,000.00
MacDonald, Colin C. (Disbarred March 8, 2006)	5	72,648.94
Muslim, Sarko M. (Permitted to Resign September 6, 2006)	10	157,990.00
Newey, Pamela (Suspended August 15, 2006)	1	500.00
Pollack, Arthur S. (Suspended June 16, 2006)	1	5,000.00
Richardson, Peter (Suspended March 17, 2006)	2	1,600.00
Shaw, James Victor (Disbarred September 20, 2005)	3	212,000.00
Sinclair, James (Disbarred April 24, 2003)	5	155,499.99
Strutt, Brian W. (Permitted to Resign July 31, 2001)	1	7,000.00
Thorburn, Beverly (in good standing-practice restrictions imposed June 30, 2006)	1	5,372.27
Solicitor #134 (Suspended October 8, 2004)	5	15,765.16
Solicitor #145 (Suspended September 30, 2005)	1	100,000.00
Solicitor #150 (Suspended June 16, 2006)	1	12,525.00
Solicitor #152 (Suspended June 16, 2006)	2	108,086.00
Solicitor #154 (Suspended September 30, 2005)	5	18,250.00
Solicitor #156 (Suspended October 1, 2004)	1	500.00
Solicitor #157 (Suspended March 7, 2006)	1	40,166.22
Solicitor #158 (Suspended June 16, 2006)	1	1,050.00
Solicitor #159 (Suspended November 19, 2005)	1	2,140.00
<b>TOTAL</b>		<b>\$1,413,294.00</b>

## LAWYERS' PROFESSIONAL INDEMNITY COMPANY

## MEMORANDUM

TO: LAW SOCIETY OF UPPER CANADA

FROM: CRAIG ALLEN

CC: MICHELLE STROM

DATE: JULY 24, 2006

RE: UNPAID CLAIMS LIABILITY, JUNE 30, 2006, LAWYERS' FUND FOR CLIENT COMPENSATION

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The unpaid claims liability, as at June 30, 2006 for the Lawyers' Fund for Client Compensation, is estimated to be \$9,683,000. This amount is

- discounted for the time value of money (in the amount of \$445,000),
- includes a provision for internal claims handling expenses (in the amount of \$2,794,000), and
- includes a margin to provide for unfavourable developments as claims proceed toward resolution (in the amount of \$1,037,000).

The June 2006 unpaid claims liability is below that at December 31, 2005, which was set at \$10,678,000.

On a nominal basis (i.e. without discounting and without a margin for unfavourable developments), the liability at June 30, 2006 is \$9,091,000, which compares to a nominal liability of \$10,049,000 at December 31, 2005.

The following table summarizes the individual items that account for the carrying forward of the December 31, 2005 nominal claims liability through to June 30, 2006:

	Claims	Internal Costs	Total
Claims Liability at December 31, 2005	\$6,903,000	\$3,146,000	\$10,049,000
Add: Adverse (Favourable) Development on Claims Reported before December 31, 2005	(458,000)	(169,000)	(627,000)
Claims Liability at December 31, 2005 with Benefit of Hindsight	6,445,000	2,977,000	9,422,000
Add: Claims Incurred in Jan.- June 2006	1,312,000	378,000	1,690,000
Less: Payments Made in Jan.- June 2006	1,604,000	417,000	2,021,000
Claims Liability at June 30, 2006	6,153,000	2,938,000	9,091,000

### Significant Matter

A significant matter came to light in late 2004 that involves multiple claims against one member. This matter is still in the process of being resolved. The amount claimed (limited by the per-claimant limit) on those claims that are currently unresolved is \$2.0 million. The statistical estimation process applied throughout this analysis has allocated \$1.1 million to the matter, taking into account the various reductions prescribed by the Fund guidelines. I have been advised by the Fund management that the amount allocated by this analysis to this matter is consistent with the facts currently known about the matter.

### Fund Balance

The Fund Balance (before miscellaneous adjustments) as at June 30, 2006 is \$19.5 million, increased from \$17.9 million at December 2005. This increase is primarily explained by the following amounts:

- The above-mentioned favorable development with respect to prior-year claims of \$627,000,
- Recoveries of \$582,000 greater than budgeted,
- Capital gains in the investment portfolio of \$189,000.

TO: Lawyers' Fund for Client Compensation Committee

FROM: Craig Allen  
Vice President & Actuary

DATE: July 25, 2006

RE: Considerations Re Compensation Fund Levy 2007

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This memorandum addresses a number of considerations to assist the Committee in its deliberations on the 2007 levy for the Lawyers' Fund for Client Compensation.

It should be noted that the Federation of Law Societies is currently examining the issue of how to provide protection from defalcation for clients of lawyers practicing temporarily in jurisdictions other than their home jurisdiction. This memorandum does not address those considerations.

Beginning in 2001, the Compensation Fund undertook a sustained program to increase its Fund Balance (the net worth of the Fund net of amounts earmarked for claims in progress). In each year from 2001 through 2003, the Compensation Fund levy provided roughly \$2.7 million for smaller incidents and an additional amount for large-scale defalcations. As there was no major defalcation during this period, the Fund Balance grew from \$9.3 million at December 2000 to \$19.5 million at December 2004.

In light of the growth of the Fund Balance, the decision was made to reduce the member levy from \$230 for 2004 to \$200 for 2005. This reduction in the levy, in effect, eliminated the provision within the levy for large-scale defalcations. The levy would roughly cover the Fund's

costs for a year where there was no large-scale defalcation - however, if there were such a large-scale incident, its claims would reduce the Fund Balance.

Protection for worse-than-expected results is thus provided by the Fund Balance, not by any provision in the annual levy. (From 2001 through 2004, further protection was provided by insurance of the Fund underwritten by LAWPRO. The favorable results over the 2001 – 2004 period, along with the substantial growth in the buffer provided by the Fund Balance enabled the Fund to discontinue the insurance program).

Immediately subsequent to the decision to lower the levy, a significant defalcation emerged in late 2004 and early 2005. As a consequence, the Fund Balance declined from \$19.5 million at December 2004 to \$17.1 million at June 2005.

Despite this reduction in the Fund Balance, the levy for 2006 was held constant at \$200, in recognition that the significant defalcation that emerged in late 2004 and early 2005 was not necessarily a harbinger of further such large-scale events. Thus, \$2.7 million was budgeted for claims in 2006. This decision has been vindicated to date, as claims reported in the first half of 2006 are valued at \$1.3 million, almost exactly the amount budgeted.

Combined with favourable development on older claims, and a recovery of greater than \$600,000, the Fund Balance has recovered to \$19.5 million as at June 30, 2006.

#### The Indicated Levy

The provision of \$2.7 million for expected claims remains appropriate for 2007. The indicated provision for recurring routine-type claims remains at \$2.7 million, while the Fund Balance at \$19.5 million is sufficient to provide for intermittent large-scale defalcations.

The expense budget for 2006 was \$7,306,900, including an allocation of roughly \$1 million for indirect expenses. Plans for 2007 are to increase the expense budget by \$175,000. This is in order to fund expanded initiatives in the Investigations Department and the Spot Audit program to combat mortgage fraud.

Thus, the needed revenue for 2007 is \$7,481,900. Offset by expected investment income of \$1,120,000, the amount to be raised by the levy is \$6,361,900. Divided among a full-time equivalent 2007 count of lawyers of 32,000 (up from 31,000 for 2006) the indicated levy per member remains at \$200. Thus, the increased number of lawyers fully offsets increases in the expense budget.

#### Claims and Levy Scenarios

While the above calculation indicates a levy of \$200, the sufficiency of such an amount depends on the actual claims experience as it emerges. The committee may wish to consider the effect of levy amounts of \$180 and \$220, in addition to the \$200 shown above. The Fund Balance under these levy scenarios and under a number of different claims scenarios will be considered.

The projection of the Fund Balance assumes that the remainder of 2006 proceeds according to the 2006 budget, and that the levy option and claims scenario take effect in 2007. It further assumes that there will be no change in the operational expenses of the Fund for 2007, over 2006 budget levels, except as noted above.

The following table presents the annual claims experience since 1991 for small-scale and large-scale defalcations. These claims are re-stated to the current limit of \$100,000 per claimant. For 2006, it is assumed that claims for the remainder of the year will equal the amount budgeted for those two quarters.

Year	Small-Scale	Large-Scale	Total
1991	4,000	4,800	8,800
1992	4,400	0	4,400
1993	2,800	900	3,700
1994	2,400	1,700	4,100
1995	2,500	500	3,000
1996	2,600	3,800	6,400
1997	2,000	600	2,600
1998	1,400	2,200	3,600
1999	2,100	0	2,100
2000	1,600	4,000	5,600
2001	2,200	0	2,200
2002	2,400	0	2,400
2003	2,800	0	2,800
2004	1,400	1,100	2,500
2005	3,000	0	3,000
2006 (est.)	1,300	0	1,300

Please note that the greater-than-expected claims activity in 2005 has not arisen from Large-Scale defalcations (defined as greater than 35 claims arising from the incident). Rather, the 2005 claims have arisen from a number of smaller incidents.

The table below presents the Fund Balance at year end for the years 1999 through 2004, along with the June 2005 and June 2006 Fund Balances. This table provides a context for the current Fund Balance of \$17.1 million.

Date	Fund Balance
Dec. 1999	\$12.4 million
March 2000	\$8.0 million
Dec. 2000	\$9.3 million
Dec. 2001	\$13.6 million
Dec. 2002	\$14.9 million
Dec. 2003	\$17.4 million
Dec. 2004	\$19.5 million
June 2005	\$17.1 million
Dec. 2005	\$17.9 million
June 2006	\$19.5 million

Scenario 1:



Under this scenario, claims for the year are valued at \$2.7 million. This is the level of claims experienced in 2003, 2004 and the first half of 2006, and is roughly equal to an average year of claims (in the absence of a large-scale defalcation).

The current Fund Balance of \$19.5 million progresses to the following amounts, under each of the options, in this scenario:

Option	Fund Balance, Dec 2007
\$180 Levy	\$18.8 million
\$200 Levy	\$19.5 million
\$220 Levy	\$20.2 million

We see that, under these options, the Fund Balance straddles its current level. This claims scenario is the most likely: results similar to this have appeared in eight of the last eleven years.

#### Scenario 2:

This scenario assumes claims for the year are valued at \$5.9 million. This is the level of claims experienced in 2000, which is representative of a year in which a large-scale defalcation comes to light.

The current Fund Balance of \$19.5 million changes under each of the funding options, as follows:

Option	Fund Balance, Dec 2007
\$180 Levy	\$15.6 million
\$200 Levy	\$16.3 million
\$220 Levy	\$17.0 million

Under Scenario 2 with the \$200 levy, the Fund Balance returns roughly to its level in mid 2003.

#### Scenario 3:

Under this scenario, claims for the year are valued at \$12.0 million. This scenario is constructed by beginning with the value of claims experienced in 1991, \$7.5 million. This is the year where the Fund's claims reached their peak value.

While some of the claims reported in 1991 were limited by \$100,000 per-claimant limit now in place, many were limited to \$60,000. It is projected that the 1991 claims would have been valued at \$8.8 million had the \$100,000 limit been in place uniformly.

In addition, there were only 15,200 lawyers in private practice in Ontario in 1991, compared to the 20,600 currently in practice. If the count of 1991 claims were adjusted in line with the increased number of lawyers, the \$8.8 million of limits-adjusted claims would rise to \$12.0 million.

The current Fund Balance of \$19.5 million changes under each of the funding options as follows:

Option	Fund Balance, Dec 2007
\$180 Levy	\$9.5 million
\$200 Levy	\$10.2 million
\$220 Levy	\$10.9 million

Under this scenario at the \$200 levy, the Fund Balance reaches a level above its December 2000 level. (Note that the suddenly lower Fund Balance at December 2000 prompted the Law Society to seek insurance of the Fund). While a reduction of the Fund Balance to this level would be a financial setback, the Fund would be able to continue operations with no difficulty.

#### Scenario 4:

In this scenario, we determine the maximum level of claims that the Fund has the capacity to absorb in 2007, under each of the levy options, given its current Fund Balance.

Under this scenario, the resources available to fund the payment of newly reported claims are limited to the Fund Balance plus the funds from a levy of either \$180, \$200 or \$220.

(Where the levy is \$200, the amount within the levy available to fund claims is \$2.7 million, while a levy of \$180 provides \$2.0 million and \$220 provides \$3.4 million.)

Option	Maximum Allowable Claim Value for 2007
\$180 Levy	\$21.5 million
\$200 Levy	\$22.2 million
\$220 Levy	\$22.9 million

#### Inferences:

The impact on the Fund Balance of increasing the levy is minor, in comparison to the impact of various claims scenarios. In addition, in the recent historical context, the current level of the Fund Balance is very strong.

The attached chart shows the historical claims experience of the Fund since 1990, stated in probability format. This experience is shown in the context of a probability curve. It can be

seen that in no year has the actual claims level exceeded \$7.5 million – this is well short of the maximum allowable claim scenarios of \$21.5 million, \$22.2 million and \$22.9 million determined above. Furthermore, claims exceeded \$3.5 million only twice in the last ten years. That said, the absence of a large-scale defalcation approaching the maximum allowable claim value does not mitigate the potential for another such defalcation arising in the next year - the experience of other Canadian jurisdictions and a general increase in fraudulent activity points to the continued threat.

Probabilities of Claims Outcomes  
Lawyers' Fund for Client Compensation

(See graph in Convocation Report)

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 26<sup>th</sup> day of October, 2006.

Treasurer