

MINUTES OF SPECIAL CONVOCATION

Friday, 9th December, 2005
9:30 a.m.

PRESENT:

The Acting Treasurer (Clayton Ruby), Aaron, Alexander, Backhouse, Banack, Bobesich, Bourque, Boyd, Campion, *Carpenter-Gunn, *Caskey, Chahbar, Cherniak, Copeland, Crowe, Curtis, Dickson, Dray, Eber, *Elliott, *Feinstein, Filion, Finkelstein, Finlayson, Gold, Gotlib, Gottlieb, Harris, Krishna, Lawrence, Legge, MacKenzie, Manes, Martin, Millar, Murphy, Murray, O'Donnell, Pattillo, Pawlitza, *Porter, *Potter, Robins, *Ross, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes, Topp, Warkentin and Wright.

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*participated by telephone

Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of November 24, 2005 were amended to include the following members of the Task Force on the Rule of Law and the Independence of the Bar: David Jackson, Professor Richard Simeon and The Honourable Sydney Robins.

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IN CAMERA

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IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

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IN PUBLIC

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The Secretary read Mr. Hunter's letter of resignation to Convocation and read Convocation's decision as follows:

Convocation today rejected Mr. Hunter's letter of resignation deciding that Mr. Hunter should be accommodated for family and personal reasons.

As a consequence, section 17 of By-Law 6 will apply and the Acting Treasurer, Clayton Ruby will continue to perform the duties of the Treasurer until Mr. Hunter is able to resume his duties as Treasurer.

MOTION – APPOINTMENTS

It was moved by Mr. Silverstein, seconded by Mr. Campion that Beth Symes and Marshall Crowe be appointed Vice-Chairs of the Finance and Audit Committee.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

Re: Notice to Licensing Candidates

Mr. Simpson presented the Report to Convocation for information.

Report to Convocation
December 9, 2005

Professional Development, Competence & Admissions Committee

Committee Members
William Simpson (Chair)
Constance Backhouse (Vice-Chair)
Gavin MacKenzie (Vice-Chair)
Peter Bourque
Kim Carpenter-Gunn
James Caskey
Sy Eber
Gary Lloyd Gottlieb
Thomas Heintzman
Vern Krishna
Laura Legge
Bonnie Warkentin
Bradley Wright

Purpose of Report: Information

Policy Secretariat
(Sophia Spurdakos 416-947-5209)

COMMITTEE PROCESS

1. The Committee met on December 5, 2005. Committee members William Simpson (Chair), Peter Bourque, Kim Carpenter-Gunn, James Caskey, Sy Eber, Laura Legge, and Bonnie Warkentin participated. Staff members Diana Miles and Sophia Spurdakos also participated.

INFORMATION

1. The new licensing process for admission to the bar of Ontario begins in May 2006. Licensing candidates have already received a number of bulletins and notices outlining the nature of the process and expectations.
2. As the commencement of the new process approaches, however, the Committee is providing an additional notice to licensing candidates informing them again of the nature of the examination process.
3. The Notice is set out on the following page.

NOTICE

TO: Licensing Candidates 2006

FROM: The Law Society of Upper Canada's Professional Development, Competence and Admissions Committee

DATE: December 9, 2005

The Law Society of Upper Canada will be introducing a new licensing process in May of 2006. Two full-day examinations comprise one component of the process.

The Law Society wishes to reiterate to all licensing candidates that in early June 2006 the Law Society will provide the reference materials that contain all of the information and study supports that students need to prepare for the examinations. The licensing examinations are predicated on a self-directed study model with no formal instruction of any kind being required.

The reference materials the Law Society provides will contain all the information needed to answer every examination question. No supplementary material is required.

The examinations are multiple-choice format and are open book.

Questions will require the students to think critically and analytically about the most appropriate answer. The questions on the examinations will be clearly set out by subject matter. This will allow students to move through the subject areas methodically and efficiently.

The examinations will be marked as Pass/Fail.

Candidates are encouraged to contact the Law Society if they require further information on the licensing process, including licensing examinations.

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

Re: Students and Lawyers with Disabilities – Increasing Access to the Legal Profession

Ms. St. Lewis presented the Report to Convocation.

Report to Convocation
December 9, 2005

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

NOTE :
DEFERRED FROM NOVEMBER 24, 2005 CONVOCATION

Committee Members
Joanne St. Lewis (Chair)
Paul Copeland (Vice-Chair)
Marion Boyd
Richard Filion
Thomas Heintzman
Tracey O'Donnell
Mark Sandler
Bradley Wright

Purpose of Report: Decision & Information

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

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Equity Public Education Events Schedule – 2005 - 2006

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) met on November 10, 2005. Committee members participating were Joanne St. Lewis (Chair), Paul Copeland (Vice-Chair), Marion Boyd, Thomas Heintzman, Tracey O'Donnell and Bradley Wright. Nathalie Boutet (representative of the Association des juristes d'expression française de l'Ontario (AJEFO)), Katherine Hensel (Representative of Rotio> tatives Aboriginal Advisory Group) and Milé Komlen (Chair of the Equity Advisory Group (EAG)), also participated. Staff members in attendance were Josée Bouchard, Anne Katherine Dionne, Sudabeh Mashkuri, Marisha Roman and Rudy Ticzon.

FOR DECISION

STUDENTS AND LAWYERS WITH DISABILITIES – INCREASING
ACCESS TO THE LEGAL PROFESSION

MOTIONS

2. That Convocation approves the development of a mentoring and peer support program tailored to the needs of students-at-law and lawyers with disabilities.
3. That Convocation approves the development of on-line networking opportunities for students-at-law and lawyers with disabilities.
4. That Convocation approves an initiative to make accessible lists of contacts, resources and employment opportunities for students-at-law and lawyers with disabilities.
5. That Convocation approves the development and communication of the following initiatives:
 - a. a business case for the recruitment and promotion of students-at-law and lawyers with disabilities;
 - b. a commitment program for the recruitment and retention of students-at-law and lawyers with disabilities in the practice of law;
 - c. a self-assessment template to assist law firms in monitoring their own progress in eliminating barriers to students-at-law and lawyers with disabilities;
 - d. an education program for law firms tailored to the needs of students-at-law and lawyers with disabilities; and
 - e. the publication of model policies and guidelines tailored to the needs of students-at-law and lawyers with disabilities.
6. That Convocation approves an initiative 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.

Background

7. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* ["Bicentennial Report"].¹ The Bicentennial Report reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians and persons with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The report made sixteen recommendations that have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.
8. On July 31, 2003, Convocation established the Bicentennial Report Working Group [Bicentennial Working Group] to review and report on the implementation status of the

¹ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997).

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.

9. On January 22, 2004, the Bicentennial Working Group presented its *Bicentennial Implementation Status Report and Strategy* ["Bicentennial Strategy Report"] to Convocation for information. The Bicentennial Strategy Report detailed the programs, services and policies created by the Law Society as a result of the recommendations of the Bicentennial Report, analyzed the implementation status of each recommendation and proposed strategies to be examined and further implemented.
10. The Bicentennial Strategy Report noted "the Law Society has not undertaken any research on barriers faced by law students and lawyers with disabilities within the legal profession". The Bicentennial Working Group proposed that, in consultation with the disability community, research be carried out to enable the Law Society to develop policies to address disability issues. This proposal is consistent with Recommendation 2 of the Bicentennial Report, which reads "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."
11. In September 2004, Joanne St. Lewis, Chair of the Equity and Aboriginal Issues Committee [the Committee], created the Disability Working Group to develop strategies to:
 - a. address barriers faced by law students and members of the profession with disabilities in accessing and being successful in the legal profession;
 - b. increase the quality of legal services offered to clients with disabilities;
 - c. ensure that the Law Society takes on a leadership role in providing high quality services to lawyers and clients with disabilities and a workplace that accommodates the needs of persons with disabilities.
12. The members of the Disability Working Group are:
 - a. Thomas Heintzman (Chair of the Disability Working Group)
 - b. Joanne St. Lewis (Chair of EAIC)
 - c. Laurie Pattillo (Bencher)
 - d. Martin Anderson (Department of Justice)
 - e. Margherita Braccio (Department of Justice)
 - f. Ena Chadha (Counsel at the ARCH Disability Law Centre)
 - g. David Crocker (Davis & Company)
 - h. Phyllis Gordon (Executive Director of ARCH Disability Law Centre and member of the EAG)
 - i. Milé Komlen (Employment Equity consultant at the CIBC and member of EAG)
 - j. Stefanie Marinich (Sole Practitioner)
 - k. Chris Montague (Executive Vice-President and General Counsel, Toronto Dominion Bank)
 - l. Christy Smith-Worthylake (Student, Faculty of Law, University of Ottawa)

13. The Disability Working Group decided that its priority would be to develop strategies to assist student members and recent calls to the bar in accessing and remaining in the legal profession. In 2004, the Disability Working Group proposed that the Law Society undertake a consultation with members with disabilities to determine what programs and initiatives could be developed to address barriers faced by them.
14. The Strategic Counsel was retained 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. Participants also included some lawyers called to the Ontario Bar but not employed or not residing in Ontario. The Strategic Counsel provided a report of its findings to the Law Society, which is attached at Appendix 2 ["The Strategic Counsel Report"]. The Disability Working Group relied on The Strategic Counsel Report to draft a report entitled *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession* ["Increasing Access to the Legal Profession Report"] (attached at Appendix 1).
15. The Increasing Access to the Legal Profession Report provides an overview of findings on systemic issues faced by persons with disabilities generally and in the legal profession. The report also discusses the definitions of disability, provides an outline of studies undertaken in Canada and the United States and analyses the findings of The Strategic Counsel in the context of other research presented in the Increasing Access to the Legal Profession Report. The legal requirements in Ontario are outlined and proposals for future action are recommended.
16. The Committee considered the Increasing Access to the Legal Profession Report and brings forward for Convocation's approval the motions presented at paragraphs 2 to 6 of the Committee report. The motions are based on the findings presented in the Increasing Access to the Legal Profession Report and in The Strategic Counsel Report.

Appendix 1

November 10, 2005

Students and Lawyers with Disabilities – Increasing Access
to the Legal Profession

Report of the Disability Working Group
to the Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones

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

STUDENTS AND LAWYERS WITH DISABILITIES –
INCREASING ACCESS TO THE LEGAL PROFESSION

Equality seeks to attain an environment whose old barriers have been removed and where new barriers are prevented before they are created, in which persons with disabilities are fully included as of right, free from stereotype or other impediment, with full respect for their dignity and worth as individuals and with full, effective and timely accommodation.

M. David Lepofsky

“A Report Card on the *Charter’s* Guarantee of Equality to Persons with Disabilities after 10 Years – What Progress? What Prospects?”
(1997) 7 National Journal of Constitutional Law 263

EXECUTIVE SUMMARY

Overview

1. Lawyers with disabilities have been graduating from law schools and entering the legal profession for decades. However, studies show that law students and lawyers with disabilities still face barriers in accessing and remaining in the legal profession.
2. The mandate of the Law Society is to regulate the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law. In the fulfilment of its mandate, the Law Society promotes diversity and equity in the legal profession and works to ensure access to legal services for a diverse population.
3. To address its mandate, the Law Society conducted a study with law students and lawyers with disabilities to identify systemic issues faced by persons with disabilities generally and in the legal profession, and to determine what programs and initiatives could be developed to address these issues. The study and research findings have led to the following proposals for action.

Proposals for Action

4. In light of the legal obligations of employers to ensure full access to employment for students and lawyers with disabilities, and of the findings of The Strategic Counsel and other studies noted in this report, the Disability Working Group developed proposals in six areas: mentoring program and peer support; networking opportunities; contacts, resources and employment opportunities; education, training and recruitment guidelines; access to accommodation; and foundation for future work.
5. Mentoring Program and Peer Support: Participants in The Strategic Counsel consultation stated that mentoring programs for lawyers with disabilities, beginning in law school and continuing into post call to the bar, would be of tremendous assistance. While the Law Society already has an Equity and Diversity Mentoring Program which

offers mentoring support to law school students, students-at-law and new calls to the bar to help them advance in the profession, the program is not tailored to the needs of students and lawyers with disabilities and does not include a peer support component. The Disability Working Group proposes that the Law Society work with organizations such as ARCH Disability Law Centre, law schools and law firms to develop a mentoring and peer support program tailored to the needs of students and lawyers with disabilities. The Disability Working Group proposes a program with the following components:

- a. Work in collaboration with law firms and other organizations to develop networking opportunities and to promote participation in the mentoring and peer support program as an important contribution to the legal profession.
 - b. Provide dual types of relationships, matching mentees with mentors who are experienced members of the profession, either with or without disabilities, and with peers who have similar experiences to those of the mentee. The second type of relationship would assist the mentee in developing a professional network of peers.
 - c. Provide the necessary resources to assist mentors, peers and mentees in developing meaningful professional relationships.
 - d. Ensure that the mentoring and peer support program complements and reinforces the next two initiatives: to facilitate networking opportunities and to develop a list of contacts, resources and employment opportunities.
 - e. Evaluate the effectiveness of the program on an ongoing basis.
 - f. Implement an outreach and communication strategy to promote the program and develop resources to support the program.
6. Networking opportunities: The Strategic Counsel Report noted that initiatives to enhance networking opportunities for students and lawyers with disabilities would be of great assistance. The Disability Working Group proposes that online networking opportunities be developed to provide message boards and a list of resources for students and lawyers with disabilities.
7. List of contacts, resources and employment opportunities: The Strategic Counsel Report noted the lack of resources available to students and lawyers with disabilities in seeking employment both at the articling and practice stages. The Disability Working Group is of the view that it would be valuable to make accessible lists of contacts, resources and employment opportunities. It also proposes that this initiative be developed in collaboration with organizations with expertise in the area of employment and disability, such as governmental agencies, legal aid clinics, the Ontario Bar Association, the Canadian Bar Association and law firms. The Disability Working Group proposes that the Law Society work in collaboration with law schools to enhance placement activities that take into account the needs of students with disabilities.
8. Education, training and recruitment guidelines: The difficulties encountered by participants in The Strategic Counsel study in finding work at the articling stage and as practicing lawyers emerged throughout the consultation. The majority of participants argued that the profession, under the leadership of the Law Society, should take a stronger role in encouraging private firms to invest in persons with disabilities, and in encouraging law firms to be barrier free. The Disability Working Group proposes that the following initiatives be implemented:
- a. The development and communication of a business case for the recruitment and promotion of persons with disabilities.

- b. That the Law Society work with law firms to develop a commitment program for the recruitment and retention of students and lawyers with disabilities in the practice of law.
 - c. The development of a self-assessment template to assist law firms and legal organizations monitor their own progress in eliminating barriers to students and lawyers with disabilities.
 - d. The development of education programs for law firms.
 - e. The publication of model policies and information for the legal profession on the duty to accommodate, servicing clients with disabilities, guidelines on accommodation practices, positive recruitment practices, tips for students and lawyers with disabilities on recruitment processes and other related topics.
9. Facilitating Access to Accommodation: The Disability Working Group recognized the difficulties faced by employers, and students-at-law and lawyers with disabilities, in accessing sources of funding to assist in developing effective accommodations. The Disability Working Group noted the importance of enhancing access to sources of funding and identified this issue as a high priority to be addressed by the Law Society in the immediate future. The Disability Working Group proposes that the Law Society identify sources of funding to facilitate access to students-at-law and lawyers with disabilities in the legal profession and to assist law firms in providing accommodations for lawyers with disabilities
10. Foundation for Future Work The Disability Working Group is of the view that this report should be brought to the attention of the judiciary and those involved in the administration of justice as some of the suggestions raised in The Strategic Counsel Report relate to court services.

INTRODUCTION

11. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* ["Bicentennial Report"].¹ The Bicentennial Report reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians and persons with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The report made sixteen recommendations that have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.
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lawyers called to the Ontario Bar but not employed or not residing in Ontario. The Strategic Counsel provided a report of its findings to the Law Society, which is presented at Appendix 2 ["The Strategic Counsel Report"].

19. This report provides an overview of findings on systemic issues faced by persons with disabilities generally and in the legal profession. This report also discusses the definitions of disability, provides an outline of studies undertaken in Canada and the United States and analyses the findings of The Strategic Counsel in the context of other research presented in this report. The legal requirements in Ontario are outlined and proposals for future action are recommended.
20. The report is divided as follows:
 - a. Systemic issues faced by persons with disabilities
 - b. Defining disability
 - c. Statistical information
 - d. The Canadian legal profession
 - e. American initiatives in the legal profession
 - f. The Law Society of Upper Canada – existing initiatives
 - g. The Strategic Counsel's findings
 - h. Overview of legal requirements in Ontario
 - i. Proposals for action

SYSTEMIC ISSUES FACED BY PERSONS WITH DISABILITIES

21. Historically persons with disabilities have been seen as burdens to society. In the 19th century they were the only group exempt from the vagrancy laws, which prohibited individuals from begging, because begging was seen as one of the only ways persons with disabilities could support themselves. Persons with disabilities were called "crippled" unless they were able to support themselves without resorting to begging. As society evolved, it began to realize that it was not ethically right to leave persons with disabilities to fend for themselves. Instead, persons with disabilities were relegated to institutions, sheltered workshops and other places where they could be cared for without social disruption.²
22. It was also assumed that persons with disabilities were not capable of managing their own lives. As a result, the medical profession gradually took on the responsibility of managing disabilities. Individuals with disabilities often lost control over the management of their disability and in some cases the management of their lives.
23. The above portrayal of disability is one that views disability as inherent to the individual and not as a social issue. This formulation is based on individual pathology which views disability as a condition to be addressed by increasing the individual's own productivity. This approach characterizes disability as incapacity. It distinguishes disability and its attached costs as an anomaly and a social burden. It portrays the inclusion of people with disabilities as a private responsibility. It uses the individual as the unit of analysis for

² Brad Byrom, "Joseph E. Sullivan and the Discourse of Crippledom in Progressive America" in M. Corker & S. French eds., *Disability Discourse* (Buckingham: Open University Press, 1999.) at 158-159.

research and policy purposes. And it depicts the individual condition as the primary point of intervention.³

24. There are a number of different approaches in the social pathology perspective, but they all have common identifiable characteristics. In contrast to the individual pathology approach, the social pathology approach starts from the perspective that disability is not inherent in the individual but it is inherent in the social structure. This approach assumes that disability is not independent of the social structure and recognizes disability as a difference rather than as anomaly. It portrays the inclusion of people with disabilities as a public responsibility. And it uses the social structure as the unit of analysis for research and policy purposes, depicting the social, environmental, and economic structures as the primary point of intervention.⁴
25. David Lepofsky states that, while society has in some ways progressed beyond the narrow attitudes expressed in the formulations based on individual pathology and while people with disabilities are becoming more and more included in mainstream society, barriers to the full inclusion of persons with disabilities still exist. Some of these barriers are physical, as in the lack of a ramp to access a building, or the lack of Braille buttons on an elevator. Although physical barriers are problematic and should be eliminated, Lepofsky states that more insidious barriers are attitudinal ones, which have a long established cultural basis, and are so ingrained in societies that they almost become second nature and remain unrecognized until they are brought to the forefront and exposed for what they really are. Examples of such barriers are the assumption by many employers that people with disabilities are not able to function competently in the work force. This assumption has resulted in a reported 52% unemployment rate among people with disabilities. Lepofsky points out that if this rate of unemployment were present in the able bodied population there would be a national crisis; yet very few people are aware of the problem.⁵
26. Over the past three decades people with disabilities have increasingly striven to take control of the discourse surrounding disability and have continually influenced public policy and legal thought surrounding disability. An interesting approach to disability discourse views disability itself as a form of social oppression. This approach is known as the social construction of disability. This approach distinguishes between impairment, which is a condition that the individual has, and disability, which is imposed upon the individual by society itself as a result of a failure by society to fully integrate mechanisms for dealing with the impairment. At some level this is a cultural problem because society views impairment as a negative thing, thus creating the disability. If impairments were appropriately planned for and dealt with, there would not be the current frenzy over how

³ Marcia H. Rioux, "On Second Thought: Constructing Knowledge, Law, Disability, and Inequality", in S. Herr, L. Gostin and H. Koh, eds., *The Human Rights of Persons with Intellectual Disabilities Different But Equal*, (Oxford: Oxford University Press, 2003) at 291-294.

⁴ *Ibid*, at 294-296

⁵ See, for example, M. David Lepofsky, "Equal Access to Canada's Judicial System for Persons with Disabilities – A Time for Reform" (1995) 5 N.J.C.L. 183-214 and "A Report Card on the Charter's Guarantee of Equality to Persons with Disabilities after 10 Years: What Progress? What Prospects?" (1997) N.J.C.L. 263-431.

to alter ways of doing things to accommodate a person's differences because this would just be second nature.⁶

27. Currently society goes to great length to try to normalize the person with the impairment. When society does accommodate for the differences arising from the disability, most individuals are under the understanding that the person with the disability will alter his or her conduct to normalize him/herself as much as possible. However, if impairments were truly accommodated, persons with impairments would not have to alter their ways of doing things. Standards would be changed so that the disability does not exist. As long as accommodating impairments is not routine, the social construction of disability will remain in place.⁷
28. Although western society has made great strides in the treatment and social inclusion of persons with disabilities, there is still a considerable distance to go before full inclusion is achieved. Society should be heading towards an explicit recognition of the social construction of disability and the legal profession and the legal system can play an important role in such a discourse. This work has begun, as legislation and jurisprudence have attempted to incorporate the social construction of disability approach within the interpretation of the concept of disability and equality rights for persons with disabilities.

DEFINING DISABILITY

29. When embarking on this project, the Disability Working Group discussed the definition of disability and decided that the consultation would proceed without a fixed definition. For the purpose of this report, however, it is useful to provide an outline of definitions that have been proposed in legislation, case law and publications in Ontario. We refer here to the definitions adopted in the *Ontario Human Rights Code*⁸ [Code] and in the *Accessibility for Ontarians with Disabilities Act, 2005* [AODA, 2005]⁹, as interpreted in jurisprudence and by the Ontario Human Rights Commission. Although the definition of disability in the *Code* and in the *AODA, 2005* focus on the impairment rather than the disadvantage encountered by the individual as a result of societal barriers, recent policy development and jurisprudence have interpreted the term disability in a way that is consistent with the social construction of disability theory described above. This is in large part due to the positive influence of the disability community in the discourse surrounding disability.
30. Disability is defined in the *Code* as follows:
 - a. Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual

⁶ Marian Corker & Sally French, "Reclaiming Discourse in Disability Studies" in M. Corker & S. French eds., *Disability Discourse* (Buckingham: Open University Press, 1999) at 3-5.

⁷ John Swain and Colin Cameron, "Unless Otherwise Stated: Discourses of Labeling and Identity in Coming Out", in M. Corker & S. French eds., *Disability Discourse* (Buckingham: Open University Press, 1999) at 75.

⁸ R.S.O. 1990, c. H.19.

⁹ S.O. 2005, c. 11.

- impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device;
- b. A condition of mental impairment or a developmental disability;
 - c. A learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
 - d. A mental disorder; or
 - e. An injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.¹⁰
31. It is noteworthy that the *AODA, 2005*¹¹ adopts the *Code* definition of the term “disability”, as outlined in paragraph 30. Therefore, it is anticipated that tribunals interpreting the term “disability” under the *AODA, 2005* will use a liberal and purposive interpretation and a contextual approach that is consistent with the interpretation of that term under human rights legislation.
32. In 2000, the Law Society adopted Rule 5.04 of the *Rules of Professional Conduct [Rules]* which provides that law firms have a legal and professional duty not to discriminate on any of the prohibited grounds enumerated in the *Code*, including the ground of disability. The *Rules* are interpreted in a manner consistent with the *Code* and the definition of disability in the *Code* applies to the *Rules*. The Law Society has also adopted that definition in model policies, such as the *Guide to Adopting a Law Firm Policy Regarding Accommodation Requirements*¹² and *Preventing and Responding to Workplace Harassment and Discrimination – A Guide to Developing a Policy for Law Firms*¹³.
33. The Supreme Court of Canada has not adopted an exhaustive definition of the concept of disability, but instead proposes “a series of guidelines that will facilitate interpretation and, at the same time, allow courts to develop the notion of [disability] consistently with

¹⁰ Section 10 of the *Code*, *supra* note 8.

¹¹ *Supra* note 9. We note that at the federal level, the *Employment Equity Act*, 1995, R.S.C. c-44 defines disability differently than at the provincial level and focuses on an individual’s disadvantage in the workforce, rather than on the impairments themselves. Disability is defined as follows:

“Persons with disabilities” means person who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who:

- a) consider themselves to be disadvantaged in employment by reason of that impairment, or
- b) believe that a employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment,

and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.

¹² *Guide to Adopting a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, May 2005).

¹³ *Preventing and Responding to Workplace Harassment and Discrimination – A Guide to Developing a Policy for Law Firms* (Toronto: Law Society of Upper Canada, 2002).

various biomedical, social or technological facts [...]”.¹⁴ It stated “a multi-dimensional approach that includes a socio-political dimension is particularly appropriate. By placing the emphasis on human dignity, respect, and the right to equality rather than a simple biomedical condition, this approach recognizes that the attitudes of society and its members often contribute to the idea or perception of a [disability]”. A disability does not necessarily flow from a particular condition, but from how society does or does not accommodate that condition, or how society perceives that condition.

34. The Ontario Human Rights Commission notes that “integration requires up front barrier-free design and inclusion-by-design in order to fully integrate persons with disabilities into all aspects of society as much as possible. This approach combats “social handicapping” and recognizes that social attitudes and actions often contribute to “handicaps”: a person may have few or even no limitations other than those created by non-inclusive thinking. The Supreme Court has noted the need to “fine-tune” society so that structures and assumptions do not exclude persons with disabilities from participation in society and it has more recently affirmed that standards should be designed to reflect all members of society, insofar as this is reasonably possible.”¹⁵
35. The definition of disability in the *Code* includes non-evident disabilities and mental disability. The Human Rights Commission discusses the particular issues raised by such disabilities:
 - a. Regardless of whether a disability is evident or non-evident, a great deal of discrimination faced by persons with disabilities is underpinned by social constructs of “normality” which in turn tend to reinforce obstacles to integration rather than encourage ways to ensure full participation. Because these disabilities are not “seen”, many of them are not well understood in society. This can lead to stereotypes, stigma and prejudice [...]
 - b. Persons with mental disabilities face a high degree of stigmatization and significant barriers to employment opportunities. Stigmatization can foster a climate that exacerbates stress, and may trigger or worsen the person’s condition. It may also mean that someone who has a problem and needs help may not seek it, for fear of being labelled.¹⁶
36. Case law has found that the term disability includes alcoholism, cancer, AIDS, hypertension, back pains, diabetes, injuries, allergies and asthma, depression and anxiety, cerebral palsy, malformation of fingers and developmental disability. The term “disability” is interpreted:
 - a. to recognize that discriminatory acts may be based as much on perceptions, myths and stereotypes as on the existence of actual functional limitations;
 - b. to protect persons who have a disability, persons who had a disability but no longer suffer from it, persons believed to have a disability whether they do or

¹⁴ In the case of *Quebec v. Boisbriand*, [2000] S.C.C. 27 the court is interpreting the term “handicap” in the Quebec *Charter of Human Rights and Freedoms*. In English the term “handicap” is obsolete. Therefore, this report uses the terms “disability” or “disabilities”.

¹⁵ *Policy and Guidelines on Disability and the Duty to Accommodate* (Toronto: Ontario Human Rights Commission, 2000) at 15.

¹⁶ *Policy and Guidelines on Disability and the Duty to Accommodate*, *ibid.* at 10.

- don't, and persons believed to have had a disability, whether they did or didn't may require accommodation;
- c. to include mental illness, developmental disabilities and learning disabilities;
 - d. to include minor illnesses or infirmities if a person can show that she was treated unfairly because of the perception of a disability;
 - e. to mean a physical disability, infirmity, malformation or disfigurement under the *Code* that is brought on by one of the named causes enumerated in the *Code*;
 - f. to include a person who starts his or her employment career with a disability, or who becomes disabled at any time during that career. The need for accommodation of disability can arise at any time, for anyone in the firm; and
 - g. to be an equality-based term that takes into account evolving biomedical, social and technological developments. Individuals should focus on the effect of the distinction experienced by the person with disabilities, rather than solely on the medical diagnosis of functional limitations.

STATISTICAL INFORMATION

37. This section provides an overview of statistical information available on law students and lawyers with disabilities in Ontario and in Canada. Statistics Canada publishes information about disability in Canada¹⁷, including statistical information about the workforce and income. However, there are few studies that provide statistical information about law students and lawyers with disabilities in Ontario.
38. In 2001, the Government of Canada sponsored a major national survey of persons with disabilities-the Participation and Activity Limitation Survey ["PALS"]. PALS gathered information on children (aged 14 and under) and adults (aged 15 and over) in Canada who have a disability, defined for the purpose of that study as an activity limitation or a participation restriction associated with a physical or mental condition or a health problem.¹⁸
39. While the overall percentage of persons with disabilities in Canada is 12.4%, a figure that includes everyone from age 0 and up, rates of disability vary across age groups.¹⁹ Overall, seniors have the highest rate of disability in Canada - a rate four times higher than that of the working age population and more than ten times higher than that of children (41% vs. 10% and 3%, respectively). Disability rates vary among the provinces, yet in every province the pattern of highest rates among seniors and lowest rates among children holds.
40. Some relevant statistics are the employment rate of persons with disabilities and household income. Fifty-one percent of persons with disabilities in Canada are employed, versus eighty-two percent of those without disabilities. The household income is \$52,835 for persons with disabilities, versus \$72,951 for those without disabilities.

¹⁷ See *Disability in Canada, A 2001 Profile* (Ottawa: Human Resources Development Canada, 2003)

¹⁸ *Ibid.*

¹⁹ *Ibid.* The Participation and Activity Limitation Survey (PALS) considers people to have a disability if they have a physical or mental condition or a health problem that restricts their ability to perform activities that are normal for their age in Canadian society. This approach is based on the one suggested by the World Health Organization.

41. Reach Canada also provides some statistical information in *A Framework for Action, Law Schools, Education Equity and Students with Disabilities: Working Toward Equitable Access to Legal Education*²⁰ ["Framework for Action"]. Labour force participation statistics show persons with disabilities (age 15 to 64) face unusually higher rates of unemployment compared to their able-bodied counterparts. However, the labour force participation rate has increased in five years, from 48.5% to 56.3%. This increase is partly explained by the increase, over the years, of the level of education of persons with disabilities.
42. Statistical information based on data from 21 Ontario universities shows that the number of students identifying themselves to special needs offices and requesting accommodations increased from 3,999 in 1991-1992 to 6,137 in 1993-1994.²¹
43. The Law Society of Upper Canada publishes some information about students enrolled in the Bar Admission Course (BAC). Students in the course are asked to voluntarily self-identify whether they are members of an equality-seeking community, including the disability community. The *Placement Report 2003/2004 of Students Enrolled in the 46th BAC 2003*²² indicates that 1.2 % of the 46th BAC class voluntarily identified as students with disabilities.
44. The *Placement Report* also indicates the following statistics for students of the 46th BAC and their articling status from May 2003 to June 2004:

46 th BAC Student Group	May '03	Jul. '03	Sept. '03	Nov. '03	Feb. '04	June '04
Total Students	1271	1257	1255	1258	1252	1219
Unplaced Students	332	299	279	153	78	57
Students with disabilities	16	16	16	16	16	16
Unplaced students with disabilities	7	5	5	3	3	2

²⁰ *A Framework for Action, Law Schools, Education Equity and Students with Disabilities: Working Towards Equitable Access to Legal Education* (Ottawa: Reach Canada, 2001)

²¹ *Ibid.* at 9. The students self-identified as follows: 5% as having a learning disability; 16.3% as having a mobility impairment; 13.2% as having temporary, chronic, head injuries and other disabilities; 8.7% as having a medical condition; 4.9% as being blind or visually impaired; 4.8% as having a psychiatric condition, 4.3% as being deaf or having a hearing impairment; and 2.8% as having multiple impairments.

²² (Toronto: Law Society of Upper Canada, July 2004) ["Placement Report"].

45. As mentioned above, although students enrolled in the BAC are asked to voluntarily self-identify, once called to the bar, members are not asked to voluntarily self-identify. Therefore, the Law Society does not have information about the number of members with disabilities, their employment rate and their type of work and area of practice.

CANADIAN STUDIES AND RESEARCH OF THE LEGAL PROFESSION

46. The following studies provide information about barriers faced by students and members with disabilities in the legal profession. Those studies informed the work of the Disability Working Group in the development of proposals for action. We note that Canadian literature has, to date, concentrated on disability issues faced by students at law school and there is only limited research on the legal profession.
47. David Lepofsky²³ has written extensively on the issue of disability and law, including accommodation of students in the law school setting and inclusion of disability issues into the law school curriculum. In his article “Disabled Persons in Canadian Law Schools”, he makes recommendations that deal with the accommodation of law students with disabilities and with methods that could be used to include disability issues into a standard law school curriculum.
48. Lepofsky notes that accommodation of persons with disabilities is an individualized process and should not be considered from a generic perspective. Accommodation should be designed with the individual's needs in mind taking into account his/her abilities and disabilities.
49. Lepofsky's opinion concerning the accommodation of law students is that while the student should be expected to play a role in finding and identifying adequate accommodations, many students may not have the tools to do so because they are either newly disabled or may be unaware of the challenges involved in law school. The law schools should be proactive in suggesting useful accommodation and actively searching out solutions. Institutions should be aware of the fact that most accommodations are relatively inexpensive and that the majority of barriers faced by students with disabilities are attitudinal rather than physical.
50. Lepofsky recommends that all law schools institute accommodation policies, appoint access officers to deal with disability issues, ensure that student events are accessible, and develop admission requirements that accommodate applicants' disabilities. He also recommends the establishment of mentoring programs with dual types of relationships. Under such program, students with disabilities would be matched with a faculty member and a peer student. The object of the dual mentor and peer support program is to ensure that students have the support and assistance of an experienced member of the profession, such as faculty, and have an opportunity to expand their networking relationships through a peer relationship. Faculty members could also assist students with disabilities to develop support networks with lawyers with and without disabilities.
51. Recommendations are also made concerning access to non-academic activities, such as volunteer mooting or working at the university legal clinic. These experiences provide students with disabilities with valuable practical skills that could help them in future practice settings.

²³ (1991) 36 McGill L.J. at 636-656.

52. Lepofsky recommends that law schools commit to giving their students training around disability issues so that they can, upon graduation, provide better legal services to the disability community. The education could focus on substantive law, professional responsibility issues related to providing services to the disability community, legal attitudes towards persons with disabilities and education on the physical and attitudinal barriers which impede access to justice for the disability community.
53. Reach Canada has published a number of studies on barriers faced by students with disabilities in legal education and how to increase access for those students.²⁴
54. The first of these studies, Framework for Action²⁵, aimed to underline obligations of universities and law schools in relation to students with disabilities and identify accommodation issues. The study presents policy options for law schools and develops recommendations for the implementation of policies and practices. Although the study does not specifically address the situation of students with disabilities in the licensing and articling stages of their careers, the study does provide insight on how to address barriers faced by students with disabilities. The report notes that not all students with apparently the same disability have the same needs, some students have multiple disabilities and some students have non-visible disabilities. The types of disabilities that can have an impact on a student's educational experience are exceptionally diverse, ranging from deafness or hearing impairment, blindness or vision impairment or a learning disability, brain injuries, mobility disabilities, functional and fine motor disabilities, chronic health conditions, mental health disorders and temporary disabilities.
55. Framework for Action notes a number of key points, including the following points:
- a. The number of students with disabilities enrolled in post-secondary education is increasing, and students with learning disabilities are one of the fastest growing segments of the law school population.
 - b. Students with disabilities are a heterogeneous group.
 - c. Much disability based discrimination and disadvantage stems from society's treatment of people with disabilities and not from actual disabilities. The removal of architectural and systemic barriers is one of the most effective methods of creating a more inclusive society.
56. Based on interviews with representatives from Canadian law schools and a review of legal and other literature, Framework for Action suggests a number of strategies that could be adopted by law schools to increase access of students with disabilities.²⁶ Those strategies range from outreach and recruitment policies, admissions procedures that recognize disability status as a positive aspect of student diversity, respectful questions concerning self-identification and providing opportunities for students to self-identify, respectful procedures for requesting accommodations, accessible premises, accessible course materials, academic supports and auxiliary aids, full participation in

²⁴ For example: *Navigating Law School and Beyond: A Practical Guide for Students Who Have Disabilities* (Ottawa: Reach Canada, June 2000); Framework for Action, *supra* note 20; *Promoting Disability Accommodation in Legal Education and Training* (Ottawa: Reach Canada, March 2003).

²⁵ *Ibid.*

²⁶ Framework for Action, *ibid.* at 57.

extra-curricular activities, and assisting students to locate suitable placements following law school.

57. Further to Framework for Action, Reach Canada published *Navigating Law School and Beyond: A Practical Guide for Students Who Have Disabilities*²⁷. The guidebook is intended for use by students with disabilities and provides information about the extent and effectiveness of accommodation policies and practices available in law schools and bar admission courses across the country. The guidebook notes some challenges faced by candidates with disabilities enrolled in the licensing process:
- a. Students may face pressures in the licensing process because of the competition to obtain articles.
 - b. Some students are reluctant to disclose their disabilities or to request accommodations because they worry that it will prejudice their career opportunities.
 - c. Funding is a major concern to students finishing law school.
 - d. Generally, students have not felt attitudinal barriers from administrators of the licensing programs, lecturers or fellow students and they felt they were fully integrated. A few students noted a lack of understanding that hampered students with disabilities.
58. Reach Canada released a third study, *Promoting Disability Accommodation in Legal Education and Training*²⁸, which assesses the extent and effectiveness of equity-based approaches in legal education, especially accommodation policies and practices. The guidebook notes the importance of accommodating students in the licensing process, of communicating information about equity initiatives, the usefulness of the Discrimination and Harassment Counsel Program and the importance of mentoring and tutoring initiatives. The guidebook also notes that one of the greatest barriers to equality is the presence of stereotypical public images and attitudes towards persons with disabilities. Professional people often underestimate the abilities of colleagues and students with disabilities, overestimate the costs of disability accommodation and frequently ignore the desire and need of individuals to participate fully in the workforce.²⁹
59. The most relevant study published by Reach Canada about the legal profession is *Advancing Professional Opportunities and Employment Accommodation*³⁰, a guidebook that focuses on employment search strategies for law students, graduates of law schools, articling students and lawyers with disabilities. The guidebook examines:
- a. Whether a person with a disability should disclose the disability to a prospective employer;
 - b. the types of accommodations that should be or are available for law-related employment; and
 - c. the kinds of supports and incentives that do or should enable law graduates and their employers to ensure appropriate accommodations.

²⁷ *Supra*, note 24.

²⁸ *Supra* note 24.

²⁹ *Ibid.* at 47.

³⁰ *Advancing Professional Opportunities and Employment Accommodation* (Ottawa: Reach Canada, 2001)

60. The guidebook looks at policies, programs and practices surrounding legal studies and employment of individuals with disabilities, particularly in British Columbia, Ontario and Nova Scotia and looks at incentive and assistance programs that promote employment accommodations through the public sector.
61. This is a practical text that offers advisory tips from law students, lawyers and other law graduates. Professional colleagues with disabilities provide advice on how to seek and ensure accommodated employment. The authors divide the advice into categories that include personal survival tips, getting the right accommodations, being professional, getting hired and thinking ahead about articling and career.
62. The document provides an outline of the job search process and discusses various options for students who are about to article. The following information is provided:
 - a. Private firm option for members with disabilities: The guidebook remarks that there remains an apparent under-representation of persons with disabilities in this sector of the profession. It also notes that there is a lack of detailed information about accommodation best practices. Several small to mid-sized firms indicated that they do not have accommodation policies and a number of participants in the study indicated that they do not know whether their law partnership has a policy concerning disabilities. There is a need for greater awareness among the legal profession regarding accommodation policies and practices. There is also a perception by law school graduates with disabilities that firms hold preconceived assumptions concerning them. As a result, a majority of respondents to the study avoided applying to private firms.
 - b. Comparing private law firms as potential employers: The guidebook covers some benefits and drawbacks of large, mid-size and small law firms, sole practice and in-house counsel positions. The information provided in this section does not discuss how the different types of employers address disability. However, it is suggested that lawyers with disabilities are frequently pushed into sole practice because of discrimination.
 - c. Government and Superior Court employment: The guidebook notes that those organizations purport to apply fair and equitable recruiting policies. The guidebook discusses the benefits of flex-time and part-time opportunities in governance and Superior Court employment.
 - d. Federal Department of Justice: The guidebook notes that the federal Department of Justice is an equal opportunity employer that has adopted workplace policies such as employment equity, flexible work hours and telework.
63. The guidebook discusses the issue of disclosure of disabilities. Whether or when to disclose a disability during the application or interview process apparently varies with the personality of the individual, the perceived culture of the employer, the degree of one's impairment or disability, and how apparent the disability is to others. There was consensus that disclosure was essential to obtain accommodation. The guidebook advises that career placement officers at the law schools or law societies may be good confidential resources for evaluating prospective law firm cultures and assisting students and recent calls in making informed decisions.
64. Participants in the study identified the lack of knowledge possessed by employers or job applicants regarding possibilities for accommodation as a serious barrier to access to

the profession.³¹ Resource tools are provided for firms, public agencies and others who hire law students and lawyers with disabilities.³²

65. In 2000, the Law Society of British Columbia undertook a project to identify and discuss barriers to persons with disabilities entering and practicing in the legal profession. A secondary purpose was to identify barriers to legal services for persons with disabilities that might form the basis for further research. Results of the project are published in *Lawyers with Disabilities: Identifying Barriers to Equality* ["Identifying Barriers"].³³
66. Twenty-four lawyers and law students with disabilities took part in the project. Ten people participated in focus groups, 12 completed written questionnaires and 2 participated in telephone interviews. The 24 participants included 16 men and 8 women ranging in age from 26 to 65. Seventeen respondents were practicing law, including six sole practitioners, five in small firms, one in a medium-size firm and four in large firms or government. Areas of practice included Aboriginal law, administrative law, advocacy, business law, civil litigation, corporate, criminal, estates, family law, general practice for the Deaf, human rights, labour, medical malpractice, personal injury, poverty, research and wills. Three participants were no longer practicing law, one participant was articling, two were law students and one a former law student. All lawyers who were no longer practicing and the former law student stated that disability was the reason for abandoning a career in the law.
67. The study discusses barriers at law school and in legal practice. The results are ranked as follows:

Comments	Percent of Comments	Ranking
Barriers	55.6 %	
<i>Discrimination</i>	58.0 %	
Lack of accommodation and support	32.2 %	1

³¹ The guidebook recommends the website of the Job Accommodation Network ["JAN"] as an excellent source of examples of accommodations required for different disabilities. The guidebook discusses employment-related interviews and is a very good tool to empower students with disabilities. It presents useful and practical information for members with disabilities regarding the interview process and provides valuable tips for members with disabilities and addresses the topic of discussing disability and accommodation issues during interviews. The guidebook provides tips about the interview process based on the type of legal organization, such as the private sector versus the public sector. It also discusses differences based on regional location.

³² The chapter discusses incentives, financial supports and tax incentive programs to assist employers with salaries or accommodation costs. It also provides an outline of funds available to assist persons with disabilities.

³³ *Lawyers with Disabilities: Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001)

Difficulty finding employment	19.7 %	2
Accommodations are considered to be too expensive	11.9 %	3
Disclosure of disability leads to discrimination	14.7 %	4
Lawyers with disabilities are marginalized into sole practice	10.6 %	5
The discrimination is similar to treatment of other disadvantaged groups	7.5 %	6
There are instances of harassment	3.4 %	7
<i>Prejudice</i>	23.2 %	
Prejudice from lawyers	49.2 %	1
Prejudice from judges	18.8 %	2
Lack of awareness about disability issues	15.6 %	3
Conservatism in the legal profession	16.4 %	4
<i>Access barriers</i>	18.8 %	
Structural barriers	80.8 %	1
Social barriers	19.2 %	2
<i>Resources</i>	23.0 %	
Mentors and allies	32.5 %	1
Positive career experiences	21.9 %	2
Accommodations to improve access	18.0 %	3
Self-initiative	27.6 %	4
<i>Suggestions for addressing barriers in legal practice</i>	21.4 %	
Advocate for more equitable career opportunities	32.8 %	1
Advocate for accommodations	20.2 %	2
Educate for change	27.7 %	3
Confront barriers	5.2 %	4
Provide peer support and mentoring	14.1 %	5

68. The study makes the following suggestions to address barriers in legal practice:

- a. The legal profession should take responsibility for acknowledging existing discrimination and for seeking solutions such as policy changes, funding initiatives and political will.

- b. Members of the legal profession should be educated through the Internet, positive image advertising, workshops, articles in the benchers' bulletins and other educational projects.
 - c. Improvements should be made to provide access and individual accommodations in courthouses, the Law Society premises and other legal institutions.
 - d. Peer support and mentoring could be made available.
 - e. Prejudice and negative attitudes should be confronted through monitoring, complaints and legal action.
69. In 2004, the Law Society of British Columbia published the second part of the study undertaken in 2000. The first part, *Identifying Barriers*, identified obstacles facing lawyers with disabilities. The second part, *Lawyers with Disabilities: Overcoming Barriers to Equality* ["Overcoming Barriers"]³⁴, was about solutions.
70. Benchers, judges, senior practitioners, law professors and government counsel were asked for practical input on how to remove some of the barriers to equality faced by lawyers with disabilities. The report makes the following recommendations:
- a. A clear definition should be developed of the term disability for use in Law Society programs.
 - b. An ongoing Law Society Access and Advisory Committee for Lawyers with Disabilities should be established.
 - c. A business case should be developed to endorse and support a greater inclusion of lawyers with disabilities at all levels of the legal profession.
 - d. Draft equity and diversity workplace policies respecting lawyers with disabilities should be provided to legal employers.
 - e. A reserve fund and other sources of funding should be created to assist law firms in providing accommodations for lawyers with disabilities.
 - f. A mentoring program should be established for lawyers with disabilities.
 - g. An online community-meeting place should be available for lawyers with disabilities where information about resources, approaches, issues and other matters can be raised and discussed.
 - h. An equity and diversity education program should be in place, including diversity training for the judiciary and the legal profession.
 - i. Lobbying should be undertaken to increase structural accommodation in BC courthouses, the Law Society building and other legal institutions.
 - j. A program should be in place to have law firms commit to a series of tangible objectives regarding recruitment, hiring, retention, advancement and compensation for lawyers with disabilities.
71. The results of research undertaken by Reach Canada and the Law Society of British Columbia informed the work of the Law Society of Upper Canada's Disability Working Group.

³⁴ *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004).

AMERICAN INITIATIVES IN THE LEGAL PROFESSION

72. The Disability Working Group also considered initiatives implemented in the United States to increase access to students and lawyers with disabilities. Some state bars have adopted initiatives in response to the *Americans with Disabilities Act of 1990*³⁵ [ADA], a federal law that prohibits discrimination against persons with disabilities in the areas of employment, public services, public accommodation, transportation and telecommunication.³⁶
73. In 1998 the California State Bar instituted a Pledge Program to increase the participation of lawyers with disabilities in the profession. Through the Pledge Program a senior member of a firm or other segment of the legal community agrees on behalf of his or her organization to conform to the principles of the ADA and endeavour to increase the participation of legal professionals with disabilities in their organization. The program is voluntary but incentives are provided through recognition by the state bar and positive publicity for their organization as the names of organizations that participate are released to the media.
74. The California State Bar also completed a survey of lawyers with disabilities in 2003 similar to the one being completed by The Strategic Counsel for the Law Society of Upper Canada. The findings there are similar to the findings in The Strategic Counsel Report with the exception that the majority of California lawyers who responded are in private practice. California lawyers reported a similar degree of employment dissatisfaction and other barriers to employment. They also reported a wage disparity between lawyers with disabilities and lawyers without disabilities. Lawyers with disabilities make approximately \$3000 less annually than their able-bodied counterparts.
75. The 2003 report recommended that the state bar endeavour to recruit more members into the Pledge Program. Other recommendations included the delivery of education programs for law firms, legal professionals and the judiciary, assistance to lawyers with disabilities in finding part-time employment, increased outreach and partnering with law schools to recruit more persons with disabilities to become lawyers.
76. The Texas State Bar has also been active in this area since 1995, when it formed the Committee on Disability Issues. The committee's role was to study the concerns of

³⁵ 42 U.S.C.S. 12101 (1990).

³⁶ The ADA defines disability as: a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment. Of particular interest to this report are the ADA provisions on employment, covered under Title I of the ADA, which apply to organizations that employ 15 people or more in both the public and private sectors. Title 1 provides that accommodations must be given short of undue hardship, which is defined as an action requiring significant difficulty or expense. Reasonable accommodation is defined as including making existing facilities readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment of examinations or training materials or policies, provision of qualified readers or interpreters or other similar accommodation. Employees covered under Title 1 must be qualified for the position applied for and able to perform the essential functions of the job with or without reasonable accommodations.

lawyers with disabilities in Texas and to make recommendations to the State Bar Board of Directors regarding ways in which the role of lawyers with disabilities can be enhanced by improvement in programs and initiatives sponsored by the State Bar.³⁷ Texas has a Pledge Program similar to the California program and is considering producing a video that would tell firms about the benefits of hiring persons with disabilities. Further, the Bar has a lawyers' assistance program to assist Texas lawyers in dealing with issues surrounding disability that may negatively affect their practice.

77. In 1994, the State Bar of Texas conducted a survey of members interested in disability issues. In the dues statement of that year, an insert was included announcing that the State Bar wanted to survey its members with disabilities and those interested in disability issues. About 500 members returned the insert stating their intention to participate. When the survey was completed, it was sent to those who had responded affirmatively. The purpose of the survey was to better serve State Bar members with disabilities, to enhance the opportunities for participation in bar activities by members with disabilities and to assist the committee in setting its priorities. In addition to the survey, an optional Interest Questionnaire was included to involve more attorneys with disabilities in bar activities.
78. One hundred and forty surveys and 86 interest questionnaires were returned. The survey asked whether the respondent had a disability and what type. Sixty two point four percent of respondents indicated that they had a mobility disability, 15.1% had a hearing disability, 1.1.% had a learning disability, 7.5% had a speech disability, 11.8% had a mental disability, 18.3% had a visual disability and 21.5% indicated that they had another type of disability.
79. Respondents were asked to prioritize the issues that the State Bar should address. The survey results indicated a relatively positive attitude about law school admission procedures, the Law School Admission Test ["LSAT"] examination process and the bar examination process. Only 8.1 percent of respondents indicated concerns in this area.
80. Respondents to the survey raised recruitment and hiring discrimination as the highest area of concern. Close to half (43.9%) of the respondents expressed concern about this issue (46.9 % of respondents with disabilities; 36.1% of those without). It was noted that employers would benefit from substantial sensitization and education about a number of issues, such as:
 - a. the applicable laws;
 - b. impermissible questions in the hiring process; and
 - c. myths, stereotypes and assumptions about attorneys with disabilities. This was recognized by the state Bar Committee as an area where it may play a role in facilitating educational programming and improving awareness.
81. Another noted area for improvement was access to CLE programming.
82. The following table indicates employment difficulties faced by respondents with disabilities.

³⁷ Rothstein, Laura, "Disabilities and the Legal Profession in Texas" (1997) Texas Bar Journal 690.

Denied employment	41.8%
Adverse action	29.1%
Limited opportunities	52.7%
Physical barriers	27.3%
Communications barriers	21.8%
Other barriers	23.6%
Other	18.2%

83. Types of accommodations needed by lawyers included:

Architectural accommodations	61.2%
Job modifications	51.8%
Assistive devices	34.1%
Transportation assistance	34.1%
Environmental accommodations	28.2%
Personal assistance	24.7%

84. The following venues were found to be inaccessible by respondents:

Law offices	60.4%
State courts	56.3%
Business and corporate headquarters	39.6%
Federal courts	31.3%
Municipal courts	31.3%
State and federal agencies	29.2%
Law schools	27.1%
Jails and prisons	20.8%

85. The American Bar Association ["ABA"] is the largest voluntary professional association in the world, with more than 400,000 members. It provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public. It is the national representative of the legal profession in the United States of America and it serves the public and the profession by promoting justice, professional excellence and

respect for the law. The ABA sets a series of goals for its organization and for the legal profession as a whole. Goal IX is to increase the number of women and minorities who actively participate in the legal profession. In 2000, people with disabilities were added to Goal IX's mandate. The ABA and its sections are seeking to fulfill Goal IX with respect to people with disabilities in a number of ways: by actively recruiting people with disabilities to take a leadership role in the organization, by encouraging members with and without disabilities to become active in disability organizations and by increasing awareness of disability issues through the publication of reports on the subject. Some ABA sections offer funding for persons with disabilities to attend ABA activities. The ABA also has a mentoring program through which individuals with disabilities become involved in the work of ABA committees with the assistance of a committee mentor. The ABA also sponsors The Paul G. Hearne Award For Disability Rights, which recognizes excellence in disability related areas such as human rights and access to justice.

86. The ABA's Subcommittee on Lawyers with Disabilities is currently seeking funding for the establishment of a scholarship program for law students with disabilities. The scholarship program will encourage students with disabilities to attend law school, and provide financial assistance for them to do so. The program will be open to students with physical, sensory, mental and learning disabilities. The Subcommittee also sponsors a mentoring program where law students with disabilities are matched with practicing lawyers with similar disabilities to give the students an opportunity to develop contacts and networks.
87. In part because of the *ADA*, there is a wealth of information in the United States on potential accommodations for employees with disabilities. For example, the job accommodation network provides information on various disabilities, accommodations, as well as advice from consultants on how to design effective accommodations.³⁸

THE LAW SOCIETY OF UPPER CANADA – EXISTING INITIATIVES

88. The Law Society of Upper Canada already has initiatives in place that provide assistance to students and members, including students and members with disabilities. Those were taken into account when developing the proposed strategy to improve access to the legal profession for persons with disabilities.
89. The Law Society has an accommodation policy for students in the licensing process. Students may request accommodations during the licensing process, including accommodations when writing exams. Students also have options and flexibility in completing all the necessary requirements of articling. For example, students may apply to complete a non-traditional articling placement (includes joint, part-time, national and international articling experiences) or may request articling abridgments (a reduction of the traditional articling term) based on compassionate or non-compassionate grounds.
90. Placement initiatives provide assistance to students-at-law by offering job search skills workshops and counselling services. Although these programs are not specifically designed for students with disabilities, they are available to all students registered in the licensing process. The job search skills workshops include topics such as how to conduct electronic job searches, winning interviews, creating impressive resumes, writing compelling covering letters, building useful contact lists and finding opportunities.

³⁸ The website for USA based JAN is <http://janweb.icdi.edu/english>.

91. The Law Society has a mentoring program for students and members from equality-seeking, Aboriginal and Francophone communities. The program matches students and recent calls with mentors and offers a range of supports, from academic and career advice to job shadowing opportunities. The Mentoring Program is provided free of charge and is available to students and members with disabilities.
92. The Law Society has adopted its *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*³⁹, updated in May 2005, to assist law firms when accommodating students and lawyers with disabilities. It also published a companion piece to the guide, the document *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities*, which includes a summary of best practices and a comprehensive legal analysis of the duty to accommodate.⁴⁰
93. The Law Society strives to ensure that its facilities are accessible to those with disabilities and regularly performs accessibility assessments of its buildings. At the end of 2004, the Law Society launched 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 improve accessibility for those with disabilities. For example, once completed, all areas of the Law Society will be accessible by elevator. As well, the Law Society will add a barrier-free men's washroom on the 1st floor, which currently only offers a women's washroom.
94. 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.

³⁹ *Supra* note 12, available online in French and English at www.lsuc.on.ca.

⁴⁰ *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities* (Toronto: Law Society of Upper Canada, updated in 2005). Available online at www.lsuc.on.ca.

95. Over the last few years, the Law Society has devoted significant efforts to making its website more accessible by implementing a new Content Management Solution ["CMS"]. The Law Society has also developed new functionalities to significantly enhance the site's accessibility. They are:
- a. The text zoom function that will allow users to choose different font sizes on the website. This function is very useful for users with vision impairments.
 - b. Under the CMS, the Law Society will provide a separate text website. This service will be accessible for users with disabilities or users who rely on screen reader or text browser to access information published on the website.
 - c. The CMS will enable the Law Society to develop a site map, making the website more accessible. The site map provides an easy way to access web pages⁴¹ and to easily identify topics on the site.
96. Once the new CMS is launched in 2005, the text only website will have achieved 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.
97. Finally, the Law Society has created a standing committee of Convocation and an advisory group to promote equity and diversity within the legal profession, including increasing access to the legal profession for students and lawyers with disabilities. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones is mandated to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to members of the equality-seeking, Aboriginal and Francophone communities.
98. The Law Society also established the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG), a group of 15 to 19 members from across Ontario, with direct experience or commitment to equity and diversity. Members of EAG have experience in areas of employment equity, access to the legal system, human rights, anti racism, anti oppression and social justice issues. The mandate of EAG is to assist the Equity and Aboriginal Issues Committee in the development of policy options for the promotion of equity and diversity in the legal profession, including persons with disabilities.

THE STRATEGIC COUNSEL'S FINDINGS

Methodology

99. In light of the fact that there is only limited information about Ontario members of the legal profession with disabilities, the Law Society retained The Strategic Counsel to undertake a consultation with students and members with disabilities. The primary objective of the consultation was to investigate the nature and extent of support that could be offered, by the Law Society and the profession, to assist members and future members with disabilities to pursue meaningful and productive careers in the practice of law. The study was intended to move beyond an enumeration of barriers faced by members with disabilities to an investigation of the ways in which the barriers might be

⁴¹ Not including PDF pages.

reduced or eliminated. However, the study also explored the nature and extent of the participants' disabilities and the barriers and challenges they have faced.

100. The consultants decided that 30 one-on-one interviews with students and members with disabilities would provide a wealth of information to guide the Disability Working Group in developing proposed strategies. One-on-one interviews also allow for great flexibility and detailed probing in the course of interviews and allow participants to relate their experiences and make observations in an entirely private context.
101. The Law Society invited participants by posting a bilingual (French and English) call for participants in the August 27, 2004 and September 17, 2004 issues of the Ontario Reports. The call for participants was also posted on the Law Society's website and sent by email to members of the profession. The deadline for indicating an interest to participate was September 30, 2004.
102. A letter of invitation to participate was sent to organizations such as:
 - a. ARCH Disability Law Centre ;
 - b. The Canadian Council of the Blind;
 - c. Canadian Hard of Hearing;
 - d. The Canadian National Institute for the Blind;
 - e. Canadian Paraplegic Association;
 - f. Counseling and Development, Psychiatric Disabilities Program;
 - g. DisAbled Women's Network Ontario;
 - h. The Learning Disabilities Association of Canada;
 - i. Multiple Sclerosis Society of Canada;
 - j. Ontario Association of the Deaf;
 - k. Ontario Bar Assistance Program;
 - l. Queen's University, Faculty of Law, Career Services;
 - m. RBC Institute for Disability Studies Research and Education;
 - n. REACH Canada;
 - o. University of Ottawa, Faculty of Law, Student Services;
 - p. University of Toronto, Faculty of Law, Career Services;
 - q. Western University, Faculty of Law, Career Services;
 - r. University of Windsor, Faculty of Law, Career Services;
 - s. Women's Legal Education and Action Fund; and
 - t. York University, Faculty of Law, Career Services.
103. Based on discussions with the Disability Working Group, The Strategic Counsel developed a screening questionnaire to determine eligibility of participants. The call for participants resulted in expressions of interest from 72 individuals. There were two guiding objectives in selecting the 30 individuals to be interviewed for the project. The first was to have the final sample reflect the range of individuals who responded. The second was to have the final sample reflect as wide a range of legal experience as possible. This included career stage, type and location of practice and type of disability. Once the initial screening was done, The Strategic Counsel selected 30 individuals to participate.
104. The Strategic Counsel provided the following sample profile of interviewees:

- a. All participants had a substantial connection with the province of Ontario and all lawyer participants had been called to the Ontario bar.
- b. Participants included students at Ontario law schools, articling students, practicing lawyers and lawyer who had left the profession or were unable to secure employment as a lawyers and had pursued a career elsewhere. Participants represented a broad range of ages.
- c. Participants included persons with mobility impairments, persons with visual impairments, persons with hearing impairments, and persons with depression, anxiety and other mental health impairments. Most characterized their disability as permanent.
- d. The sample was fairly evenly divided by gender.
- e. Although the consultation aimed at considering the intersection of participants' membership in more than one equality-seeking community, such as disability and race, ethnicity or cultural background, religion or creed, language, sexual orientation, gender or gender identity, the vast majority of the interviewees indicated that they did not consider themselves members of other equality-seeking communities than disability.

Key Findings

105. The findings of The Strategic Counsel are fairly consistent with findings of other research summarized in this report. The study indicates that while students and lawyers with disabilities have made great progress in accessing the legal profession, significant issues remain unresolved.
106. Experiences of participants, accommodations provided and areas for improvements are presented in a chronological order, from law school, to the licensing and articling process and finally practice. The Strategic Counsel Report also discusses experiences of lawyers with court services. The Disability Working Group determined that the issues raised in this area were relevant to this study as they have a significant impact on the professional experience of litigators and those who regularly appear before tribunals and courts. Some of those findings will be brought to the attention of court administrators and the judiciary. The study finally asked participants to identify potential initiatives that would be of value to them. The findings of The Strategic Counsel consultation, along with other research information outlined above, form the basis for the Disability Working Group's proposals for action.

Law School

107. Although the Law Society does not have jurisdiction over law schools, it appeared important to ask students and members with disabilities about their experience in law school for a number of reasons:
 - a. law school represents the first step in a lawyer's career and barriers faced at law school may affect entrance into the legal profession or withdrawal from the legal profession;
 - b. some practices adopted by law schools may be model practices and provide useful guidance to the Law Society;
 - c. the Law Society may wish to work in collaboration with law schools on these issues.

108. The Strategic Counsel Report indicates that the law school experience is a positive one for students with disabilities and that the law school culture is accommodating and supportive. Participants indicated that they typically chose their law school because of previous knowledge of the community, support networks in place and the presence of family members in the geographical location of the school. Some participants also emphasized the importance of good public transit.
109. The report indicates that in the last 10 years, most law schools have adopted accommodations policies, have designated an office and/or staff devoted to students with disabilities, and make significant efforts to learn the accommodation needs of students. This has led to a greater willingness for students to disclose their disabilities and request the appropriate accommodations.
110. Law schools provide a wide range of accommodations to students, such as extra time to write examinations, being provided with a separate room to write examinations, and the provision of materials in alternate formats. The practice of small group environment was mentioned as an important source of academic and social support to students.
111. The findings of The Strategic Counsel regarding the law school experience are consistent with the findings of the Law Society of British Columbia (LSBC) in *Identifying Barriers*⁴², which notes that almost half the comments about law schools were positive, that law schools have made tremendous progress in the last 10 years in providing appropriate accommodations and support to students with disabilities.
112. The Strategic Counsel Report notes the following three areas for improvement:
- a. The execution of accommodation practices: Participants noted that while law schools offer reasonable accommodations, the accommodations requested are sometimes only partially provided or not provided in a timely manner. This issue was also raised in the Law Society of British Columbia's *Identifying Barriers* where progress toward access and accommodation was noted, but the effective implementation of accommodations remains an issue. This issue could be explained, in part, by the fact that there is an increase of students with disabilities requesting accommodations in law schools and, as Reach Canada's Framework for Action report points out, "the most significant issues arise from the demand to accommodate a rapidly increasing number of students with non-visible disabilities. During the past decade or so, more and more students with learning disabilities, attention deficit disorders, and mental health conditions have requested accommodations. The need for reliable methods to substantiate the existence of such disabilities and their precise nature is a common concern, particularly with respect to learning disabilities. Determining the most effective methods for accommodating such disabilities is of equal concern".⁴³
 - b. Some participants noted social difficulties with their peers, classmates' resentfulness of accommodations provided, and alienation from the social life and networks, which had implications for the academic performance and ability to network. This finding is consistent with the view that the most insidious barriers remain attitudinal ones.

⁴² *Supra* note 33.

⁴³ *Supra* note 20 at 36.

- c. Some participants noted that often the discretion to provide accommodations resides in individual professors. It was suggested that such decisions should be part of the law school's overall accommodations policy.

Bar Admission Course

113. The Strategic Counsel reports very positive findings about the experience of students-at-law with disabilities while in the Bar Admission Course. Participants indicated that they generally received similar accommodations as in law school and some participants were informed of the Law Society's accommodation policy.
114. Beginning in 2006, the Bar Admission Course in Ontario will be replaced by a licensing process that will include a Skills and Professional Responsibility Program ["SPR Program"] and two exams. The Accommodation Policy will be maintained and accommodations will be provided to students with disabilities. However, it is difficult to anticipate how the format of the new licensing program will impact on students with disabilities.
115. The new licensing process will include a five week mandatory SPR program. The Strategic Counsel Report noted that "elements of the in-class teaching experience were also the subject of some negative comment, much of which was related in some fashion to the lawyers who act as BAC instructors [...] a number of participants noted that BAC instructors are not typically trained as educators and that as a result they were not always aware of or sensitive to the importance of an accessible classroom environment". Unlike the present BAC, structures are in place to ensure that instructors in the SPR Program will be fully trained to offer the course. All instructors involved in the SPR program will be practising lawyers and prior to the commencement of the program, they will receive comprehensive training on facilitation in a small group learning environment, group dynamics, conflict resolution, skills development and how to apply the assessment criteria consistently. Candidates will be asked to evaluate the instructors and constructive feedback will be provided to facilitate instructor improvements. It is anticipated that the Program will be offered within the university context and that the Law Society Accommodation Policy and practices will be applied within the university context. This may facilitate the implementation of accommodations, as students with disabilities will have already been receiving accommodations during their three years at law school.
116. Students-at-law in the new licensing program will also have to pass a Barrister examination and a Solicitor examination. As the licensing authority for the province's lawyers, the Law Society is committed to an admission process that is both reliable as a measure of entry-level competence and free of unreasonable barriers to admission for all groups, especially those candidates from groups currently underrepresented in the legal profession. Throughout the examination development process, the Law Society canvassed equity issues and concerns. The Law Society ensured that members from equality-seeking, Aboriginal and Francophone communities were involved in the design of the competencies to be tested, the examination questions and the administrative process. The Law Society is also committed to maintaining and enhancing the Education Support Services. Therefore, it is anticipated that potential barriers to students with disabilities have been eliminated.

Articling and Employment

117. Most participants noted that their experiences and challenges were similar when seeking employment as an articling student and when seeking employment as a lawyer. The majority of participants end up in government or quasi-government articling positions.

Articling

118. Participants noted the following about finding an articling position:
- a. They generally had more difficulty in securing an articling position than their colleagues without disabilities.
 - b. A significant number of participants were not able to secure their preferred type of articling position.
 - c. Some cited disability-related reasons for not seeking certain kinds of articling positions.
 - d. In most cases, they had not secured an articling position by the end of second year.
 - e. A number of students did not disclose their disability when applying for positions because to do so would lessen their chances of being offered an interview.
 - f. For those who disclosed their disability, the issue of accommodation was prominent during the interview process.
 - g. Generally, private sector employers expressed more concern than did government or quasi-government employers about the cost and difficulty involved in accommodating employees.
 - h. Private sector employers were less likely than government and quasi-government employers to have accommodation policies.
119. Participants noted that generally, private sector employers did not know about the cost and availability of accommodations. There also seemed to be a lack of knowledge of disabilities generally and what students with disabilities could be expected to accomplish once on the job. Lack of knowledge possessed by employers regarding possibilities for accommodation was also identified as a barrier to greater access in Reach Canada's *Advancing Professional Opportunities and Employment Accommodation*.⁴⁴
120. Participants noted the lack of resources available to students with disabilities in seeking articling positions. Participants indicated that career placement assistance at law schools and the Law Society should be available to students with disabilities.
121. Once the articling positions were secured, most participants indicated that their articling experience was fairly good. Some participants noted that they were not provided with the same quality of articling experience or same opportunities. For example:
- a. they were given less challenging work;
 - b. they were not being exposed to the most senior people; and
 - c. they felt obliged to work harder than students without disabilities.

⁴⁴ *Supra* note 30 at 37.

122. Some participants noted that the law firm culture is based on the bottom line and the number of billable hours, which creates barriers for lawyers with disabilities. Those findings are consistent with the Law Society of British Columbia's study, *Identifying Barriers*⁴⁵, in which respondents identified the economic bottom line that drives the legal profession as one of the main reasons employers are reluctant to hire lawyers with disabilities.

Employment

123. The findings indicate that a significant proportion of participants reported having had great difficulty in securing work as a lawyer following their call to the bar. Few of those are engaged in private practice. A number of those participants would have preferred to remain in private practice. Almost all participants indicated that they had more difficulty finding work as a lawyer than an articling position. Most participants elected not to disclose their disability because they felt that it would adversely affect their chances of being granted an interview or a job.
124. Several participants commented that their experiences have led them to conclude that disability remains one area where there is discrimination. The majority was of the view that the difficulties they encountered in pursuing their legal careers are to a significant degree the product of attitudes prevalent in society at large.

Court Services

125. Although it is not necessarily within the jurisdiction of the Law Society to address barriers encountered in courthouses and courtrooms, the Disability Working Group was of the view that those barriers affect the professional experience of litigants and their clients. Overall, comments were directed to physical plant issues. Some participants suggested that there should be an access or accommodation office for courthouses. A number of practical suggestions were made that would increase accessibility of courthouses.
126. Participants did not identify significant attitudinal or other barriers on the part of court staff or judges. To the extent that issues concerning judicial or court staff attitudes arose, participants were of the view that they stemmed from inadequate awareness of the needs to provide a fully accessible courtroom environment.

OVERVIEW OF LEGAL REQUIREMENTS IN ONTARIO

127. Before outlining the Disability Working Group proposals for action, this section provides an overview on the legal obligations on law firms and the legal profession to promote equality rights of students and lawyers with disabilities.

Ontario Human Rights Code

128. The *Code*⁴⁶ imposes a duty on employers, including law firms, to promote equality rights of persons with disabilities and to accommodate persons with disabilities up to the point of undue hardship.⁴⁷ It states that every person has a right to equal treatment with

⁴⁵ *Supra* note 33.

⁴⁶ *Supra* note 8, subsection 5(1) (employment).

⁴⁷ Section 17 of the *Code* imposes a duty to accommodate persons with disabilities:

respect to employment without discrimination because of [...] disability. Section 17 of the Code also creates an obligation to accommodate persons with disabilities up to the point of undue hardship. It recognizes that discrimination based on disability can be based on society's failure to accommodate actual differences and emphasizes the need for individual accommodation.

129. 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. However, employers such as law firms, when assessing whether an accommodation amounts to undue hardship, should only consider the costs related to the accommodation including outside sources of funding, if any, and health and safety requirements. Costs will amount to undue hardship only if they are so substantial that they would alter the essential nature of the organization or law firm, or so significant that they would substantially affect its viability.⁴⁸ Law firms can also argue that there is undue hardship if the accommodation creates a potential health or safety risk, which amounts to undue hardship only when the degree of risk that remains after the accommodation has been made outweighs the benefits of enhancing equality for persons with disabilities.⁴⁹ Law firms should not take into account, when considering whether there is undue hardship, factors such as the fact that the accommodation will create business inconvenience⁵⁰, affect employee morale⁵¹, is not what the client prefers⁵², or contravenes a collective agreement or contract.⁵³

(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. 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.).

⁴⁸ Taken from *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 15 at 30.

⁴⁹ *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 15 at 34.

⁵⁰ The Ontario Human Rights Commission is of the view that "business inconvenience" is not a defence to the duty to accommodate. If there are demonstrable costs attributable to decreased productivity, efficiency or effectiveness, they can be taken into account in assessing undue hardship under the cost standard, providing they are quantifiable and demonstrably related to the proposed accommodation.

See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 15 at 28.

⁵¹ The Ontario Human Rights Commission is of the view that in some cases, accommodating an employee may generate negative reactions from co-workers who are either unaware of the reason for the accommodation or who believe that the employee is receiving an undue benefit [...] However, it is not acceptable to allow discriminatory attitudes to fester into workplace hostilities that poison the environment.

See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 15 at 28.

⁵² Third-party preference does not constitute a justification for discriminatory acts. (See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 15 at 28).

⁵³ Collective agreements or contractual arrangements cannot act as a bar to providing accommodation. (See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 15 at 28).

130. The responsibility to respect the *Code* is also an ethical obligation imposed on lawyers under the *Rules*. Rule 5.04 of the *Rules* provides that 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 enumerated in the *Code*, including the ground of 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.
131. The terms “employer” and “employment” are defined broadly and law firms have a duty to accommodate that extends to professional employment of other lawyers, articulated students, or any other person, from administrative staff to partners. The term “employment” covers recruitment, interviewing, hiring, promotion, evaluation, compensation, professional development and admission to partnership.
132. The commentary to Rule 5.04 describes the duty to accommodate as follows: “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”.

Accessibility for Ontarians with Disabilities Act

133. In 2005, the Ontario legislative assembly passed the *AODA, 2005*⁵⁴. The *AODA, 2005* has been adopted to provide a more proactive approach to achieving full accessibility for person with disabilities in Ontario. The *AODA, 2005*, unlike its predecessor *Ontarians with Disabilities Act, 2001*⁵⁵, applies to both public and private sectors, and will ultimately establish tangible objectives and standards, as well as enforcement mechanisms to ensure that they are met.
134. It is likely that the *AODA, 2005* will apply to the legal sector, including law firms. The *AODA, 2005* applies to every person or organization in the public and private sectors of the Province of Ontario to which an accessibility standard applies. An accessibility standard will only 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.
135. The *AODA, 2005* provides the development of industry or sector specific accessibility standards that will be developed through a collaborative process involving persons with disabilities, representatives of industry and sectors of the economy, and representatives of government.
136. The standards will set out measures, policies, practices or other requirements for identification, removal and prevention of barriers faced by persons with disabilities. “Barriers” are defined in the *AODA, 2005* as “anything that prevents a person with a

⁵⁴ Received Royal Assent on June 13, 2005.

⁵⁵ S.O. 2001, c. 32.

disability from fully participating in all aspects of society because of his or her disability". This would include architectural, information and communication, attitudinal, technological and policy and practices barriers.

137. The standards, once developed, will be implemented in a series of 5-year phases, with a target date for achievement of accessibility in 2025.
138. Every person and organization to which the *AODA, 2005* applies will have to implement the standards and file and make publicly available an annual accessibility report.
139. The *AODA, 2005* creates an oversight regime, including inspectors, directors and a tribunal and creates offences for furnishing false or misleading information and for failure to comply with an order from a director or the tribunal. Fines for such offences will vary from up to \$50,000 per day for individuals and \$100,000 per day for corporations.

PROPOSALS FOR ACTION

140. In light of the legal obligations of employers to ensure full access to employment for students and lawyers with disabilities, and of the findings of The Strategic Counsel and other studies noted in this report, the Disability Working Group developed proposals in six areas:
 - a. Mentoring program and peer support
 - b. Networking opportunities
 - c. List of contacts, resources and employment opportunities
 - d. Education, training and recruitment guidelines
 - e. Facilitating access to accommodation
 - f. Foundation for future work

Mentoring Program and Peer Support

141. Participants in The Strategic Counsel consultation stated that mentoring programs for lawyers with disabilities, beginning in law school and continuing into post call to the bar, would be of tremendous assistance. Participants noted that a mentoring program should provide an opportunity for lawyers with disabilities to meet people with similar experiences, while also providing the chance for mentees with disabilities to meet with mentors who do not have disabilities.
142. Mentoring programs offer a number of benefits:
 - a. Mentors are seen as valuable to anyone pursuing a career in the practice of law, more particularly to students and recently-called lawyers with disabilities who face challenges their colleagues do not.
 - b. Mentors are a good way of helping address the feelings of isolation.
 - c. Mentors can assist to find articling positions and jobs as practicing lawyers.
 - d. Mentors with disabilities are uniquely well positioned to advise on where to look for jobs, which employers have a track record of hiring lawyers with disabilities, and which employers are most willing to work with employees with disabilities.
 - e. Mentors with disabilities are a valuable source of advice for strategies to adopt in the job search and regarding to what point and to what extent a disability should be disclosed.

- f. Involving lawyers without disabilities may also increase the awareness about disabilities and abilities of lawyers with disabilities and extend the networking opportunities for students and lawyers with disabilities.
143. While the Law Society already has an Equity and Diversity Mentoring Program which offers mentoring support to law school students, students-at-law and new calls to the bar to help them advance in the profession, the program does not specifically focus on providing assistance and services to mentees with disabilities and does not include a peer support component. The Disability Working Group proposes that the Law Society work with organizations such as ARCH Disability Law Centre, law schools and law firms to develop a mentoring and peer support program tailored to the needs of students and lawyers with disabilities. The objective of the program would be to:
- a. provide networking opportunities and lasting professional relationships for members with disabilities, beginning at the law school stage and continuing throughout their careers;
 - b. provide mentoring opportunities with mentors with disabilities and mentors without disabilities;
 - c. increase networking opportunities by providing dual types of relationships: mentoring relationships with senior members of the bar and peer relationships with members with similar experiences; and
 - d. promote the presence of members with disabilities in the legal profession by increasing awareness of the abilities of lawyers with disabilities within the legal profession and private practice.
144. The Disability Working Group proposes a mentoring and peer support program with the following components:
- a. Modifying the existing Equity and Diversity Mentoring Program to include a component that is tailored to provide mentoring and peer support opportunities for mentees with disabilities. This would include revising registration forms to encourage disclosure of disabilities by mentees and mentors or peers, developing an outreach and communication strategy to promote this component of the program and developing resources as described below to support the program.
 - b. Developing the mentoring and peer support program in collaboration with organizations such as ARCH, law schools (to ensure that the relationship between mentor, peer and mentee begins at early stage in a person's career), and the legal profession. It is proposed that the Law Society work in collaboration with law firms to develop networking opportunities and to promote participation in the mentoring and peer support program as an important contribution to the legal profession.
 - c. Expanding the existing mentoring program to include peer support relationships. David Lepofsky suggested a similar idea in the context of law school. He recommended the establishment of mentoring programs that would include dual relationships with mentors who are faculty members and peer students. It is proposed that the Law Society coordinate a similar type of mentoring and peer support program, with dual types of relationships with mentors who are experienced members of the profession, either with or without disabilities, and peers who have similar experiences than those of the mentee. The second type

- of relationship would assist the mentee in developing a professional network of peers.
- d. Providing the necessary resources to assist mentors, peers and mentees in developing meaningful professional relationships.
 - e. Ensuring that the mentoring and peer support program complements and reinforces the next two initiatives: to facilitate networking opportunities and to develop a list of contacts, resources and employment opportunities.
 - f. Evaluating the effectiveness of the program on an ongoing basis.

Networking opportunities

145. The Strategic Counsel Report noted that initiatives to enhance networking opportunities for lawyers with disabilities would be of great assistance. Along with the mentoring and peer support program described above, the Disability Working Group proposes that on-line networking opportunities be developed.
146. Such opportunities have been developed in the United States. Although no longer accessible, one example of such programs was the Disabled Lawyering Alliance: A Community of Lawyers and Law Students with Disability. The Disabled Lawyering Alliance was an on-line network of lawyers and law students with disabilities. The network's primary mission was to bring together individuals interested in promoting the presence and advancement of people with disabilities within the legal profession. Efforts included establishing mentoring relationships, developing professional peer networks, responding to issues facing lawyers and law students with disabilities, and promoting the positive image of lawyers and law students with disabilities within society and the academic community. Students and practitioners with disabilities were encouraged to join, as were individuals interested in building coalitions and networks in this area. The website provided links to a number of related listserves for practitioners and students, as well as to sources of information concerning persons with disabilities.
147. The online networking opportunity could provide message boards and a list of resources for students and lawyers with disabilities. The Law Society of British Columbia's Overcoming Barriers report also recommended an initiative that would go beyond a web page to become an interactive forum such as a listserve, chatroom or intranet.
148. The Strategic Counsel Report noted, however, that the online networking opportunity would have to be set up in such a way that is accessible to blind lawyers and lawyers with visual impairments as well as to those who have difficulty using a keyboard.

List of contacts, resources and employment opportunities

149. The Strategic Counsel Report noted the lack of resources available to students and lawyers with disabilities in seeking employment both at the articling and practice stages. The Disability Working Group is of the view that it would be valuable to make accessible lists of contacts, resources and employment opportunities.
150. It also proposes that this initiative be developed in collaboration with organizations with expertise in the area of employment and disability, such as governmental agencies, legal aid clinics, the Canadian Bar Association and law firms.

151. In the United States, the ABA has taken a leadership role in providing the types of resources that would be useful for students and lawyers with disabilities. The website provides information about: federal or governmental agencies involved in the area of employment of persons with disabilities; national organizations and associations; employment related resources, internships and other opportunities; education and training programs on substantive disability and mental health law; and a list of lawyers practicing in related areas of law. The Disability Working Group proposes that similar resources be developed. Other resources could also include employment sites geared to disabilities, mentoring and peer relationship programs, relevant publications such as best-practices, model policies and guidebooks. The Disability Working Group is of the view that the Law Society should provide information, or links to information, about the availability, cost, and any funding programs associated with assistive devices.
152. The Disability Working Group also notes that that career placement assistance provided at law schools and by the Law Society should be available for students with disabilities. The Disability Working Group notes that such career placement initiatives are already in place, through workshops and job postings amongst others, but do not cater specifically to the needs of students with disabilities. The Disability Working Group proposes that the Law Society work in collaboration with law schools to enhance placement activities to take into account the needs of students with disabilities.

Education, training and recruitment guidelines

153. The Strategic Counsel Report grouped together potential initiatives that were directed principally to employers and, more particularly to private employers than to government. The difficulties participants encountered in finding work at the articling stage and as practicing lawyers emerged throughout the consultation. The majority of participants argued that the profession, lead by the Law Society, needs to take a stronger leadership role in encouraging private firms to invest in persons with disabilities, and encouraging law firms to be barrier free. The law firms through self-assessments can monitor their progress.
154. There was some recognition that lawyers in private practice are subject to financial pressures that affect decisions about employing lawyers with disabilities. Although some participants were opposed to forcing employers to hire lawyers with disabilities, several participants suggested that 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 and that lawyers with disabilities are an asset to the legal profession and to law firms.
155. Most studies referred to in this report noted that the most insidious barriers to persons with disabilities, in society and in the legal profession, are attitudinal. For example, employers often make false assumptions that people with disabilities are not able to function competently in the work force and that accommodations are extremely costly.
156. However, organizational systemic change takes time. The goal of making the practice of law fully accessible will require a strategy that includes a business case for the inclusion of greater diversity within law firms, commitment from the law firms regarding recruitment and retention of students and lawyers with disabilities, policies, education programs and guidelines or best-practices. The Disability Working Group proposes that the initiatives described below be implemented.

Business Case

157. As Catalyst states in *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*, “The first step in making effective organizational change is to understand and widely communicate the business case for change”.⁵⁶ Because private sector legal employers are profit based and rely on revenue generated from clients, the development and communication of a business case for the recruitment and promotion of persons with disabilities would likely be an effective tool to influence change in law firms and the legal profession. The business case should demonstrate that a diversified pool of associates and partners, including lawyers with disabilities, increases the capacity of a firm to serve a broader client base. The business case can also demonstrate that accommodating lawyers with disabilities is a good long term investment, is generally not exceedingly costly and that lawyers with disabilities are as productive as other employees. Increasing the representation of lawyers within a law firm can be used to market the firms’ services and the fact that it has the capacity to cater to the Ontario population. In order to be effective, the message will have to be strongly communicated to law firms and the legal profession at large.

Commitment Program.

158. A number of bar associations and state bars in the United States have developed, in collaboration with law firms and the legal profession, statements of commitment to take concrete action to achieve objectives in the area of equity and diversity.
159. As noted earlier in this report, both the California State Bar and the Texas State Bar have adopted pledge programs to increase participation of lawyers with disabilities in the profession. Through the pledge program a senior member of a firm agrees on behalf of the organization to increase the participation of legal professionals with disabilities in their organization. The programs are voluntary but the State Bar provides incentives through recognition and there is positive publicity for the organizations through release of list of participants to the media. Such programs has also been successfully implemented by the Bar Association of San Francisco in an effort to increase the recruitment and retention of women in law firms. Washington State has recently developed a similar program in an effort to increase the recruitment and retention of law students and attorneys from diverse populations.
160. The Disability Working Group proposes that the Law Society work with law firms to development a similar commitment program for the recruitment and retention of students and lawyers with disabilities in the practice of law.

Self-Assessment Template Provided by Law Society

161. Some participants in The Strategic Counsel consultation noted that “law firms must be barrier free, which can be monitored though self-assessments. The Law Society could provide a template to assist with this”. The availability of a self-assessment template for law firms would have the benefit of assisting the firms in monitoring their own progress in eliminating barriers to students and lawyers with disabilities and in recruiting and

⁵⁶ Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (Toronto: Catalyst, 2005).

retaining such students and lawyers. Such an initiative could be implemented by the Law Society as part of its on going policy development work in the area of model policies.

Education Programs about Accommodation and Model Policies

162. Participants in The Strategic Counsel consultation noted their skepticism about the effectiveness among private sector employers of initiatives already in place in most jurisdiction, such as policies and educational initiatives. However, most participants were of the view that these initiatives just do not go far enough and suggested that stronger action is required. The Disability Working Group is of the view that educational initiatives and model policies for the legal profession are valuable if undertaken in the context of a broader strategy for action developed between the Law Society and law firms as described in this section of the report. The need for greater awareness among the legal profession regarding accommodation policies and practices and the value of recruiting and retaining lawyers with disabilities was mentioned in most of the reports produced about the legal profession.⁵⁷ The Law Society of British Columbia's study, *Identifying Barriers*, and the follow-up report *Overcoming Barriers*, noted that members of the legal profession should be educated through the internet, positive image advertising, workshops, articles in the benchers' bulletins and other educational projects.⁵⁸
163. The Law Society already has an Equity and Diversity Education Program with a mandate to provide custom-designed education programs for the legal profession and law firms. The Disability Working Group proposes that, in the context of that program, the Law Society develop education programs for law firms, such as:
- a. workshops on the duty to accommodate and accommodation practices;
 - b. workshops on recruitment and retention practices that promote access and equality for persons with disabilities;
 - c. education programs to increase awareness of the legal profession about the value of diversifying its workforce, providing an inclusive work environment for students and lawyers with disabilities, and servicing clients with disabilities;
 - d. continuing legal education programs for the legal profession about the duty to accommodate in the workplace and in the provision of services; and
 - e. the publication of regular articles on the Law Society website and other Law Society publications about disability issues and lawyers with disabilities.
164. The Disability Working Group also proposes that the Law Society continue to publish and update model policies and information for the legal profession on the duty to accommodate, servicing clients with disabilities, guidelines on accommodation practices, positive recruitment practices, tips for students and lawyers with disabilities on process and other related topics. As mentioned in this report, the Law Society has published the *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*⁵⁹ and *the Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities*⁶⁰. The development of further model policies and practical guidelines would complement the work already accomplished by the Law Society. Other organizations have published guidelines on accommodations

⁵⁷ *Advancing Professional Opportunities and Employment Accommodation*, *supra* note 30,

⁵⁸ *Identifying Barriers*, *supra* note 33; *Overcoming Barriers*, *supra* note 34.

⁵⁹ *Supra* note 39.

⁶⁰ *Supra* note 40.

and positive recruitment practices, which may guide the Law Society in its work in this area.⁶¹

Facilitating Access to Accommodation

165. While received well in principle, opinions of participants in The Strategic Counsel consultation were divided as to how effective facilitating access to accommodation between individuals and employers would be in practice. Some saw this as an attractive proposal, as it would involve the Law Society and the profession taking a leadership role on an important issue and because it could ameliorate much of the concern among employers as to what is required in order to accommodate, how difficult accommodations are to acquire, implement and maintain and how much they cost. Some of the initiatives mentioned above would serve to facilitate access to accommodation, such as:
- a. education programs for law firms;
 - b. guidelines on accommodation practices for the legal profession;
 - c. information published for the legal profession;
 - d. resources made available to the legal profession about accommodations and where to apply for funding.
166. The Disability Working Group recognized the difficulties faced by employers, and students-at-law and lawyers with disabilities, in accessing sources of funding to ensure that students and lawyers are provided with effective accommodations. The Disability Working Group noted the importance of enhancing access to sources of funding and identified this issue as a high priority to be addressed by the Law Society in the immediate future. The Disability Working Group proposes that the Law Society identify and publicize sources of funding to facilitate access of students-at-law and lawyers with disabilities to the legal profession and to assist law firms in providing accommodations for lawyers and students-at-law with disabilities.⁶²

⁶¹ For example, the Ontario Human Rights Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 15. The Human Resources and Skills Development of Canada also produces guidebooks and publications in the area of disability, for example the publication *Ten Essentials to get that Job*. In the United States there are a number of guidebooks and publications in the area of disability. For example, the Social Security Administration office, the U.S. Equal Employment Opportunity Commission and the Department of Justice have published *A Guide for People with Disabilities Seeking Employment*, October 2000; the U.S. Department of Justice, Civil Rights Division published *A Guide to Disabilities Rights Laws*, August 2004. See also the following website: <http://www.eeoc.gov/types/ada.html>.

⁶² A number of funding sources and models are available, for example through the Government of Canada and the Ministry of Community and Social Services of the Government of Ontario. The CIBC has implemented a central accommodation program that caters to its diverse lines of business. Accommodation initiatives are coordinated through an external service-provider with expertise in the area of accommodations. The service-provider discusses the appropriate accommodation with the person with disabilities and his or her position and needs. The service-provider also works with agents (such as software technicians, construction companies and community agencies) to develop the most effective solutions to the requests for accommodation. When the appropriate type of accommodation is determined, costs for the accommodation are taken from a central fund established by the bank. In 2004, the CIBC employee population was approximately 40,000 and the total cost for the accommodation program was at \$40,000.00.

Foundation for Future Work

167. Some of the suggestions raised in The Strategic Counsel Report relate to court services. Therefore, the Disability Working Group is of the view that this report should be brought to the attention of the judiciary and those involved in the administration of justice.
168. The Disability Working Group has not, during this consultation, considered the issue of increasing the quality of legal services offered to clients with disabilities. If the initiatives described in this report are implemented, the Disability Working Group proposes to continue its work by developing strategies to increase the quality of legal services offered to clients with disabilities. The initiatives described in this report are a first step towards increasing awareness within the legal profession and should offer a good foundation for future work in this area.
169. The Disability Working Group has not made specific proposals regarding the licensing program. The Strategic Counsel reported positive comments about accommodation practices in the BAC. As the BAC will be modified in 2006 to a licensing program, the Disability Working Group was of the view that it is premature to make proposals about the new program.

RESOURCE REQUIREMENTS

170. While the Disability Working Group recognizes that the implementation of its proposals will require human and financial resources, the Equity Initiatives Department has indicated that it is in a position to incrementally implement the proposals over a period of two to three years without immediate additional human or financial resources. It is anticipated that implementation of this project falls within the budget of the Equity Initiatives Department, and, at this point in time, additional financial resources are not required.

Appendix 2

A Report to

The Law Society of Upper Canada

Access Research Consultation

August 2005

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Introduction

A. Introduction and Background

The Strategic Counsel is pleased to present to the Law Society of Upper Canada this report of findings from the Access Research Consultation.

The Disability Working Group, a Working Group of the Equity and Aboriginal Issues Committee of the Law Society of Upper Canada, wished to undertake research to identify the nature and extent of support that could be developed to assist law students, law graduates and lawyers with disabilities to enter the legal profession and maintain a successful career in the practice of law. Given the sensitive nature of many of the issues relevant to this research, the Disability Working Group concluded that the consultation process would best be undertaken on a confidential basis by researchers independent of the Law Society. *The Strategic Counsel*, a Toronto-based research firm, was asked to undertake the consultation.

B. Objectives

As noted above, the primary objective of the consultation was to investigate the nature and extent of support that could be offered, by the Law Society in particular but also by the profession more broadly, to assist members and future members with disabilities to pursue meaningful and productive careers in the practice of law.

Considerable research has been undertaken to investigate the barriers facing lawyers with disabilities, in particular two reports released in the last few years by The Law Society of British Columbia that provide a comprehensive picture of these barriers. This research was intended to move beyond an enumeration of barriers to an investigation of the ways in which those barriers might be reduced or eliminated.

Meeting this objective did, however, require exploring among participants the nature and extent of their disabilities, as well as the barriers and other challenges they have faced, in order to provide depth and context to the discussions concerning possible types of support that could be offered. In the result, a significant proportion of almost all interviews was devoted to this exploration as participants went into these issues in considerable detail.

C. Methodology

The research objectives were met qualitatively through 30 one-on-one interviews. One-on-one interviews were selected as the methodology because they allow for great flexibility and detailed probing in the course of interviews, and, of significant importance to this consultation, because they allow participants to relate their experiences and make observations in an entirely private context.

The interviews followed a discussion guide developed over a number of drafts in consultation with the Working Group. Interviews ranged in length from about 45 minutes to just over an hour and a half. The average interview length was approximately one hour.

The reader should note that the findings reported here reflect only the experiences and opinions of those who participated in the consultation, and can not be projected to the broader population of lawyers, law graduates and law students with disabilities.

D. Preliminary Issues

There were two threshold issues in undertaking this consultation. The first was how “disabled” was to be defined. The second, and related, issue was how to identify and then reach the sample of those who would be eligible to participate in the consultation.

In consultation with the Working Group, it was decided that that the consultation would proceed without a fixed definition of disability.

The process of deciding how best to identify and reach law students, law graduates and lawyers with disabilities began with the recognition that there was no database or other comprehensive source of information that could be used as the basis for the consultation. Further, even if there had been, it would not have included either persons who had not disclosed their disability or persons who had not disclosed the precise nature or extent of their disability.

In the result, it was decided that the best way to proceed would be to publicize the consultation and invite those who wished to participate to identify themselves. Accordingly, a bilingual (English and French) Call for Participants was drafted and published in the Ontario Reports and posted on the Law Society’s website. In addition, notice of the consultation was included in email messages broadcast by the Law Society’s Communications and Public Affairs Department. The Call for Participants was published in the August 27 and September 17 issues of the Ontario Reports, and was posted on the Law Society’s website and sent by email to members of the profession. Those interested in participating were invited to contact *The Strategic Counsel* by any of telephone, fax, email or Bell Relay Service before September 30, 2004. The confidentiality of those contemplating participation in the consultation was clearly of paramount importance, and thus the Call for Participants stressed that the identity of those who responded would be known only to the research team at *The Strategic Counsel* and that none of the information provided during the interviews would be reported to the Law Society in any way which might allow it to be linked either with the individual who provided it or with their place of employment.

E. Response to Consultation and Selection of Participants

The Call for Participants resulted in expressions of interest from 72 individuals. The vast majority of contacts came by telephone or email. One came by fax. Although the Call for

Participants had set a deadline of September 30, 2004, expressions of interest continued to arrive into late October. All those who responded to the Call for Participants were considered for participation in the consultation.

The extent of information provided by those responding to the Call for Participants varied widely. Some individuals provided a number of pertinent details, including age, place of employment, type of law practised, and the nature and extent of their disability. Others provided just a name and contact information. Two of those who responded provided only a first name and email address.

There were two guiding objectives in selecting the 30 individuals to be interviewed. The first was to have the final sample reflect the range of individuals who responded. The second was to have the final sample reflect as wide a range of legal experience, such as career stage, type and location of practice, and type of disability as possible. In order to meet these objectives, it was necessary to contact those who had only provided a limited amount of information in order to learn a little more about them. A short screening questionnaire was developed in consultation with the Working Group for this purpose. Forty confidential screening interviews were conducted. These interviews lasted about 15 minutes on average. Once the initial screening process was complete, *The Strategic Counsel* selected 30 individuals to participate in a long-form interview. Further details on the composition of the final sample are provided in the next section of the report.

In the circumstances of this consultation, however, it is not possible to provide as detailed a profile as might otherwise be expected. As noted earlier, participant confidentiality, which is critical to much research, is of particular importance to this consultation.

First, several of the individuals we interviewed have either not disclosed their disability widely, and in particular have not disclosed it to current or prospective employers, or have not disclosed its full nature or extent. Second, the population of persons with disabilities relevant to this research is quite small. In fact, on this latter point, one of those we interviewed noted that he had seen similar research among this population in which he had been able to identify one of the participants even though no name had been provided. We have sought to ensure that no one who participated in this consultation can be identified based on the contents of this report.

F. Participant Profile

All participants had a substantial connection with the province of Ontario, and all lawyer participants had been called to the Ontario bar. They included students at Ontario law schools, articling students, practising lawyers and lawyers who had left the profession or were unable to secure employment as a lawyer and had pursued a related career. Of the practising lawyers, the majority were employed by government or not-for-profit organizations rather than engaged in private practice. There was a good mix of ages, which allowed us to gain some perspective on how disability issues and the experiences of lawyers with disabilities have changed over time. Participants included persons with mobility impairments, persons with visual impairments, persons with hearing impairments, and persons with depression, anxiety and other mental health impairments. All but a few of those who participated characterized their disability as permanent, rather than temporary or episodic. The sample was evenly divided by gender. Finally, the consultation was prepared to consider the intersection of participants' membership in more than one equality-seeking community. In addition to being members of the disability community, participants were invited to indicate whether they considered themselves to be members of other equality-seeking communities for one or more of the following reasons – race,

ethnicity or cultural background, religion or creed, language, sexual orientation, gender or gender identity. The vast majority of those interviewed indicated that they did not consider themselves members of any other equality-seeking community. Among the small minority who did indicate membership in another equality-seeking community, most were women and they told us that it was by virtue of their gender that they considered themselves members of more than the disability community.

I. Key Findings

Key Findings

A. Introduction

Interviews proceeded chronologically, starting with participants' law school experiences and continuing through the various stages of their legal career, in order to provide context for the discussion of potential support that could be provided to lawyers and law students with disabilities. This report follows the same structure.

Broadly speaking, the incidence of barriers increases, and the incidence and efficacy of the accommodation provided declines, as persons with disabilities move through their careers. While virtually all participants observed that great progress has been made on disability issues, significant issues remain unresolved, particularly so once they have been called to the bar and embarked on the practice of law.

B. Law School

The strong majority of participants reported largely positive experiences both at law school and during the Bar Admission Course (BAC). They also offered a number of suggestions for ways in which the educational experience of students with disabilities could be enhanced.

1. Experiences

All participants attended law school in Ontario, and each of the law schools in Ontario was represented in the total sample of those who participated in the consultation. Although the law school environment for students with disabilities appears to have become much more accommodating and supportive, the research suggests that room for improvement remains in a number of areas.

Disability does not appear to have been a major factor in participants' decision as to which law school to attend and, to the extent that it was, it does not seem to have been driven by the nature of the law school itself but rather by its geographical location. Thus several participants reported that they attended law school at the same university where they had obtained their undergraduate education because they had come to know the community, had support networks set up, or because they had family there. A few participants mentioned the importance of good public transit to their everyday lives and indicated that they would not have attended a law school where this was not available.

The chief improvement noted is in openness to providing accommodations to students with disabilities. There did not appear to be much variation by law school, suggesting that all Ontario law schools are making efforts to accommodate students with disabilities. Participants who graduated from law school in the late 1980's or early 1990's do not recall there being much if

anything by way of a formal accommodations policy, much less a university department or official devoted to students with disabilities.

“They were developing an accommodations policy on a case-by-case basis.”

“They were learning at the same time I was.”

Most of those who graduated from law school in the last 10 years, by contrast, do recall an accommodations policy (whether formal or simply a policy in practice), and that the law school, either itself or through a university office devoted to students with disabilities, made significant efforts to learn what accommodations the student required and how best to provide them. In fact several of those we interviewed mentioned that the law school had invited them for a visit during the summer before first year to review what accommodations would be required and begin the process of putting them in place. In one instance this included a meeting with a law school librarian to review what would be required in order to make the library accessible.

This consultation suggests that moving in tandem with greater awareness of and commitment to disability issues on the part of the law schools is a greater willingness of students with disabilities both to disclose their disabilities and request that appropriate accommodations be provided. Participants referred to a generational change that has taken place among persons with disabilities.

“I’m of the generation that would disclose. The older generation didn’t know to self-disclose.”

“My generation didn’t discuss these things. I’m still not very comfortable discussing it.”

Consistent with this, most participants disclosed their disabilities to the law school, either in their application or upon accepting an offer of admission.

2. Accommodations Provided

Participants identified a wide range of accommodations that were provided by law schools. Most frequently mentioned were receiving extra time to write examinations, being provided with a separate room in which to write examinations, and the provision of materials in alternate format.

Although not an accommodation in the sense of others described in this report, the practice of many law schools to divide the first year class into small groups was cited as being of particular benefit to students with disabilities. The small group environment provides a source of academic and social support to students who may, as a result of their disabilities, feel somewhat isolated from their peers. Participants variously described their first year small group as “*very tight*”, we “*leaned on each other*”, and “*it saved my life.*”

3. Areas for Improvement

Notwithstanding the progress that appears to have been made regarding disability issues, there remain some aspects of the law school experience that could be improved. Two of them presage themes that recurred throughout the consultation. First, while the will to accommodate is increasingly evident, execution continues to be problematic. Second, a significant minority of

participants reported, notwithstanding the first year small group approach, social difficulties with their peers. Third, several participants reported that the decision to provide accommodations was in the discretion of individual professors. Each of these will be discussed in turn.

Provision of Accommodations

Several participants reported that while the law school was willing to provide reasonable accommodations, in the result the accommodations requested were only partially provided or were not provided in a timely fashion.

A good example of this, which was cited by several participants, was the provision of materials in alternate format. The participant who had been invited to visit the law school in the summer prior to the commencement of first year informed the law school during the course of the visit what would be needed by way of materials in alternate format. This was in July. The materials were not ready until November, which the participant described as *“atrocious”*. Another participant described having had a similar experience, saying that it *“took forever”* to get materials in alternate format. In both cases, it was not just custom casebooks prepared by professors that were late in arriving, but also the standard textbooks. Each of these participants felt that the late delivery of materials had an adverse impact on their academic performance.

A number of participants who required accommodation by way of computer applications, or access to a computer for writing examinations, reported having had technical problems. Their sense was that these problems arose largely because the law school was not sufficiently familiar with the software or hardware in question.

Faculty Discretion

In several cases, it lay within the discretion of individual professors to grant the accommodations requested. Examples included a separate room in which to write an examination or additional time to complete a written assignment. Most participants reported that their professors were extremely supportive and that they readily granted the accommodations sought. However, in a few cases, the professor was not supportive. Participants suggested that important accommodations such as these should not be in the discretion of individual professors and that it should be part of the law school's overall accommodations policy to grant them.

Peer Support

Finally, notwithstanding the division of first year classes into small groups, a significant minority of participants found their colleagues to be less than supportive.

“It took a long time for my classmates to understand and feel comfortable. My first few months were miserable experiences. There was no one around to give me a hand.”

A few participants reported that their classmates were resentful of the accommodations provided to them on the basis that they represented an unfair advantage. Several participants commented that the highly competitive nature of law school, and indeed the legal profession itself, is reflected in the type of people who become law students and the way in which they behave while at law school.

“None of the students who got extra time [to write exams] ever, ever mentioned it. Other students would have thought it was an unfair advantage.”

Related to this, for one participant, is a sense of entitlement among many law students.

“You start out being told you are privileged, the cream of the crop, more intelligent, more capable than anyone else in the world. Then you start to believe that you’re somehow better than anybody else. Law students don’t see ‘privileged’ as ‘opportunity’, rather ‘I’m better’ or ‘entitled’.”

A majority of participants reported feeling, to varying degrees, alienated by reason of their disability from the social life and networks that are an important part of the law school experience. They observed that this not only impoverished their social experience at law school, it also had implications for their academic performance and their ability to network, which they identified as a highly important aspect of pursuing a successful career after law school.

C. Bar Admission Course

The vast majority of participants reported that their BAC experience was, for the most part, a positive one.

Some participants recalled that the Law Society informed them of its accommodations policy, while others could not recall being so informed. In almost all cases, however, the Law Society agreed to provide participants with the same accommodations as they had been provided with at law school. Only one participant reported having difficulty in obtaining accommodations for the BAC. The difficulty was encountered at the staff level, and was rectified by a senior manager at the Law Society. The participant summed up the experience this way.

“You have to go up the ladder to get results. People at the entry level are inadequately trained and completely ignorant of the issues. It’s always hard to ask for accommodations. Therefore they need people who are sensitive to the issues.”

Generally, however, criticisms of the BAC from an accessibility perspective were quite minor. A few participants reported having the same problems receiving alternate format BAC materials or classroom technical support in a timely fashion as they had experienced in law school. However, this was not seen as reflecting any unwillingness on the part of the Law Society to provide accommodations. One such participant observed that *“the Law Society had the will to accommodate but the execution was weak.”* This participant’s overall impression of the BAC experience was that *“The Law Society made a concerted effort.”*

Elements of the in-class teaching experience were also the subject of some negative comment, much of which was related in some fashion to the lawyers who act as BAC instructors. Overall, most participants held favourable impressions of the BAC instructors and felt that they made every effort to provide effective and useful instruction.

“The instructors always treated me very well. They were very encouraging.”

However, a number of participants noted that BAC instructors are not typically trained as educators and that as a result they were not always aware of or sensitive to the importance of an accessible classroom environment. Consistent with participants’ overall positive impressions

of the instructors, most of the criticisms were relatively minor. Examples included difficulty reading information that was provided only on a chalk board, not being given sufficient time to find material on a CD-Rom during the course of a lecture, and providing the answers to in-class exercises in oral form only rather than also distributing written answers.

There was only one complaint about the Law Society's physical premises from an accessibility perspective and that was that the effectiveness of the audio loop in the large lecture room is limited by the placement of the microphone.

D. Employment – Articling and Practice

Participants reported similar experiences and challenges in seeking employment both as articling students and then as lawyers following their call to the bar. Generally, they reported that employers, private sector employers in particular, were much less receptive to persons with disabilities than either law schools or the BAC administrators at the Law Society. The majority of participants ended up with government or quasi-government articling positions. In only a few cases was that the result of a preference for not articling with a lawyer in private practice.

The difficulties participants reported experiencing in seeking to find articling positions presage the similar, but more profound, obstacles that a number of them faced when seeking employment as lawyers following their call to the bar.

1. Securing an Articling Position

Most participants reported that they had more difficulty in securing an articling position than did their colleagues without disabilities. A significant number of them indicated that they were not able to secure their preferred type of articling position, while others cited disability-related reasons for not seeking certain kinds of articling positions. In most cases, unlike the majority of their classmates, they were not able to secure an articling position by the end of second year. A number reported waiting until the end of third year, and one participants reported being unable to secure an articling position until after completing the BAC. One participant described searching for an articling position as *“a depressing experience.”*

Contrary to their approach during school and the BAC, a number of participants did not disclose their disability when applying for articling positions. The most common reason for not disclosing was concern that to do so would lessen their chances of being offered an interview. *“I didn't want them to think that I was weak.”*

Among those who disclosed, the issue of accommodations was prominent during the interview process. Generally, private sector employers expressed more concern than did government or quasi-government agencies about the cost and difficulty involved in putting in place necessary accommodations. They were also less likely than the government to have any type of formal accommodation policy. Part of the issue with private sector employers appears to be ignorance. This was reported to operate on two levels.

The first level was ignorance about the cost and availability of accommodations.

“I knew more than they [the firm] did about the programs and the companies that provide equipment.”

Ignorance at a more profound level was described as ignorance of both disabilities generally and of what students with disabilities could be expected to accomplish once on the job. Participants described significant obstacles presented by the way in which they are perceived. One participant characterized this as *“getting people to take me seriously”*, while another expressed frustration at having to make strenuous efforts to counter the perception evident during interviews that prospective employers *“didn’t believe that I could do the job.”* One participant summed up the difficulties students with disabilities face in looking for work with lawyers in private practice by simply saying of those lawyers *“they’re afraid.”*

One participant’s experience in seeking an articling position illustrates clearly the difficulty inherent in the decision as to whether to disclose at the application stage of the process. She based the decision to disclose on prior experiences seeking work before law school, where interviewers were surprised by the fact of her disability upon learning of it during the interview and concluded that she would be unable to do the job. She described the decision to disclose in applications for articling positions as *“a mistake.”* Only five offers of interviews, all from various branches of government, were received in response to over 200 applications. *“I did anything and everything in sight.”* Her objective was to secure an articling position in private practice, but no offers of interviews were received from the dozens of law firms she applied to. As a result, she changed her approach at the beginning of the third year of law school and sent out a new batch of applications for articling positions at law firms, this time not disclosing her disability. Although most firms replied that their articling positions had already been filled, five firms did offer her an interview. By the end of third year, she had secured an articling position at one of those firms.

Also identified in many of the interviews was the lack of resources that are available to students with disabilities in seeking articling positions. The law schools were particularly singled out in this regard, but there was also some criticism of the Law Society on this issue. There was a strong sense that career placement assistance geared to students with disabilities should be available. Even information about where students with disabilities had been hired in the past or a list of employers known to be receptive to hiring students with disabilities would have been helpful.

“I didn’t know where to begin. Should I disclose my disability on job applications?”

2. The Articling Experience

Once having secured an articling position, most participants reported that they received fairly good articles. Although the majority felt that they were given the same opportunities and treatment as the other students working with them, a significant minority reported that did not.

Among those who reported that they did not get the same quality of articling experience, or the same opportunities, most described their experience as being given less challenging work or not being exposed to the most senior people at their place of articles. Examples include one participant who wanted to get hired back and knew that in order to do so it would be necessary to impress the *“heavy hitters”* but none of them would provide this participant with any work. The participant found this frustrating as it precluded any opportunity of showing the kind of work the participant could do. Some of these participants also said that they felt obliged to work harder than their colleagues without disabilities, in the sense of taking on more work, in order to get the lawyers to take them seriously.

A few participants traced some of the difficulties they had during their articles to the bottom line focus that pervades many law firms, and larger law firms in particular. One participant, who described the atmosphere at the law firm as “tough”, made specific reference to the impact of a bottom line focus on the firm’s culture.

“It goes back to being understanding, and they’re not. They had no time for crutches. All I needed was for a few people to say ‘It’ll be ok’. I’m pessimistic that anything will ever change at that firm. They just don’t have time for it.”

Another participant, who also commented at length on the adverse impact of the bottom line focus of some law firms, was particularly critical of the use of billable hour targets for measuring the contribution made by articling students.

“Law firms assess productivity microscopically by billable hours. This provides a false impression of objectivity and devalues talent. Women with little kids have the same experience. People look at articling students that way and therefore students with disabilities are disadvantaged. Value is a better guide.”

“There’s a prevailing opinion out there that if you can’t work like anyone else then your job is devalued. There’s a focus on what you can’t do rather than what you can do.”

3. Securing Work as a Lawyer

A significant proportion of those who participated in this 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, although by no means all, of those employed elsewhere would have preferred to be in private practice. Almost all of the participants who reported difficulty in finding employment as a practising lawyer indicated that they had more difficulty finding work as a lawyer than they had had securing an articling position. Given this climate, most who had any realistic choice elected not to disclose their disability. Some did so on principle.

“Those with disabilities don’t see themselves as disabled.”

“I never hid or lied about anything, but I didn’t wear a big sign and hand out leaflets either.”

Most of those who did not disclose, however, chose not to do so because they felt that it would adversely affect their chances of being granted an interview and/or a job. They made this decision even if the nature of their disability meant that they would have been able to practise more effectively if they had disclosed and requested some form of accommodation.

“It’s hard to know the disability role here. It doesn’t take much to deter a lawyer from hiring somebody.”

“I didn’t want to them to think that I was weak.”

A number of 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.”

One participant’s experience in trying to obtain a job in private practice illustrates this well. She did not disclose her disability in her application letters and got what she described as *“tons of interviews.”* She did disclose her disability during the course of the interviews. Even though she attended about 50 interviews at law firms over the course of a year she received no offers. She indicated that while some interviews went well, a number did not. *“One person essentially junked the interview on the basis that she didn’t need someone at my level, even though she had reviewed my resume prior to granting me the interview.”* In other cases it went from *“We’re really impressed with your resume”* during telephone conversations to set up the interview to a sense that they didn’t really believe her resume once she had disclosed her disability during the interview. *“No one really gave me a straight up chance.”* She even had friends in private practice approach firms on her behalf and they told her that they got essentially the same response to their overtures that she had received during interviews. Her impression of her friends’ experiences in trying to assist her was that *“it enlightened them.”* She ultimately gave up trying to find a job in private practice and found a job in the government. Neither working for the government, nor the type of work she was offered there, was her first choice. She continues to want to go into private practice, but said *“I don’t know how likely that will be unless things change in the profession.”*

Several participants commented that their experiences have led them to conclude that disability is one of the last remaining areas of discrimination that, if not socially sanctioned, then is certainly not subject to the same degree of social opprobrium that racism and sexism, for example, are.

“We’ve made huge strides on gender issues. Society hasn’t moved as much on disability issues. Part of this is education-based; part of the problem is power-based. The disabled community doesn’t have the same clout.”

“Women’s rights, same sex marriage, racial equality are all heading in the right direction. We’re not there yet with rights for people with disabilities.”

“People with disabilities fare the worst irrespective of class of employment. Why is this?”

“Disability is more embedded than anything else, more than race, colour or creed. It breaks down all the barriers – race, culture, creed, gender, age – it goes beyond them. You are seen as somehow being incapable, not as human as anybody else.”

An obvious question suggested by these remarks is the extent to which the legal profession is merely a reflection of the society in which it exists. The majority of those who participated in this consultation were of the view that the difficulties they have encountered in pursuing their legal careers are to a significant degree the product of attitudes prevalent in society at large.

However, a few participants did express the view that the legal profession is lagging social attitudes as they relate to persons with disabilities.

“The legal profession is about ten years behind on human rights.”

“The legal community is like a dinosaur limping. They don’t reflect society; they’re the worst of it.”

E. Court Services

Recognizing the fundamental importance of courthouses and courtrooms, participants were asked to comment on their experiences in court and to make suggestions as to how accessibility could be improved. Given that they were at varying stages of their legal careers, and that a number of participants who are in practice attend court only infrequently if at all, the findings on this issue are based on a much smaller number of interviews than is the case for most of the other issues addressed in this report. Further, participants’ observations on this issue tended to be more narrowly focussed and reflective of individual experiences.

Overall, complaints and suggestions for improvements were directed largely to physical plant issues. *“Buildings, not people, are the problem.”* Those who offered comments on this aspect of the consultation did not identify any significant attitudinal or other barriers on the part of court staff or judges. In fact, one participant recounted an experience with a case management master in which the pace of discoveries was scheduled specifically to accommodate her. Perhaps reflecting a decline in civility, a few participants observed that they have encountered more difficulties with their colleagues than with court staff or judges. *“The judges have been pretty good. The worst aspect has been opposing counsel – arrogance and discourtesy beyond the norm.”*

To the extent that issues concerning judicial or court staff attitudes did arise, participants were of the view that they stemmed from inadequate awareness concerning what needs to be done to provide a fully accessible courtroom environment rather than from any deliberate unwillingness to accommodate as required.

“If this were raised [the need for accommodation in the courtroom], is there awareness on their [the judges’] part?”

“We don’t wear signs to say that we are disabled. Subtle disabilities are hard to pick up. Education will get at the subtle things.”

“Judges and adjudicators need to see people with disabilities discharging their responsibilities. This would challenge preconceived notions about what disability looks like.”

“Encourage judges and court staff to inquire about disability needs where appropriate. In general, persons with disabilities should not be offended by any such inquiries.”

As to overall physical plant issues, a number of participants urged that accessibility issues receive a high priority when new courthouses are being built or existing ones renovated. Further, several participants suggested that there ought to be something in the nature of an access or accommodation office for courthouses.

“Who would I call to get a special chair, to find out what is available and how to get it there?”

“Are the only aids available what’s in storage or would it be ordered, and, if so, who pays? Is there a fund in Court Services?”

As noted earlier, specific complaints or recommendations tended to vary by individual, although several did come up more than once. The suggestions made are listed immediately below.

- *“Replace benches in courtrooms with chairs.”*
- *“Provide simultaneous transcription or visual transcript.”*
- *“Sufficient parking should be provided immediately adjacent to courthouses.”*
- *“Provide adequate space to set up/spread out materials.”*
- *“Provide access to counsel tables, rather than requiring argument from farther back in the courtroom.”*
- *“Ensure the counsel table is accessible. In some older courtrooms it can be difficult to get through the gate.”*
- *“Access to the podium in the Supreme Court of Canada is important for at least two reasons. If you can’t access it you’re nearly in the judges’ laps and also there is authority attached to the use of the podium that you lose if you don’t have access and that represents a disadvantage.”*
- *“Provide enlargement equipment to assist with small print briefs and legislation.”*
- *“The audio loop technology in courtrooms that is accessed through a hearing aid is useful, but not everything goes into a microphone so this technology does not represent a complete solution. Sign language with an interpreter would be a better solution.”*

Although not a courthouse or courtroom access issue in the same sense, one participant noted that having to make appearances in a number of geographically dispersed courthouses in one day, as is required in some types of practice, represents a significant obstacle to lawyers who have a mobility impairment. A related issue raised by another participant is that Legal Aid will pay for mileage for use of a personal vehicle but not for cabs.

F. Potential Initiatives

1. Introduction

As noted at the outset of this report, one of the primary objectives of the consultation was to investigate the nature and extent of support that could be offered by the Law Society to members and future members to assist them to pursue successful and meaningful careers in the practice of law.

The prospect of the Law Society potentially offering support to lawyers with disabilities met with considerable enthusiasm among participants. *“I’m glad that the Law Society is taking an interest. That gives me hope.”* Several participants suggested that the Law Society is overdue to increase its support of lawyers with disabilities and that it has not had the strongest track record for doing so in the past.

“The Law Society should be more proactive in assisting those with disabilities to find employment, especially in private practice. The Law Society has not been very helpful in terms of employment assistance.”

However, and consistent with remarks made earlier when discussing the challenges faced when seeking employment, other participants observed that the attitudinal and other challenges they face are as much or more a societal problem as they are a problem for the legal profession or the Law Society to address.

“People expect instant service today. How will people with disabilities reconcile this with public expectations?”

“Law gets practised the way clients want it practised.”

“There is less the Law Society can do. They can’t make people more comfortable with me. Education and greater exposure to this disability will improve things over time.”

In order to focus discussion, participants were asked to assess seven possible initiatives. These were:

- Mentoring programs for lawyers with disabilities, beginning at the law school stage
- Developing Internet-based networking opportunities for lawyers with disabilities
- Maintaining a list of available contacts, resources and employment opportunities
- Providing training and education to employers on disability issues and accommodation
- Facilitating access to accommodation between individuals and employers
- Preparing a recruitment guidebook
- Drafting guidelines on accommodation practices

Of these initiatives, there was widespread support for the first three and somewhat more tempered support for facilitating access to accommodation between individuals and employers. There was less interest expressed in the remaining initiatives tested.

2. Mentoring Programs

Almost universally, participants were of the view that mentoring programs for lawyers with disabilities, beginning at the law school stage, would be of tremendous assistance to them. In fact, many participants observed that mentoring would be of great benefit to all law students and lawyers, not just those with disabilities. Several participants had been fortunate enough to find mentors on their own and were extremely positive about the benefits that had flowed from the relationship. One participant made reference to a mentoring programme having been set up by the Canadian Association of Visually Impaired Lawyers, while another believed that the Law Society already offers a mentorship program.

"Mentoring is a really good idea for lawyers with disabilities."

"I was never connected to lawyers with disabilities until I got into practice."

"It would have been great if I could have been put in touch with people who had similar sorts of problems."

"It would be useful to have someone to talk to, just to tell you you're not alone."

"People I could learn from and emulate."

"Lawyers who have been in practice are realistic about the challenges."

Importantly, however, a number of participants stressed that any mentoring program must involve as mentors not only lawyers with disabilities but also lawyers who do not have a disability. Involving only lawyers with disabilities in a mentorship initiative was seen by these participants as potentially leading to those with disabilities being further marginalized rather than integrated more fully into the profession.

A mentoring program was seen as offering a number of significant benefits. Mentors were widely seen as valuable to anyone pursuing a career in the practice of law, and particularly valuable to students and recently-called lawyers with disabilities who face challenges their colleagues do not. Mentors were seen as a good way of helping address the feelings of isolation that many participants reported, and of assisting them to find articling positions and then jobs as practising lawyers. Mentors with disabilities were seen as being uniquely well positioned to advise on where to look for jobs, as to which employers have a track record of hiring lawyers with disabilities, and which employers are most willing to work with employees with disabilities to ensure that proper accommodations are provided and maintained. They would also be a valuable source of advice for strategies to adopt in the job search, and in particular regarding whether, at what point and to what extent, a disability should be disclosed. As is clear from the findings reported earlier concerning the job application and interview process, issues related to disclosure were significant for a number of participants.

Further, one participant observed that involving non-disabled lawyers would have the additional benefit of reducing the ignorance about disabilities, and the abilities of lawyers with disabilities, that was cited as one of the chief impediments to finding work generally and work in private practice in particular.

Finally, a mentorship program was seen as complementing and reinforcing the next two initiatives, both of which were received very positively.

3. Internet-Based Networking Opportunities

Given the sense of isolation that many participants reported, and the difficulties that many experienced finding both articling positions and employment as practising lawyers, any initiative that would enhance networking opportunities for lawyers with disabilities was seen as a very positive step. Networking was widely seen as crucial to pursuing and maintaining a legal career and the vast majority of participants indicated that their opportunities for doing so in any meaningful way are quite limited. Participants suggested that it be expanded to include dinner meetings and conferences.

“Networking would help to stop some of the isolation. There are so many people out there who need assistance.”

In addition to direct career benefits, networking was seen as a way of increasing the overall profile of lawyers with disabilities, and thereby providing a base from which to more aggressively confront prevailing attitudes toward persons with disabilities in both the legal profession and in the broader society.

A number of participants cautioned, however, that if it is to be set up on an Internet platform, it will have to be set up in such a way that it can be accessed by blind lawyers and lawyers with visual impairments as well as those who have difficulty in using a keyboard.

4. List of Contacts, Resources and Employment Opportunities

This potential initiative was also received very positively, and for much the same reasons that emerged during the discussion concerning networking opportunities. The benefits of such an initiative were seen as largely self-evident, and there was not much discussion about it. As reported above, a significant number of participants commented on the lack of resources available to them in seeking employment both at the articling and practice stages. A list of contacts could also further assist lawyers with disabilities to raise their profile.

Finally, on the subject of resources, one participant urged that information about the availability, cost, and any funding programs associated with assistive devices be a high priority.

“It’s financially prohibitive to pay someone else to do this for you.”

5. Facilitating Access to Accommodation

While received well in principle, opinions were divided as to how effective facilitating access to accommodation between individuals and employers would be in practice. It was seen as attractive by those who favoured it principally because it would involve the Law Society and the profession taking a leadership role on an important issue and because it could ameliorate much of the concern among employers as to what is required in order to accommodate, how difficult accommodations are to acquire, implement and maintain, and how much they will cost.

“I really like that. How can you sell yourself in interviews when they’re asking about access issues?”

“Educate the private bar about the real practicalities of accommodation, the real ‘nuts and bolts’, not just theoretically. Act as a conduit for firms who want to hire those with disabilities.”

“Funding should be available for private firms to purchase equipment required to accommodate lawyers with disabilities.”

Doubts arose in two areas. First, this was seen as an initiative aimed largely at private practice employers given the widely held perception that government is much more willing to accommodate and has a much longer track record of having done so. The second, and related, doubt was whether putting such an initiative in place would have any significant impact on private practice employers.

“The provincial and federal governments are more committed to access. How committed are the private firms? How accessible are they?”

“I can’t see sole practitioners accommodating.”

These concerns, which were expressed by a significant number of participants, are taken up in greater detail in the next section of the report.

6. Employer Training/Education, Recruitment Guidebook

The remaining potential initiatives are grouped together for two reasons. First, they are directed principally to employers and participants again suggested that they are likely to be directed more to private employers than to government. Secondly, participants tended either to assess them together or to make broad observations that had some bearing on each of them. Most of these comments had to do with the difficulty of finding employment in private practice.

The difficulties participants encountered in finding work, both at the articling stage of their careers and subsequently as practising lawyers, emerged strongly throughout this consultation. Discussions about these final potential initiatives tended to focus on the approach that the profession and the Law Society ought to take in addressing this issue. The majority of participants argued that the profession, led by the Law Society, needs to take a stronger leadership role and that initiatives such these represent steps in that direction. There was considerable skepticism, however, about their effectiveness among private sector employers and therefore as to whether undertaking them would represent a good investment of time and resources.

A few participants did not think these initiatives go nearly far enough, and suggested that stronger action is required. The following comments reflect this point of view.

“The Law Society has to take more of a proactive step in terms of encouraging private firms to invest in persons with a disability.”

“If things are really going to change, we are going to require legislation with ‘teeth’.”

“If the government can do it, why can’t private firms?”

“The Law Society needs to commit itself to making the practice of law fully accessible and barrier free. Law firms must be barrier free, which can be monitored through self-assessments. The Law Society could provide a template to assist with this.”

“The traditional combination of strategies directed to changing attitudes through greater education and awareness is hackneyed and doesn’t work. If you want to change attitudes, change actions and the attitudes will follow. This means that, if necessary, you will have to compel behaviour. Simply putting it in the Code of Conduct won’t cut it. People won’t pursue it because to do so would be a career wrecker.”

Others, however, although equally committed to the goal of making the practice of law fully accessible, were strongly opposed to forcing employers to hire lawyers with disabilities. One participant, for whom simply recalling the enormous frustration and sadness of not being able to find employment in private practice was very emotional, nonetheless remained strongly opposed to compelling behaviour.

“You can’t force people because they’ll be resentful. I want them to want me. Is it because I’m good or because you had to hire me?”

A like-minded participant expressed a similar view.

“I don’t want to be in an office where I’m only there because of a program or because someone’s picking up the tab. I want a real, meaningful job.”

There was also some recognition that lawyers in private practice are subject to financial pressures that are not present to the same extent in government and that these pressures affect decisions about employing lawyers with disabilities. However, several participants suggested that lawyers in private practice also have an incentive that the government does not. They argued that 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.”

“Ironically, 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.”

7. Participant Suggestions

The one area that participants identified as important not specifically addressed by the preferred initiatives is awareness building, although this would be addressed in an indirect fashion if the mentoring program encourages the participation of lawyers without disabilities as mentors. Participants had some suggestions as to how awareness might be raised. They included the following.

“The face of the Law Society is still pretty traditional. Increase the visibility of lawyers with disabilities.”

“Higher visibility. Put it out there that we have these people here.”

“Celebrate success stories in Law Society and other professional publications.”

“People need to see the results. All the seminars in the world won’t change that.”

8. Preferred Approaches

Although there is no definitive answer as to which of the initiatives tested in the consultation should be pursued, and participants expressed strongly that any such initiatives would be warmly welcomed, the findings do suggest that participants found some to be more valuable,

and more likely to be effective, than others. Most participants were of the view that the challenges facing lawyers with disabilities are a reflection of attitudes in society generally, as well as a reflection of attitudes in the profession, and that, as has happened to a great extent with race and gender, attitudes in the profession will change as society's attitudes do.

The findings suggest that a mentoring program, networking opportunities and a list of contacts, resources and employment opportunities are the most preferred initiatives among the seven tested. Each of these initiatives is designed to assist lawyers with disabilities directly in their efforts to pursue and maintain a meaningful and rewarding career in the practice of law. The other initiatives tested, which were also perceived to be of assistance, would do so more indirectly through employers. This consultation suggests that the direct approach is preferred.

II. Appendix 1 – Screener

Appendix I – Screener

LSUC Access Research - Screener

Thank you for your interest in the Law Society's consultation with lawyers, law graduates and law students. I want to reiterate that this research is entirely confidential, and that your identity will be known only to *The Strategic Counsel*. In order to assist us in ensuring that the pool of participants in this research is as representative as possible, I would like to ask you a few preliminary questions.

1. Name:
2. Gender:
3. Age:
4. Contact Information:
5. Preferred means of contact:
 - Email
 - Telephone
 - TTY
 - Fax
6. Where or how did you hear about this consultation?
7. Are you a:
 - Lawyer (SKIP TO Q. 15)
 - Law Graduate but never called to the bar
 - Law Student (SKIP TO Q. 16)
8. Did you article?
 - Yes
 - No (SKIP TO Q. 15)

9. Were you called to the bar?
 - Yes (CONTINUE)
 - No (SKIP TO Q. 15)
10. Did you ever practise?
 - Yes (CONTINUE)
 - No (SKIP TO Q. 15)
11. Are you currently engaged in the private practice of law?
 - Yes (CONTINUE)
 - No (SKIP TO Q. 14)
12. How many lawyers are in your practice?
13. What are your main areas of practice? (SKIP TO Q. 15)
14. Please select the one category that best represents your primary activity in law.
 - Government (Specify)
 - In-house counsel
 - Education
 - Unemployed
 - Other (Specify)
15. Where do you practice law/are you employed?
16. What was/is expected to be, your year of call to the bar?
17. Please briefly describe the nature of your disability.
18. This consultation will consider the intersection of participants' membership in more than one equality-seeking community. You have indicated that you are a member of the disability community. If you wish, please indicate whether you consider yourself to be a member of other equality-seeking communities for one or more of the following reasons. (Accept all that apply.)
 - Your race
 - Your ethnicity or cultural background
 - Your religion or creed
 - Your language
 - Your sexual orientation
 - Your gender
 - Your gender identity

Thank you again for your interest in this consultation. We have received an overwhelming response to our call for participants. Although we are interested in the experiences and observations of all those who have contacted us, we have to limit the number of long interviews that will be undertaken in the course of the consultation.

As I mentioned at the earlier, the research seeks to include the widest possible cross-section of individuals with disabilities. We are in the process of selecting a representative pool of participants from all regions of Ontario. We will contact you again over the next two weeks to let you know whether you have been selected for a long interview, and, if you have, to schedule a convenient time for the interview.

If you are not selected for a long interview, the Law Society's Disability Working Group would still welcome your comments. Please direct these comments to Josée Bouchard, Equity Advisor at the Law Society.

III. Appendix II – Discussion Guide

LSUC Access Research Discussion Guide

The interviewer will begin by thanking the interviewee for having agreed to participate in the consultation. The interviewer will then review briefly the nature and objectives of the consultation process. The interviewer will stress the confidential nature of the interview and the consultation process itself. In particular, the interviewer will stress that *The Strategic Counsel* will not disclose to the Law Society the identity of any of those who participate in the consultation. The interviewer will also inform the interviewee that the report of findings that *The Strategic Counsel* prepares for the Law Society will contain no identifying information, including nature of disability if that might serve to effectively identify a participant.

A. Background Information

Note: Most of this information will have been captured in the screening process. Where necessary, it will be confirmed and/or further details sought.

- Gender
- Age
- Member in another equality-seeking community
- Status
 - Law Student
 - BAC Student / Articling Student
 - Practising Lawyer
 - Other (e.g., employed outside the legal profession, unable to work due to disability, unemployed)
- Year of call/jurisdiction
- What is the nature of your disability?
 - Is your disability permanent, temporary or episodic?
- How long have you had a disability?
 - 0-3 years
 - 4-6 years
 - 7-10 years
 - 11 years or more

- What was the nature of your practice or the place where you currently article?
 - Type of practice/areas of law
 - Size of firm
 - Location of practice
 - Full or part-time
 - Other considerations

B. Lawyers

- Briefly describe the nature of your current practice.
 - o (If not practising) Briefly describe the reasons you left the practice of law indicating the extent to which your disability was a factor.
- Has the nature of your practice changed in any way since you were called to the bar? What were the reasons for your shift in practice areas? Please describe briefly.
- To what extent has your disability affected your capacity to find employment?
- To what extent has your disability affected the type of practice in which you are engaged?
- Does your place of employment have an accommodation policy?
 - (If yes) Were you informed of that policy? When (during interview, when position was offered)?
- To what extent have you disclosed your disability at your place(s) of employment?
 - (If no or limited disclosure) Why have you not disclosed/disclosed fully?
- How do you accommodate your disability in the course of your practice?
- Was any accommodation offered at your place of employment?
 - What accommodation was offered?
 - Did you feel that the accommodation offered was sufficient? If not, why not? What more should have been done?
- Did you make any request for accommodation to your employer?
 - (If yes) What accommodation did you request?
 - Were you satisfied with the response?
 - (If no) What were the considerations you made in deciding not to make a request for accommodation?
- Are there any other accommodations that would be helpful to you in undertaking the day-to-day tasks involved in your practice?
- Please identify briefly the court services you have had an opportunity to utilize on a significant basis.
- Has your disability had an impact on your experience with court services? Please describe the challenges you have faced.

- Please comment on measures that you believe could be undertaken to make court services more accessible.

- Probe:
 - Access to the courts/tribunal
 - Scheduling of matters
 - Accessibility of court/tribunal services
 - Attitude of judges/opposing counsel/court staff
 - During the conduct of a hearing/case

Accommodation in examination and cross-examination

- Has your career followed the path that you envisaged when you were in law school/first embarking on the practice of law?
 - If not, how is it different?
 - To what extent has your disability been a factor?
- What, if any, changes to you expect to your practice in the future?
- If you are no longer practicing law, do you have any intention to return at a later point? Why or why not?
- How could the Law Society or the profession assist in reducing barriers facing lawyers with disabilities in their day-to-day practices?
 - Have you any suggestions for programs or other initiatives that would be of assistance to lawyers with disabilities in advancing their careers?

C. Articling

- Please describe the process you followed to secure an articling position? Probe:
 - When obtained articles (i.e. second year, third year, phase I, after completion of phase III)
 - Resources available/used
 - Challenges encountered and extent to which those were disability-related
- What were/are the most significant challenges facing you as an articling student?
- Did you disclose the nature or extent of your disability either during the interview process or subsequently?
 - (If no) Why not?
- Do you believe that your disability made it more difficult for you to secure an articling position?
 - To what extent and how?
- Did your disability affect the places to which you applied for articles?
 - Type of firm?

- Size of firm?
 - Geographical location of firm?
 - Type of work?
 - Other considerations?
- Did your place of articles have an accommodation policy?
 - (If yes) Were you informed of that policy? When (during interview, when articling position was offered)?
- Was any accommodation offered at your place of articles?
 - What accommodation was offered?
 - Did you feel that the accommodation offered was sufficient? If not, why not? What more should have been done?
- Did you make any request for accommodation?
 - (If yes) What accommodation did you request?
 - What accommodations were made?
 - Did you find them sufficient?
 - What further accommodations, if any, do you believe should have been made?
 - (If no) What factors affected your willingness to ask for accommodation?
- Do you believe that you were treated differently than other articling students because of your disability?
 - Attitude of the lawyers/other articling students/clients/judges/court staff?
 - The type of work you were given?
 - Extent of exposure to clients?
- Do you believe that you were disadvantaged in your articles as a result of your disability/disclosure of your disability?
- Were any of the articling students at your place of articles offered positions at the conclusion of the articling term? (If yes)
 - Were you offered a position at your place of articles at the conclusion of your articling term?
 - To what extent do you believe your disability was a factor in the decision not to offer you a place?
- Based on your experience, is there any advice that you would offer to the profession as to how to assist articling students with disabilities to secure articling positions and pursue meaningful and useful articles?
- Have you any suggestions for programs or other initiatives that would be of assistance to articling students with disabilities in pursuing their careers in law?

D. Bar Admission Course

- When did you complete the Bar Admission Course?
- Where did you undertake the BAC?
- Were any disability-related factors considered or involved in your choice of where to undertake the BAC?
- Did you disclose your disability? If not, why did you not do so?
- How did your disability impact on your experience during the BAC?
- Overall, how did your disability impact on your experience during the BAC?
- Did the Law Society have an accommodation policy for the BAC?
 - (If yes) Were you informed of that policy at the outset of the Course?
- Was any accommodation offered by the Law Society?
 - What accommodation was offered?
 - Did you feel that the accommodation offered was sufficient? If not, why not? What more should have been done?
- Did you make any request for accommodation?
 - (If yes) What accommodation did you request?
 - (If no) What factors did you consider in not making your request?
- Did the Law Society offer career placement services or other resources to provide advice or other assistance in securing employment following completion of the BAC?
 - (If yes) What were they?
 - (If no) What would have been helpful in this respect?
- Based on your experience, is there any advice that you would offer as to how BAC students with disabilities could be better assisted in successfully completing the Course?

E. Law School

- Law School attended and year of graduation?
- Were any disability-related factors considered or involved in your choice of law school?
- Did you disclose your disability to the law school either at the time you applied or subsequently?
 - If not, why did you not do so?
- Did the law school have an accommodation policy?
 - (If yes) Were you informed of that policy upon admission?
- Was any accommodation offered by the law school?

- What accommodation was offered?
- Did you feel that the accommodation offered was sufficient? If not, why not? What more should have been done?
- Did you make any request for accommodation?
 - (If yes) What accommodation did you request?
 - Did you feel that the accommodation made was sufficient? If not, why not? What more should have been done?
 - (If no) What factors did you consider in not making a request for accommodation?
- Did your disability have any impact your educational or social experiences at law school?
- Did the law school offer career placement services or other resources to provide advice or other assistance in securing employment such as summer jobs or articling positions?
 - (If yes) What were they?
 - (If no) What would have been helpful in this respect?
- Based on your experience, is there any advice that you would offer as to how law students with disabilities could be better assisted in successfully pursuing their studies?

F. All persons

- Have you been subject to or observed discriminatory attitudes or practices within the legal profession that you would like to bring to the attention of the Law Society? Probe:
 - Attitudes of employers/potential employers
 - Attitudes of colleagues
 - Attitudes of non-lawyer staff
 - Attitudes of clients
 - Attitudes of judges
- During law school, the BAC and/or your career, did you have one or more than one mentor or someone to whom you looked for guidance?
 - If so, please indicate at what point in your studies/career?
 - How did you obtain the mentor?
 - Did you select that person to provide you with guidance relating to your disability?
 - Did that person provide you with guidance relating to your disability? How?
 - o (If no) Do you think a mentor would have been helpful? How?

G. Potential Initiatives

The interviewer will raise a series of possible initiatives that might be of assistance to lawyers with disabilities in establishing themselves and advancing in the practice of law, and explore how useful participants believe these would be and the reasons underlying their impressions. The interviewer will also explore participants' views regarding how these initiatives could best be developed and implemented. It is likely that at least several of them will have been identified in response to earlier questions.

Initiatives to be tested could include:

- Mentoring programs for lawyers with disabilities, beginning at the law school stage
- Developing Internet-based networking opportunities for lawyers with disabilities
- Maintaining a list of available contacts, resources and employment opportunities
- Providing training and education to employers on disability issues and accommodation
- Facilitating access to accommodation between individuals and employers
- Preparing a recruitment guidebook
- Drafting guidelines on accommodation practices

H. Conclusion

At the conclusion of the interview, the interviewer will give participants the opportunity to comment further on any aspect of the interview, or to raise any issue that they did not feel was explored, or explored adequately, in the course of the interview.

FOR INFORMATION

EQUITY PUBLIC EDUCATION EVENTS SCHEDULE - 2005-2006

1. The following is a list of public education events planned for 2005 – 2006:

a. Black History Month

- i. Event date: February, 22, 2006
- ii. Topic: *At Risk Youth – How the Justice System Can Play a Positive Role*
- iii. Location: 1:00 p.m. – 5:00 p.m.: Panel discussion, Donald Lamont Learning Centre and 5:00 p.m. – 7:00 p.m.: Reception, Law Society Convocation Hall.

b. International Women's Day Event

- i. Event date: March 8, 2006
- ii. Proposed topic: *Trafficking of Women and Children*
- iii. Location: 4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre and 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall.

c. International Day for the Elimination of Racial Discrimination

- i. Event date: March 24, 2006
 - ii. Proposed topic: *Canadian Citizens Tortured Abroad – National and International Response*
 - iii. Location: 3:00 p.m. – 6:00 p.m.: Ottawa, University of Ottawa.
6:00 p.m. – 7:30 p.m.: Reception.
- d. National Holocaust Memorial Day
 - i. Event date: April 26, 2006
 - ii. Proposed topic: *Eliminating On-Line Propaganda of Racial and Religious Hatred*
 - iii. Location: 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre and 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall.
- e. South Asian Heritage Month
 - i. Event date: May 3, 2006
 - ii. Topic: *How the Law Recognizes Culturally Diverse Family Structures*
 - iii. Location: 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre and 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall.
- f. Access Awareness
 - i. Event date: TBD
 - ii. Topic: *Disability Issues as they Relate to Federal Laws* (Telecommunications, Transportation and Immigration Laws)
 - iii. Location: Ottawa
- g. National Aboriginal Day
 - i. Event date: June 8, 2006
 - ii. Topic: TBD
 - iii. Location: 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre and 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall.
- h. Pride Week Event
 - i. Event date: June 15, 2006
 - ii. Topic: TBD
 - iii. Location: 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre and 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall.
- i. Louis Riel Day
 - i. Event date: November 16, 2006

- ii. Topic: TBD
- iii. Location: 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre and 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall.

It was moved by Ms. St. Lewis, seconded by Mr. Copeland -

1. That Convocation approves the development of a mentoring and peer support program tailored to the needs of students-at-law and lawyers with disabilities.
2. That Convocation approves the development of on-line networking opportunities for students-at-law and lawyers with disabilities.
3. That Convocation approves an initiative to make accessible lists of contacts, resources and employment opportunities for students-at-law and lawyers with disabilities.
4. That Convocation approves the development and communication of the following initiatives:
 - a. a business case for the recruitment and promotion of students-at-law and lawyers with disabilities;
 - b. a commitment program for the recruitment and retention of students-at-law and lawyers with disabilities in the practice of law;
 - c. a self-assessment template to assist law firms in monitoring their own progress in eliminating barriers to students-at-law and lawyers with disabilities;
 - d. an education program for law firms tailored to the needs of students-at-law and lawyers with disabilities; and
 - e. the publication of model policies and guidelines tailored to the needs of students-at-law and lawyers with disabilities.
5. That Convocation approves an initiative 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.

Carried

Item For Information

- Committee's Priorities

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Proposal for a Member's Report to the Law Society of Criminal and Other Charges

Ms. Curtis presented the Report to Convocation.

Professional Regulation Committee

NOTE:
DEFERRED FROM NOVEMBER 24, 2005 CONVOCATION

Committee Members
Carole Curtis, Chair
Mary Louise Dickson, Vice-Chair
Laurence Pattillo, Vice-Chair
Gordon Z. Bobesich
Anne Marie Doyle
George D. Finlayson
Patrick G. Furlong
Alan Gold
Allan Gotlib
Gavin MacKenzie
Ross W. Murray
Judith Potter
Sydney Robins
Bradley Wright

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on November 10, 2005. In attendance were Carole Curtis (Chair), Mary Louise Dickson (Vice-chair), George

Finlayson, Alan Gold, Judith Potter, Sydney Robins and Bradley Wright. Staff attending were Naomi Bussin, Anne-Katherine Dionne, Terry Knott, Zeynep Onen and Jim Varro.

FOR DECISION

PROPOSAL FOR A MEMBER'S REPORT TO THE LAW SOCIETY OF CRIMINAL AND OTHER CHARGES

MOTION

2. THAT By-Law 20 [Review of Complaints] made by Convocation on January 28, 1999, and amended by Convocation on May 28, 1999, April 26, 2001 and January 24, 2002, be revoked and the following substituted:

REPORTING REQUIREMENTS

OFFENCES

Requirement to report offences: members

1. (1) Every member shall inform the Society in writing of,
 - (a) a charge that the member committed,
 - (i) an indictable offence under the *Criminal Code* (Canada),
 - (ii) an offence under the *Controlled Drugs and Substances Act* (Canada),
 - (iii) an offence under the *Income Tax Act* (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory,
 - (iv) an offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, or
 - (v) an offence under another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the member or relates in any way to the practice of law by the member; and
 - (b) the disposition of a charge mentioned in clause (a).

Requirement to report offences: student members

- (2) Every student member shall inform the Society in writing of,
 - (a) a charge that the student member committed,

- (i) an indictable offence under the *Criminal Code* (Canada),
 - (ii) an offence under the *Controlled Drugs and Substances Act* (Canada),
 - (iii) an offence under the *Income Tax Act* (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory,
 - (iv) an offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, or
 - (v) an offence under another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the student member or relates in any way to the conduct of the student member as such; and
- (b) the disposition of a charge mentioned in clause (a).

Requirement to report: private prosecution

(3) Despite subsection (1) and (2), a member or student member is only required to inform the Society of a charge contained in an information laid under section 504 of the *Criminal Code* (Canada), other than an information referred to in subsection 507 (1) of the *Criminal Code* (Canada), and of the disposition of the charge, if the charge results in a finding of guilt or a conviction.

Time of report

(4) A member or student member shall report a charge as soon as reasonably practicable after he or she receives notice of the charge and shall report the disposition of a charge as soon as reasonably practicable after he or she receives notice of the disposition.

Same

(5) In the circumstances mentioned in subsection (3), a member or student member shall report a charge and the disposition of the charge as soon as reasonably practicable after he or she receives notice of the disposition.

Interpretation: "indictable offence"

(6) In this section, "indictable offence" excludes an offence for which an offender is punishable only by summary conviction but includes,

- (a) an offence for which an offender may be prosecuted only by indictment; and
- (b) an offence for which an offender may be prosecuted by indictment or is punishable by summary conviction, at the instance of the prosecution.

DIVULGATIONS OBLIGATOIRES

INFRACTIONS

Exigence de divulgation d'une infraction commise par un membre

1. (1) Par écrit, le membre avise le Barreau

- a) de toute accusation selon laquelle elle ou il aurait perpétré
 - (i) un acte criminel au sens du *Code criminel* (Canada);
 - (ii) une infraction prévue dans la *Loi réglementant certaines drogues et autres substances* (Canada);
 - (iii) une infraction visée dans la *Loi de l'impôt sur le revenu* du Canada ou dans toute autre loi adoptée par une province ou un territoire du Canada relativement à l'impôt sur le revenu;
 - (iv) une infraction prévue dans une loi entérinée par une province ou un territoire du Canada relativement aux valeurs mobilières;
 - (v) une infraction visée dans un autre texte législatif adopté par le Parlement, par une province ou par un territoire du Canada, dans le cadre de laquelle on invoque, de façon explicite ou tacite, la malhonnêteté du membre ou qui se rapporte à l'exercice du droit par ce dernier;
- b) de la décision relative à l'accusation mentionnée à l'alinéa a).

Exigence de divulgation d'une infraction commise par un membre étudiant

- (2) Par écrit, le membre étudiant avise le Barreau

- a) de toute accusation selon laquelle elle ou il aurait perpétré
 - (i) un acte criminel au sens du *Code criminel* (Canada);
 - (ii) une infraction prévue dans la *Loi réglementant certaines drogues et autres substances* (Canada);
 - (iii) une infraction visée dans la *Loi de l'impôt sur le revenu* du Canada ou dans toute autre loi adoptée par une province ou un territoire du Canada relativement à l'impôt sur le revenu;
 - (iv) une infraction prévue dans une loi entérinée par une province ou un territoire du Canada relativement aux valeurs mobilières;
 - (v) une infraction visée dans un autre texte législatif adopté par le Parlement, par une province ou par un territoire du Canada, dans le cadre de laquelle on invoque, de façon explicite ou tacite, la malhonnêteté du membre ou qui se rapporte à l'exercice du droit par ce dernier;
- b) de la décision relative à l'accusation mentionnée à l'alinéa a).

Exigence de divulgation dans le cadre d'un litige privé

- (3) Malgré les paragraphes (1) et (2), le membre ou le membre étudiant n'est tenu d'aviser le Barreau d'une accusation visée par les dénonciations faites dans le cadre de l'article 504 du *Code criminel* du Canada, hormis celles visées au paragraphe 507 (1) du *Code criminel*,

et de la décision relative à l'accusation, que si cette dernière se solde par une déclaration de culpabilité ou une condamnation.

Moment de la divulgation

(4) Le membre ou le membre étudiant avise le Barreau qu'il fait l'objet d'une accusation dès la réception de l'avis d'accusation; il avise également le Barreau de la décision relative à l'accusation dès la réception de l'avis de la décision.

Idem

(5) Dans les situations visées au paragraphe (3), le membre ou le membre étudiant avise le Barreau d'une accusation et de la décision relative à cette dernière dès la réception de l'avis de la décision.

Interprétation : « acte criminel »

(6) Au présent article, bien qu'elle exclue les infractions punissables seulement sur déclaration sommaire de culpabilité, la définition de l'expression « acte criminel » comprend ce qui suit :

- a) l'infraction en vertu de laquelle la poursuite ne peut être intentée que par voie de mise en accusation;
- b) l'infraction en vertu de laquelle la poursuite peut être intentée par voie de mise en accusation ou qui est punissable sur déclaration sommaire de culpabilité, sur l'initiative de la Couronne.

Introduction

3. From December 2004 to February 2005, the Committee proposed a number of changes to various regulatory processes. All but one of the proposals were reported to and approved at June 2005 Convocation.
4. The one remaining matter, which the Committee approved in early 2005, is a proposal to require a member to report to the Law Society certain criminal charges, findings of guilt and convictions. This proposal requires a new by-law. The Committee decided to await the draft of the By-Law before reporting this matter to Convocation.
5. The By-Law has now been prepared based on the Committee's policy proposals.

Background to the Policy Proposal and the By-Law

6. The proposal arose from a consideration of the issues that arise where an order for an interlocutory suspension (formerly called an interim suspension) is sought against a member who has been charged with a criminal offence but the trial is pending.
7. In certain circumstances, it would be appropriate for the Law Society to apply for an interlocutory suspension of a member who is charged with a criminal offence. An interlocutory suspension would be pursued because the risk to the public, including the risk of a loss of faith in the administration of justice, may be too great to justify waiting for the member to be convicted in a criminal forum. This does not mean that member is presumed guilty of the criminal charges. Rather, it acknowledges that the need for public protection is of paramount importance to the Law Society in its role as regulator.

8. In June 2005, Convocation approved proposals to relax the notice and evidentiary procedural rules applicable to applications for interlocutory suspensions¹, and in the Committee's view, this will assist in addressing the issues that arise where a member is charged with a serious criminal offence. However, in these cases, the Crown may or may not share information with the Law Society about a case, and the Law Society usually cannot use Crown evidence in prior or concurrent disciplinary proceedings without interfering with the administration of the criminal justice system. This in turn restricts the Law Society's ability to respond with complete formal discipline until criminal charges are resolved and a complete case can be presented without fear of undermining the criminal prosecution.
9. Where serious charges are involved, the Society should be able to apply for suspension of a member on the basis of more limited evidence. Even in these cases, there is a risk that the Law Society may interfere with the Crown's case. A member, in defending a motion for an interlocutory suspension, could seek to cross-examine witnesses who will be Crown witnesses in the criminal proceedings. Creating a procedural rule for such cases, for example, to restrict a member's ability to cross-examine and/or call viva voce evidence in the member's defence of a motion for an interlocutory suspension would not be a solution to avoid interference with the Crown's case, as such a rule would violate the principles of natural justice.
10. The Committee, in considering appropriate solutions, focused on the member, and the imposition of a requirement that he or she report to the Law Society the fact of criminal charges and convictions. The Committee noted other law societies' regulations in this respect. The Law Society of British Columbia requires a written report of charges from its members. The Law Society of Alberta may make an order (without a proceeding) suspending a member upon his or her conviction of an indictable offence. The Law Society of Saskatchewan requires a member's report of a finding of guilt with respect to certain charges. The Law Society of Manitoba requires a member's report of a conviction. The Nova Scotia Barristers' Society requires a member's report of a conviction and in response, can exercise a number of remedies at a show cause hearing, including suspension.²
11. In the Committee's view, the member's notice to the Society of the charges will provide the Society with information it needs to take appropriate steps, including a motion for an interlocutory suspension order, to ensure that the public interest is protected.

Overview of the Policy

12. The Committee determined that the requirement for a report should be limited to certain types of serious charges. The following explains the proposal, which is reflected in draft By-Law 20 in the motion on page 4.

¹ Convocation made the following amendments, among others, to the *Rules of Practice and Procedure*:

- a. an amendment to permit a motion for an interlocutory suspension and restriction order to be heard without notice to the member; and
- b. an amendment to permit the introduction of a broad range of evidence on such motions by incorporating s. 15 of the *Statutory Powers Procedure Act*.

² See Appendix 1 for details of these regulations.

- a. The mandatory reporting requirement would extend to all members and student members³ who are to report to the Law Society, as soon as practicable, and in writing,
 - i. any outstanding charges under the *Criminal Code*, the *Controlled Drugs and Substances Act*, the *Income Tax Act* of Canada or any Province of Canada, any securities act of any Province of Canada, or under any other federal or provincial statute that involve, implicitly or explicitly, an allegation of dishonesty, or relate to the practice of law;
 - ii. the disposition of any of the above charges, including findings of guilt and convictions.
- b. No notification would be required where the member or student member has been charged with an offence under the *Criminal Code* that can only be proceeded with summarily. This exemption does not apply to hybrid offences where the Crown has elected, or may elect, to proceed summarily. The proposed by-law does not refer to hybrid offences, as these offences are deemed to be indictable offences until the Crown elects to proceed summarily;
- c. No notification would be required where the member or student member has been charged under a private prosecution, as contemplated by section 507.1⁴ of

³ The proposal does not extend to individuals who are applying for readmission (as a member) to the Law Society. The Committee proposes that Convocation defer this issue and await the legislative amendments in Bill 14 (introduced October 27, 2005) with respect to paralegal regulation and other matters. The proposed legislative amendments focus on licensees (i.e. distinguishing between lawyers and paralegals by granting to each a different class of license) rather than members. Under this approach, a lawyer would be licensed as a barrister and solicitor and would be entitled to practise law in Ontario.

⁴ 504. Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged.

(a) that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person

- (i) is or is believed to be, or
- (ii) resides or is believed to reside

within the territorial jurisdiction of the justice;

(b) that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;

(c) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or

(d) that the person has in his possession stolen property within the territorial jurisdiction of the justice.

...

the *Criminal Code*, unless and until any finding of guilt has been made against the member or student member.

507.1 (1) A justice who receives an information laid under section 504, other than an information referred to in subsection 507(1), shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information.

(2) A judge or designated justice to whom an information is referred under subsection (1) and who considers that a case for doing so is made out shall issue either a summons or warrant for the arrest of the accused to compel him or her to attend before a justice to answer to a charge of the offence charged in the information.

- (3) The judge or designated justice may issue a summons or warrant only if he or she
- (a) has heard and considered the allegations of the informant and the evidence of witnesses;
 - (b) is satisfied that the Attorney General has received a copy of the information;
 - (c) is satisfied that the Attorney General has received reasonable notice of the hearing under paragraph (a); and
 - (d) has given the Attorney General an opportunity to attend the hearing under paragraph (a) and to cross-examine and call witnesses and to present any relevant evidence at the hearing.
- (4) The Attorney General may appear at the hearing held under paragraph (3)(a) without being deemed to intervene in the proceeding.
- (5) If the judge or designated justice does not issue a summons or warrant under subsection (2), he or she shall endorse the information with a statement to that effect. Unless the informant, not later than six months after the endorsement, commences proceedings to compel the judge or designated justice to issue a summons or warrant, the information is deemed never to have been laid.
- (6) If proceedings are commenced under subsection (5) and a summons or warrant is not issued as a result of those proceedings, the information is deemed never to have been laid.
- (7) If a hearing in respect of an offence has been held under paragraph (3) (a) and the judge or designated justice has not issued a summons or a warrant, no other hearings may be held under that paragraph with respect to the offence or an included offence unless there is new evidence in support of the allegation in respect of which the hearing is sought to be held.
- (8) Subsections 507(2) to (8) apply to proceedings under this section.
- (9) Subsections (1) to (8) do not apply in respect of an information laid under section 810 or 810.1.

OTHER CANADIAN LAW SOCIETIES' RULES AND REGULATIONS ON REPORTING
CRIMINAL AND OTHER CHARGES

British Columbia

Rules of Professional Conduct

Reporting criminal charges

3-90 (1) Subject to subrule (2), a lawyer, articled student or applicant who is charged with an offence under a federal or provincial statute must, as soon as practicable, give written notice to the Executive Director of

- (a) the particulars of the charge, and
 - (b) the disposition of the charge and any agreement arising out of the charge.
- (2) No notification is required under subrule (1) if a lawyer, articled student or applicant is issued or served with a ticket as defined in the *Contraventions Act* (Canada) or a violation ticket as defined in the *Offence Act*.

Alberta

Legal Profession Act

s. 83(2) If a member is convicted of an indictable offence, the Benchers, without any other proceedings under this Part and before the expiration of the appeal period relating to the conviction, may order the suspension of the membership of the member whether or not an appeal is commenced.

Saskatchewan

Legal Profession Act

Notification of Convictions and Proceedings

149A. (1) The following persons shall, in writing, advise The Law Society of Saskatchewan of any plea of guilty or finding of guilt with respect to any offence under The Criminal Code of Canada, The Controlled Drugs and Substances Act, any Securities Act of any Province of Canada, any Income Tax Act of Canada or any Province of Canada, any Act in relation to Bankruptcy, and The Customs and Excise Act, or any legislation similar to any of the foregoing, in any jurisdiction:

- (a) a student-at-law;
- (b) an active member with respect to any convictions occurring hereafter;
- (c) an applicant for admission or reinstatement.

(2) A member shall also advise the Law Society immediately of any investigation or proceedings concerning the member conducted by any other professional or regulatory body.

Manitoba

Code of Professional Conduct

Chapter 15

5.1 The lawyer or law corporation must notify the chief executive officer immediately upon being convicted of an offence under a federal statute. Following such notification, the complaints investigation committee may request the member or a voting shareholder of the law corporation to appear before the committee to discuss the conviction. [see Rule 2-80]

Rule 2-80 (pursuant to the *Legal Profession Act*)

Notice of conviction

2-80(1) A member or law corporation must notify the chief executive officer immediately upon being convicted of an offence under a federal statute.

Nova Scotia

Legal Profession Act

38(1) Where a member of the Society has been convicted or found to be guilty in or out of Canada of any offence that is inconsistent with the proper professional behaviour of a member of the Society, including a conviction under

- (a) the Criminal Code (Canada);
- (b) the Controlled Drug and Substances Act (Canada);
- (c) the Income Tax Act (Canada); or
- (d) such other legislation as is prescribed in the regulations,

the Complaints Investigation Committee may, by such notice as it prescribes, require the member to attend a show-cause hearing to establish why the member should not be subject to review by the Complaints Investigation Committee.

(2) During the course of a show-cause hearing pursuant to subsection (1), the Complaints Investigation Committee may, where it considers it proper, take any of the actions authorized by clauses 36(2)(f) to (n) or Section 37.

(3) When the Complaints Investigation Committee has concluded a show-cause hearing pursuant to subsection (1), it may, where it considers it proper, take any of the actions authorized by subsection 36(2) or Section 37.

(4) For the purposes of subsection (1), a certificate of conviction of a member of the Society is conclusive evidence that the member has committed the offence stated therein, unless it is proved that the conviction has been quashed or set aside.

(5) Where a member of the Society has been convicted of an offence referred to in subsection (1), the member shall report the conviction to the Executive Director within thirty days of the conviction having been entered.

36(1) The Complaints Investigation Committee has all the powers conferred by this Act and the regulations in the discharge of its functions as well as the powers, privileges and immunities of a commissioner under the Public Inquiries Act.

(2) The Complaints Investigation Committee may do one or more of the following things during or after an investigation:

- (a) require a member of the Society to attend before it for purposes of assisting with the investigation or for any other purpose consistent with the objects of the professional responsibility process;
- (b) dispose of a complaint in a manner prescribed by the regulations;
- (c) issue a reprimand with the consent of the member of the Society;
- (d) authorize the Executive Director to lay a charge against a member of the Society;
- (e) recommend approval of a settlement agreement to a hearing panel;
- (f) order a financial audit of the practice of a member of the Society to be carried out by a person or persons qualified to do so;
- (g) order a review of the practice of a member of the Society to be carried out by any person or persons;
- (h) where a review conducted pursuant to clause (g) identifies inadequacies in the member's practice or conduct that pose a substantial risk that the member will face disciplinary action in the future, assist the member to remedy those inadequacies;
- (i) require a member of the Society to submit to an assessment or examination, or both, to determine whether the member is professionally competent;
- (j) receive reports from the audit, review, examination or assessment referred to in clauses (f), (g), (h) or (i);
- (k) after providing a member of the Society with an opportunity to be heard, and where it is in the public interest to do so, direct the member to comply with any reasonable requirements specified by the Complaints Investigation Committee as a result of its consideration of the audit, review, examination or assessment referred to in clauses (f), (g), (h) or (i);

- (l) direct that there be an application pursuant to Section 50 regarding the trust account of a practising lawyer;
- (m) by resolution, appoint a receiver pursuant to Section 51;
- (n) by resolution, direct that the Society apply to the court for the appointment of a custodian pursuant to Section 53;
- (o) in addition to the other powers conferred by this subsection, where the member of the Society complained against is a law firm, require the law firm to do what the Complaints Investigation Committee reasonably requires to assist in an investigation.

37(1) The Complaints Investigation Committee may, by resolution, where in its opinion it is in the public interest to do so,

- (a) suspend a practising certificate; or
- (b) impose restrictions or conditions on a practising certificate, during or following an investigation until the suspension, restrictions or conditions are rescinded or amended by the Complaints Investigation Committee or a hearing panel.

(2) The power of the Complaints Investigation Committee pursuant to subsection (1) may be exercised with or without hearing the practising lawyer.

(3) The Complaints Investigation Committee shall, forthwith after passing a resolution pursuant to subsection (1), provide a copy of the resolution to the practising lawyer to whom the resolution applies, including the reasons for a decision to suspend the practising certificate or impose restrictions or conditions on the practising certificate.

(4) A lawyer who receives written notice pursuant to subsection (3) may request in writing, a meeting with the Complaints Investigation Committee.

(5) Where a request is received pursuant to subsection (4), the Complaints Investigation Committee shall

- (a) provide an opportunity for the lawyer to meet with the Complaints Investigation Committee within ten days of the written request; and
- (b) after meeting with the lawyer, may confirm, vary or terminate the suspension, restrictions or conditions imposed pursuant to subsection (1).

(6) Where the Complaints Investigation Committee holds a hearing before making a determination under subsection (1), or where a lawyer requests the opportunity to meet with the Complaints Investigation Committee pursuant to subsection (4), the lawyer has the right to

- (a) be represented by counsel, at the lawyer's expense;
- (b) disclosure of the nature of the complaint; and

- (c) an opportunity to present a response and make submissions.
- (7) A lawyer may appeal to the Nova Scotia Court of Appeal on any question of law from a decision of the Complaints Investigation Committee pursuant to this Section, in accordance with Section 49.

FOR DECISION

CRITERIA WITH RESPECT TO MEMBERS' CONDUCT ELIGIBLE FOR THE NEW REGULATORY MEETING (REPORT FROM THE PROCEEDINGS AUTHORIZATION COMMITTEE)

MOTION

13. That Convocation approves the following general criteria prepared by the Proceedings Authorization Committee for the types of misconduct that would be eligible for a Regulatory Meeting:

A Regulatory Meeting may be authorized by the Proceedings Authorization Committee ("the PAC") in the following circumstances:

- a. The Law Society has conducted an investigation of the member's conduct and the evidence suggests the member may have breached his or her obligations under the *Rules of Professional Conduct*, but in the opinion of the PAC, the circumstances are such that a conduct application may not be warranted if the member agrees to the Meeting;
- b. The conduct to be discussed is not substantially in dispute;
- c. It is not in the public interest to deal with the matter by an Invitation to Attend, given its confidential nature, because:
 - i. The conduct of a member has been the subject of comment in a public forum, including, for example:
 - A. by a court as a matter of public record orally or in writing;
 - B. in a news report, press report, media release, article, journal, or other publication or public medium; or
 - C. at a meeting, gathering, conference, etc.; and
 - ii. As a result of such comment in a public forum, the public is expecting or would reasonably expect to receive a Law Society response to the issue.

Background

14. In June 2005, Convocation approved the policy for a new Regulatory Meeting, which is essentially an Invitation to Attend which can be publicly noted. The policy appears at Appendix 1. The policy contains the following paragraph:

Only members who engaged in specified types of misconduct, the general criteria for which will be determined by the [Proceedings Authorization

Committee], *as approved by Convocation*, would be eligible for a regulatory meeting.
(Emphasis added)

15. The Proceedings Authorization Committee (“the PAC”) has prepared this report, which the Professional Regulation Committee has included in its report for the convenience of Convocation. Pursuant to the paragraph quoted above, the PAC is proposing the criteria set out in the motion at paragraph 13 for Convocation’s approval. The report also summarizes the purpose of the regulatory meeting.

Purpose of the Meeting

16. The Regulatory Meeting is intended for cases where the matter could be referred for discipline through conduct proceedings, but in the view of the PAC there is evidence of a breach of the *Rules of Professional Conduct* that has received public attention and there is good reason to follow a remedial process instead of formal discipline.
17. Where the facts of such a case are in the public realm, the Regulatory Meeting permits an informal discussion of the issues with the member, the benchers conducting the Meeting, and any other persons who may attend with the consent of the member and the Law Society.
18. The purpose of the Meeting is to discuss the ethical issues with the member. At the conclusion of the Meeting, the fact that the Meeting took place is to be public to allow reference to the conduct that led to the Meeting. After authorization by the PAC, Society staff will advise the member of the information to be made public about the Meeting so that the member may provide his or her informed consent to the Meeting.
19. The public information is limited to the name of the member, a brief description of the member’s conduct that led to the Meeting, and the regulatory issues that arose from that conduct. No other information may be disseminated about the Meeting without the agreement of the Meeting participants.
20. The Regulatory Meeting offers an opportunity for frank discussion about difficult issues of conduct where the facts are not in dispute, but there may be differing views on its interpretation in an ethical context. The Meeting provides a forum to generate solutions and closure for the member on issues such as civility. It provides a public response by the Society to the conduct that resulted in the complaint.
21. In accordance with By-Law 21, the decision to authorize a regulatory meeting is at the discretion of the PAC.⁵

⁵ 9. (1)After reviewing a matter, the [Proceedings Authorization] Committee may determine that no action should be taken in respect of the matter or, subject to subsections (2) to (4), the Committee may take one or more of the following actions:

...

3. Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her conduct.
 - 3.1 Invite a member to attend before a panel of benchers to receive advice concerning his or her professional competence.

Appendix 1

THE REGULATORY MEETING
(as approved by Convocation on June 22, 2005)

1. The Proceedings Authorization Committee (“the PAC”) may authorize an invitation to a member to attend a regulatory meeting.
2. In order to proceed with a regulatory meeting, the member must accept (for the purpose of the meeting) the general facts alleged, be willing to participate in the process and be aware of his or her options and rights. These include:
 - a. The voluntary nature of attendance at the meeting,
 - b. The fact that the PAC may consider further action if the member does not accept the invitation to attend the meeting or having accepted, does not attend,
 - c. The fact that the meeting will be a matter of public record, which will also disclose the issue or issues which prompted the authorization of the meeting and the outcome,
 - d. The option for the member, in agreement with the PAC, to invite others to attend the meeting, as discussed below,
 - e. The option for the member to attend with counsel.
3. The member will be advised that the purpose of the meeting is threefold:
 - a. to *educate* the member about the impact of his or her actions,
 - b. to hold the member *accountable* for them, and
 - c. to *address the harm* inflicted on the public (either the complainant or the larger public interest).

Identification of general issues around civility or other matters related to the lawyer’s conduct and possible solutions could be part of addressing the harm.
4. Only members who engaged in specified types of misconduct, the general criteria for which will be determined by the PAC, as approved by Convocation, would be eligible for a regulatory meeting.
5. Required attendees at the meeting will be the member and two or more PAC members.
6. The member and the PAC members attending the meeting may agree that the following may attend the regulatory meeting:
 - a. one or two senior members of the legal profession, depending on the nature of the issue,
 - b. a lay bencher (community representative)
 - c. the complainant.
7. Although the meeting is restricted to those listed above, there will be a public statement that the meeting occurred which identifies both the member and the issues. The fact that the meeting occurred will be a matter of public record at the Law Society.

8. The outcomes of such a meeting may include:
- a. no further action and closing the file;
 - b. the member apologizing to the complainant, after which the file will be closed; or
 - c. a referral back to the PAC for possible authorization of a Conduct Application in the appropriate case.

A key element of the regulatory meeting is its public outcome. The regulatory meeting is not disciplinary, but it will be used where a public disposition is required, for example, where the court has commented publicly on the issue. The Invitation to Attend will continue to be the appropriate remedy where the matter should be private and confidential.

Motion made November 24, 2005

It was moved by Ms. Curtis, seconded by Ms. Dickson that By-Law 20 be amended as set out at page 4 of the Report.

REPORTING REQUIREMENTS

OFFENCES

Requirement to report offences: members

1. (1) Every member shall inform the Society in writing of,
 - (a) a charge that the member committed,
 - (i) an indictable offence under the *Criminal Code* (Canada),
 - (ii) an offence under the *Controlled Drugs and Substances Act* (Canada),
 - (iii) an offence under the *Income Tax Act* (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory,
 - (iv) an offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, or
 - (v) an offence under another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the member or relates in any way to the practice of law by the member; and
 - (b) the disposition of a charge mentioned in clause (a).

Requirement to report offences: student members

- (2) Every student member shall inform the Society in writing of,
 - (a) a charge that the student member committed,

- (i) an indictable offence under the *Criminal Code* (Canada),
 - (ii) an offence under the *Controlled Drugs and Substances Act* (Canada),
 - (iii) an offence under the *Income Tax Act* (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory,
 - (iv) an offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, or
 - (v) an offence under another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the student member or relates in any way to the conduct of the student member as such; and
- (b) the disposition of a charge mentioned in clause (a).

Requirement to report: private prosecution

(3) Despite subsection (1) and (2), a member or student member is only required to inform the Society of a charge contained in an information laid under section 504 of the *Criminal Code* (Canada), other than an information referred to in subsection 507 (1) of the *Criminal Code* (Canada), and of the disposition of the charge, if the charge results in a finding of guilt or a conviction.

Time of report

(4) A member or student member shall report a charge as soon as reasonably practicable after he or she receives notice of the charge and shall report the disposition of a charge as soon as reasonably practicable after he or she receives notice of the disposition.

Same

(5) In the circumstances mentioned in subsection (3), a member or student member shall report a charge and the disposition of the charge as soon as reasonably practicable after he or she receives notice of the disposition.

Interpretation: "indictable offence"

(6) In this section, "indictable offence" excludes an offence for which an offender is punishable only by summary conviction but includes,

- (a) an offence for which an offender may be prosecuted only by indictment; and
- (b) an offence for which an offender may be prosecuted by indictment or is punishable by summary conviction, at the instance of the prosecution.

DIVULGATIONS OBLIGATOIRES

INFRACTIONS

Exigence de divulgation d'une infraction commise par un membre

1. (1) Par écrit, le membre avise le Barreau

- a) de toute accusation selon laquelle elle ou il aurait perpétré
 - (i) un acte criminel au sens du *Code criminel* (Canada);
 - (ii) une infraction prévue dans la *Loi réglementant certaines drogues et autres substances* (Canada);
 - (iii) une infraction visée dans la *Loi de l'impôt sur le revenu* du Canada ou dans toute autre loi adoptée par une province ou un territoire du Canada relativement à l'impôt sur le revenu;
 - (iv) une infraction prévue dans une loi entérinée par une province ou un territoire du Canada relativement aux valeurs mobilières;
 - (v) une infraction visée dans un autre texte législatif adopté par le Parlement, par une province ou par un territoire du Canada, dans le cadre de laquelle on invoque, de façon explicite ou tacite, la malhonnêteté du membre ou qui se rapporte à l'exercice du droit par ce dernier;
- b) de la décision relative à l'accusation mentionnée à l'alinéa a).

Exigence de divulgation d'une infraction commise par un membre étudiant

- (2) Par écrit, le membre étudiant avise le Barreau

- a) de toute accusation selon laquelle elle ou il aurait perpétré
 - (i) un acte criminel au sens du *Code criminel* (Canada);
 - (ii) une infraction prévue dans la *Loi réglementant certaines drogues et autres substances* (Canada);
 - (iii) une infraction visée dans la *Loi de l'impôt sur le revenu* du Canada ou dans toute autre loi adoptée par une province ou un territoire du Canada relativement à l'impôt sur le revenu;
 - (iv) une infraction prévue dans une loi entérinée par une province ou un territoire du Canada relativement aux valeurs mobilières;
 - (v) une infraction visée dans un autre texte législatif adopté par le Parlement, par une province ou par un territoire du Canada, dans le cadre de laquelle on invoque, de façon explicite ou tacite, la malhonnêteté du membre ou qui se rapporte à l'exercice du droit par ce dernier;
- b) de la décision relative à l'accusation mentionnée à l'alinéa a).

Exigence de divulgation dans le cadre d'un litige privé

- (3) Malgré les paragraphes (1) et (2), le membre ou le membre étudiant n'est tenu d'aviser le Barreau d'une accusation visée par les dénonciations faites dans le cadre de l'article 504 du *Code criminel* du Canada, hormis celles visées au paragraphe 507 (1) du *Code*

criminel, et de la décision relative à l'accusation, que si cette dernière se solde par une déclaration de culpabilité ou une condamnation.

Moment de la divulgation

(4) Le membre ou le membre étudiant avise le Barreau qu'il fait l'objet d'une accusation dès la réception de l'avis d'accusation; il avise également le Barreau de la décision relative à l'accusation dès la réception de l'avis de la décision.

Idem

(5) Dans les situations visées au paragraphe (3), le membre ou le membre étudiant avise le Barreau d'une accusation et de la décision relative à cette dernière dès la réception de l'avis de la décision.

Interprétation : « acte criminel »

(6) Au présent article, bien qu'elle exclue les infractions punissables seulement sur déclaration sommaire de culpabilité, la définition de l'expression « acte criminel » comprend ce qui suit :

- a) l'infraction en vertu de laquelle la poursuite ne peut être intentée que par voie de mise en accusation;
- b) l'infraction en vertu de laquelle la poursuite peut être intentée par voie de mise en accusation ou qui est punissable sur déclaration sommaire de culpabilité, sur l'initiative de la Couronne.

It was moved by Mr. Champion, seconded by Mr. Swaye, that the words "where the charge alleges, explicitly or implicitly, dishonesty on the part of the member or relates in any way to the practice of the law by the member" be added to section 1. (1) (a) (iii) and (iv).

It was clarified by Mr. Sandler that the Champion/Swaye motion applies to section 2 of the By-Law dealing with students' obligations.

It was moved by Mr. Bobesich, seconded by Mr. Gottlieb that members be required to report only convictions.

Lost

It was moved by Ms. Curtis, seconded by Ms. Dickson that By-Law 20, as amended by the Champion/Swaye motion be approved.

Carried

ROLL-CALL VOTE

Aaron	For	Harris	For
Alexander	For	Krishna	For
Backhouse	For	MacKenzie	For
Bobesich	Against	Manes	For
Bourque	For	Martin	For
Champion	For	Millar	For
Chahbar	For	O'Donnell	For
Cherniak	For	Pattillo	For

Copeland	For	Pawlitza	For
Crowe	For	St. Lewis	For
Curtis	For	Sandler	For
Dickson	For	Silverstein	Against
Dray	For	Simpson	For
Eber	For	Swaye	For
Filion	For	Symes	For
Finlayson	For	Topp	Against
Gold	For	Warkentin	For
Gotlib	For	Wright	For
Gottlieb	Against		

Vote: 32 For; 4 Against

Item Not Reached

- Criteria With Respect to Members' Conduct Eligible for the New Regulatory Meeting (Report from the Proceedings Authorization Committee)

REPORTS NOT REACHED

Governance Task Force Report
Tribunals Committee Report
CEO's Report

The Acting Treasurer thanked Malcolm Heins, Katherine Corrick and Deidré Rowe Brown for their assistance.

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 26th day of January, 2006.

Acting Treasurer