

MINUTES OF CONVOCATION

Thursday, 26th April, 2007
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Alexander, Backhouse, Banack, Boyd, Campion, Carpenter-Gunn, Caskey, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Feinstein, Fillion, Furlong, Go, Gotlib, Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrence, Lawrie, Legge, Martin, Millar, Minor, Murphy, Murray, Pawlitza, Potter, Robins, Ruby, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes (by telephone), Topp, Wardlaw, Warkentin, Wright and Yachetti (by telephone).

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer extended condolences on behalf of Convocation to the family and friends of June Callwood, well-known journalist, author and social activist, who passed away after a lengthy and courageous battle against cancer on April 14, 2007. Ms. Callwood served as an appointed bencher from 1987 to 1991 and was granted an Honorary Doctor of Laws degree by the Law Society of Upper Canada for her contributions to the legal profession.

Condolences were also extended to the family of The Honourable Archie Campbell who passed away on April 17, 2007. On March 29th Convocation resolved to confer on Justice Campbell the degree of Doctor of Laws, *honoris causa*. The honorary degree will be conferred on Justice Campbell posthumously at a call to the bar ceremony at Roy Thompson Hall in Toronto on June 19, 2007. Brian Lennox, The Honourable Dan Chilcott and Barbara Jackman will also receive Doctor of Laws degrees at the call to the bar ceremonies in June 2007.

The Treasurer announced the names of those who will be awarded the Law Society Medal and the Lincoln Alexander Award. They are as follows:

Law Society Medal

Claude M. V. Pensa, Q.C., London
 Rodney Hull, Q.C., Toronto
 Professor Martha Jackman, Ottawa
 Angus McKenzie, Q.C., London
 Claude Pensa, Q.C., London
 Reuben Rosenblatt, Q.C., Toronto

Lincoln Alexander Award

Roger Rowe, Toronto

The Treasurer thanked the following benchers who have chosen not to stand for re-election for their dedication and contributions to the legal profession: Earl Cherniak, Holly Harris, Robert Martin and Tracey O'Donnell. The Treasurer also expressed gratitude to the following benchers who have decided to become life benchers: Paul Copeland, Abraham Feinstein, Neil Finkelstein, Ron Manes, Ross Murray and Robert Topp.

The Treasurer reported on his activities since last Convocation.

SECRETARY'S REPORT

The Secretary gave a status report on the 2007 Bencher Election.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of March 29, 2007 were confirmed.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCETO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADAASSEMBLED IN CONVOCATION

The Director of Professional Development and Competence presents the following candidates for Call to the Bar of Ontario pursuant to By-Law 11, section 7:

(a) Transfer from another Province

The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 26th, 2007:

Aiyaz Amirali Alibhai
 Robert Roland Bradbury
 Michel Dery

Province of British Columbia
 Province of Newfoundland and Labrador
 Province of British Columbia

Craig Stephen Doherty
 Jason Michael Farrer
 Kelly Adele Gallagher-Mackay
 Michael Alphonse ParJ
 Miriam Ariella Vale Peters
 Kirsten Alicia Thoreson
 Jason William Joseph Woycheshyn

Province of British Columbia
 Province of British Columbia
 Territory of Nunavut
 Province of New Brunswick
 Province of British Columbia
 Province of Alberta
 Province of Alberta

(b) Licensing Process (Bar Admission Course)

Pursuant to By-Law 11, section 7(2) the following candidate has satisfied the requirements and has been excused from participating in a call day ceremony. The following candidate has successfully completed the Licensing Process (Bar Admission Course), filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 26th, 2007:

Bridget Mary Jokitalo

Bar Admission Course

ALL OF WHICH is respectfully submitted

DATED this the 26th day of April, 2007

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

Carried

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Mr. Millar presented the Report.

Report to Convocation
 April 26, 2007

Finance and Audit Committee

Committee Members
 Derry Millar, Chair
 Beth Symes, Vice-Chair
 Brad Wright, Vice-Chair
 Abdul Chahbar
 Andrew Coffey
 Marshall Crowe
 Holly Harris

Ross Murray
 Alan Silverstein
 Gerald Swaye

Purposes of Report: Decision and Information

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

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2. In Camera Matter
3. Tribunals Composition Task Force
4. Statement of Investment Compliance Statements – Short-Term Portfolio and Long-Term Portfolio
5. Investment Compliance Reports - General Fund and Lawyers Fund for Client Compensation - Foyston, Gordon & Payne

COMMITTEE PROCESS

1. The Finance and Audit Committee (“the Committee”) met on April 12, 2007. Committee members in attendance were: Derry Millar (c.), Beth Symes (v.c.), Brad Wright (v.c.) Abdul Chahbar, Marshall Crowe, Holly Harris, Ross Murray, Alan Silverstein, and Gerry Swaye.
2. Other benchers attending were Mark Sandler and Heather Ross. Sam Persaud from Deloitte & Touche LLP also attended. Staff in attendance were Malcolm Heins, Wendy Tysall, John Matos, Fred Grady, Jim Varro and Andrew Cawse.

FOR DECISION

THE LAW SOCIETY OF UPPER CANADA GENERAL FUND - AUDITED FINANCIAL
STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2006

Motion

3. The Finance & Audit Committee recommends the annual financial statements for the Law Society of Upper Canada General Fund for the year ended December 31, 2006 be approved by Convocation.
4. Mr. David Ross, Ms. Paula Jesty, and Mr. Sam Persaud of Deloitte & Touche LLP, will be in attendance.

General FundFor the year ended December 31, 2006Management Discussion and Analysis

5. The Law Society of Upper Canada ("the Society") General Fund is composed of a number of funds included in these financial statements. The Unrestricted Fund is the Society's operating fund representing the bulk of its revenues and expenses. There are a number of special purpose funds restricted by Convocation. These are the Capital Allocation, Invested in Capital Assets, County Libraries, Special Projects, Repayable Allowance, Endowment and the Working Capital Reserve funds. The Society's annual membership fee is based on the financial requirements of the restricted and unrestricted funds.
6. Separate financial statements are prepared for the Lawyers Fund for Client Compensation, LibraryCo Inc. and the Combined Errors and Omissions Insurance Fund.

BALANCE SHEET

Cash and short-term investments

7. Cash and short-term investments, have decreased by approximately \$1.8 million from \$15.9 million at the end of 2005 to \$14.1 million at December 31, 2006. The short-term investments include government backed securities and money market instruments issued by major Canadian banks.

Portfolio investments

8. Portfolio, or long-term investments increased slightly to \$10.8 million from \$10.5 million and comprise North American equities (20%) and Canadian bonds (80%). The portfolio is managed in compliance with the General Fund's investment policy. Fixed income investments include a diversified mix of government, provincial and corporate bonds with an investment rating of "BBB" or better. Equity investments include a diversified mix of equities listed on the major U.S. and Canadian stock exchanges. At December 31 2006, the market value was \$255,000 more than the book value of the portfolio.

Capital assets

9. The decrease in capital assets from \$23.1 million to \$22.9 million reflects the completion of the Osgoode Hall north wing renovation project in February 2006 and the commencement of related amortization. Total expenditures on the north wing renovation were \$9.7 million.
10. The Ottawa property, with a carrying value of \$2.1 million, classified as "capital assets held for resale" in 2005, was sold in May 2006 for \$2.2 million.

Current liabilities and deferred revenue

11. Accounts payable and accrued liabilities have decreased by \$3.3 million to \$5.9 million as a result of the payment of holdbacks on the north wing renovation project and a litigation provision and the reversal, into income, of a statute barred accrued liability.
12. Deferred revenue of \$5.5 million, representing 2007 membership fees received in 2006, has decreased from \$7.2 million.

Unclaimed trust funds

13. Unclaimed trust funds continue to increase, reaching \$1.4 million in 2006 (2005: \$1.3 million). These are trust monies turned over to the Society by members who are unable to locate or identify the clients to whom the monies are owed. By statute, the Society administers these funds, in perpetuity, with the net income from the funds transferred to the Law Foundation of Ontario annually. The Society is reimbursed for expenses associated with the administration of unclaimed trusts to a limit of the annual income earned on funds held.

STATEMENT OF REVENUES AND EXPENSES

14. The Society's General Fund has generated an unrestricted surplus of \$1.2 million as a result of operations for 2006 (2005: \$367,000).
15. Total revenues for the General Fund increased by \$2 million from \$57.2 million in 2005 to \$59.2 million in 2006. Net expenses increased slightly from \$57.8 million to \$58.6 million.

Revenues

16. Membership fees increased by \$3 million in 2006 attributable to approximately 750 more members and a \$68 per member fee increase.
17. The major components of professional development and competence ("PD&C") revenues are the licensing process and post-call education programs. PD&C revenues declined by \$2.3 million over 2005 as a result of a reduction in the tuition fee from \$4,400 for the bar admission course to \$2,600 for the new licensing process.
18. Investment income comprises interest earned on fixed income investments, dividends earned on equities and net capital gains realized on the disposition of bonds or equities. Also included in investment income is a \$3 million (2005: \$2.5 million) transfer of

investment income from the Errors and Omissions Insurance Fund leading to the \$617,000 increase in total investment income to \$4.1 million. The annual return on the short-term portfolio was 4% for 2006, up from 2.9% in 2005, consistent with increased short-term interest rates. The return on bonds was 4.4% (2.1% in 2005). The total rate of return including unrealized amounts on the long-term portfolio was 6.5% (2005: 3%).

19. Other revenues were consistent with 2005 and include a variety of items such as lawyer referral service fees, Ontario Reports royalties, catering revenues, litigation and enforcement cost recoveries, charges for fee payment plans and other miscellaneous revenues including the reversal of provisions deemed no longer necessary.

Expenses

20. Total net expenses of \$58.6 million represent a nominal increase from \$57.8 million in 2005, although the biggest individual departmental change was the \$1.4 million decline in PD&C expenses after the transition from the bar admission course to the shorter licensing process. As anticipated, this decrease was offset by direct regulatory operating expenses increasing with the rising costs associated with mortgage fraud.

Professional development and competence expenses

21. Professional development and competence expenses decreased because of reductions in exam administration, materials production and instruction expenses as the streamlined licensing process transitioned from the bar admission course. Continuing Legal Education expenses were static year-on-year.

Professional regulation expenses

22. Direct professional regulation expenses increased from \$12 million in 2005 to \$13.3 million in 2006. The regulatory division is in the midst of a number of large and complex mortgage fraud investigations requiring additional employees and an increase in outside counsel and expert witness costs in 2006.

Administrative expenses

23. Administrative expenses of \$7.1 million, increased from \$6.3 million in 2005, comprise Finance, Information Systems and Human Resources departments. The increase was primarily attributable to increased work on information systems work necessary to maintain the Society's key operating systems.

Other expenses

24. Other expenses include benchers related disbursements, payments to the Federation of Law Societies and CANLII, insurance and audit fees, catering costs, payments to CDLPA, OLAP, Pro Bono Law Ontario, the Advocates' Society, severance payments and other miscellaneous expenses of the Society. Total other expenses of \$5.3 million have decreased from \$6.1 million in 2005 primarily because of year-on-year differences in severance costs and provisions for uncollectable accounts receivable.

Amortization

25. Amortization of \$2.4 million has increased over 2005 with the amortization of the renovation costs of the north wing over a ten-year period.

STATEMENT OF CHANGES IN FUND BALANCES*Capital Allocation Fund*

26. The Capital Allocation Fund is the funding source for approved capital projects. The fund is replenished on an annual basis by the \$75 portion of member fees (unchanged from 2005) dedicated to capital funding. The Fund was the recipient of the \$2.2 million in proceeds from the sale of the Ottawa property.

Invested in Capital Assets Fund

27. Expenditures capitalized and reported as capital assets are maintained in the Invested in Capital Assets Fund, which has decreased to \$22.9 million with the sale of the Ottawa property and amortization for the year.

County Libraries Fund

28. In 2006, the \$6.8 million in County Library expenses show a small increase from previous years. The Society levies, collects and remits funds for county library purposes to LibraryCo Inc. on a basis determined when the annual budgets are approved.

Repayable Allowance Fund

29. In 2006, the Law Society's Repayable Allowance program provided \$94,000 to 28 students (2005: \$213,000 to 66 students).

Endowment Fund

30. The Society administers the J. Shirley Denison Endowment Fund established to provide relief and assistance to members, students and former members. During the year \$53,000 was paid to 15 eligible applicants (2005: \$57,000 to 14 eligible applicants).

Special Projects Fund

31. The Special Projects Fund is maintained to ensure that financing is available for ongoing special projects that have been approved but not completed in the fiscal year budgeted. The 2006 year-end balance is \$128,000, primarily representing remaining funding for the Task Force on the Independence of the Bar and the Rule of Law and the survey of the impact of law school tuition fee increases.

Working Capital Reserve

32. The Working Capital Reserve of \$7.9 million is unchanged since being set in 2002 at a level equivalent to two months of the Society's operating expenses. Since that time operating expenses have increased so that the reserve now represents 1.6 months of operating expenses. The Working Capital Reserve will generate the cash required to

pay the expenses of the recently approved paralegal start-up budget. The paralegal start-up budget projects a deficit of \$1.5 million to be recovered from paralegals in future years. The Society's cash reserves will be replenished with this repayment by paralegals.

Notes to Financial Statements

Stated in whole dollars except where indicated
For the year ended December 31, 2006

1. Description of Fund

The Law Society of Upper Canada (the "Society") was founded in 1797 and incorporated in 1822 with the enactment of the *Law Society Act*. The Society exists to govern the legal profession in the public interest. This is achieved by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct and 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. The governing body of the Society, which is known as Convocation, carries out this mandate.

The *Law Society Act* was amended by the *Access to Justice Act* in October 2006, which will come into full effect on May 1, 2007 to legislate the regulation of paralegals by the Society. The legislation resulted in the formation of the Paralegal Standing Committee. The legislation expands the function of the Society to ensure that:

- (a) all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law and persons who provide legal services in Ontario.

The Society is not subject to income or capital taxes because it is a not-for-profit corporation. These financial statements represent the financial position and operations of the Law Society of Upper Canada – General Fund, which includes certain internally restricted funds, and do not purport to represent all assets and liabilities under the control of the Society.

Separate financial statements have been prepared for the following related entities, which have not been consolidated into the General Fund statements:

Lawyers Fund for Client Compensation

The Society maintains the Lawyers Fund for Client Compensation ("Compensation Fund") pursuant to section 51 of the *Law Society Act* to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. Members' annual fees and investment income finance the Compensation Fund. The Compensation Fund reports fees collected by the General Fund as revenues. The Compensation Fund reimburses the General Fund for certain administrative expenses, spot audit expense and a portion of the

costs of operating the investigation and discipline functions of the Society. In 2006 these amounted to \$4,022,000 (2005 – \$3,931,000).

Errors & Omissions Insurance Fund and Lawyers' Professional Indemnity Company

The Society provides professional liability insurance to the legal profession through the Errors and Omissions Insurance Fund ("E&O Fund") and the Lawyers' Professional Indemnity Company ("LAWPRO"). The E&O Fund was originally set up in the Society's accounts to record insurance claims and expenses and related levies and their investment. LAWPRO took over underwriting the program commencing in 1990. LAWPRO, a wholly owned subsidiary of the Society, was incorporated in 1990 and is licensed to provide lawyer's professional liability and title insurance. On an annual basis the E&O Fund provides the General Fund with income derived from its surplus earnings. This income, reported as Investment Income of the General Fund, amounted in 2006 to \$3,000,000 (2005 – \$2,500,000). LAWPRO paid \$238,000 (2005 – \$102,000) primarily for shared information systems, governance costs and government relations services.

LibraryCo Inc.

LibraryCo Inc., a wholly owned, not-for-profit subsidiary of the Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services across Ontario and to administer funding on behalf of the Society. LibraryCo Inc. was incorporated under the Business Corporations Act of Ontario in 2001. The Corporation issued 100 voting Common Shares to the Society for \$100 and 100 Special Shares to the County and District Law President's Association for \$100. The holders of the Special Shares are entitled to elect one director.

The Society levies and collects funds for County and District Law Library purposes and transfers these funds to LibraryCo Inc. Convocation internally restricts these funds for use by county law libraries to carry out their annual operations and any special projects approved by Convocation.

Law Society Foundation

The Law Society Foundation ("LSF"), a registered charity, was incorporated by Letters Patent in 1962. The objectives of the LSF are to foster, encourage and promote legal education in Ontario, provide financial assistance to law students in Ontario, restore and preserve land and buildings of historical significance to Canada's legal heritage, receive gifts of muniments and legal memorabilia of interest and significance to Canada's legal heritage, maintain a collection of gifts of books and other written material for use by educational institutions in Canada, to receive donations and to maintain a fund for the relief of poverty by providing meals to persons in need. The Society provides facilities, administration, accounting, security and certain other services at no cost to the LSF.

The Law Foundation of Ontario

The Law Foundation of Ontario ("LFO"), a corporation without share capital established in 1974, was created to receive interest accruing on monies held in lawyers' mixed trust accounts and to establish and maintain a fund to be used for the purposes of legal education and legal research, legal aid and the establishment, maintenance and operation of law libraries. During 2006, the LFO contributed \$944,000 to the General Fund of the Society (2005 – \$1,447,000) for the

operation of the Licensing Process / Bar Admission Course and \$76,000 (2005 – \$100,000) for legal heritage programs.

2. Significant Accounting Policies

Basis of presentation

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations published by the Canadian Institute of Chartered Accountants using the restricted fund method of reporting revenues.

Description of funds

The *Unrestricted Fund* accounts for the Society's program delivery and administrative activities. This fund reports unrestricted resources.

Restricted Funds

The *Capital Allocation Fund* is maintained to provide a source of funds for the acquisition and maintenance of the Society's capital assets. These include buildings and major equipment including computers. Amounts of assets capitalized, according to the Society's capital asset policy, are transferred to the Invested in Capital Assets Fund. Expenditures not capitalized are expended in the Capital Allocation Fund. At December 31, 2006 the balance is \$3,546,000 (2005 – \$1,622,000).

The *Invested in Capital Assets Fund* records transactions related to the Society's capital assets, specifically acquisitions, amortization and disposals. At December 31, 2006 the balance is \$22,880,000 (2005 – \$25,146,000).

The *County Libraries Fund* records transactions related to the Society's support of county law libraries. The fund accumulates levies raised by the Society for county library purposes. The Society remits amounts to LibraryCo Inc. on a predetermined basis as approved by Convocation. In recent years the funds remitted have nominally exceeded the funds collected and in 2006 an amount of \$147,000 has been transferred from the Unrestricted Fund to finance the accumulated deficit. At December 31, 2006 the fund balance is nil (2005 deficit – \$53,000).

The *Repayable Allowance Fund* provides students with funding for tuition and living expenses and is based on a student's ability to repay the grant within a specified period of time following the student's non-participation in the Licensing Process / Bar Admission Course. At December 31, 2006, the balance is \$52,000 (2005 – \$46,000).

The *Endowment Fund* is the J. Shirley Denison Fund, established to provide relief and assistance to members and former members who find themselves in difficult financial circumstances. Contributions for endowments are recognised as revenue in the Endowment Fund. At December 31, 2006, the Endowment Fund balance is \$253,000 (2005 – \$294,000).

The *Special Projects Fund* is maintained to ensure that financing is available for ongoing special projects. The balance at December 31, 2006 is \$128,000 (2005 – \$105,000).

The *Working Capital Reserve* is maintained to ensure adequate cash reserves for the continuous financing of the Society's operations. This fund balance is sufficient to provide for

the Society's operating expenses for up to two months. At December 31, 2006 the balance is \$7,975,000 (2005 – \$7,975,000).

Cash and short-term investments

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy and are subject to insignificant risk of a change in value. Investment income, except income earned on resources held for endowment, is retained in and reported by the Unrestricted Fund.

Portfolio investments

Portfolio investments are recorded at cost, net of amortization of premiums and discounts. Investments consist of a diversified portfolio of government bonds, corporate bonds and Canadian and U.S. equities, according to the Society's investment policy. Only if a loss in the value of an investment is other than a temporary decline is the investment written down to recognize the loss.

Capital assets

Assets are capitalized and subject to amortization when they are determined to have a minimum useful life of three years and an acquisition cost of \$10,000 for equipment, furniture and computer equipment, \$25,000 for computer software and \$25,000 for building improvements. Capital assets are presented at cost net of accumulated amortization. For purposes of calculating the first year's amortization, all capital assets are deemed to be acquired, put into service, or completed on July 1st. Amortization is charged to expenses on a straight-line basis over the estimated useful lives of the assets as follows:

Buildings	30 years
Building improvements	10 years
Furniture, equipment and computer hardware and software	3 to 5 years

Revenue recognition

Membership fees are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Accordingly, fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next year.

Professional development and competence, investment and other revenues are recognized when receivable if the amount can be reasonably estimated and collection is reasonably assured.

Collections

The Society owns a collection of legal research and reference material as well as a collection of portraits and sculptures. The cost of additions to the collections is expensed as incurred. No value is recorded in these financial statements for donated items.

Volunteer services

The Law Society is governed by a board of directors known as benchers and who meet as Convocation, forty of whom are elected lawyers and eight of whom are appointed by the provincial government. Under the *Access to Justice Act*, two paralegals have also been appointed as benchers by the provincial government. The Province remunerates their appointed benchers. Elected and ex-officio benchers are only eligible for remuneration after contributing 26 days of voluntary time. The work of the Society is also dependent on other voluntary services by members of the profession. No value has been included in these financial statements for gratuitous services.

Financial instruments

The estimated fair values of short-term investments, accounts receivable, prepaid expenses, accounts payable, accrued liabilities and deferred revenue approximate their carrying amounts in the financial statements due to the relatively short period to maturity of these instruments.

Measurement uncertainty

The preparation of the financial statements in accordance with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingencies at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

3. Accounts Receivable

Included in accounts receivable are certain related parties amounts as follows:

	<u>2006</u>	<u>2005</u>
The Law Foundation of Ontario	293,000	543,000
LibraryCo Inc.	16,000	-
Lawyers' Professional Indemnity Company	14,000	92,000
Lawyers Fund for Client Compensation	-	332,000
The Law Society Foundation	-	26,000

4. Portfolio Investments

(\$000's)	2006		2005	
	<u>Book</u>	<u>Market</u>	<u>Book</u>	<u>Market</u>
	<u>Value</u>	<u>Value</u>	<u>Value</u>	<u>Value</u>
Debt Securities	8,936	8,888	8,423	8,316
Common Shares	<u>1,886</u>	<u>2,189</u>	<u>2,089</u>	<u>2,081</u>
	<u>10,822</u>	<u>11,077</u>	<u>10,512</u>	<u>10,397</u>

5. Capital Assets Held For Resale

The land and building owned in Ottawa were placed on the market for sale in July 2005, and sold in May 2006. They were classified as capital assets held for resale at December 31, 2005, shown at carrying value.

6. Capital Assets

(\$000's)	2006		2005	
	<u>Cost</u>	<u>Accumulated Amortization</u>	<u>Net</u>	<u>Net</u>
Land and buildings	25,395	17,216	8,179	8,730
Building improvements	17,475	4,168	13,307	4,411
Building improvements under construction	-	-	-	8,560
Furniture, equipment and computer hardware and software	<u>5,446</u>	<u>4,052</u>	<u>1,394</u>	<u>1,360</u>
	<u>48,316</u>	<u>25,436</u>	<u>22,880</u>	<u>23,061</u>

In 2004 construction commenced on the renovation of Osgoode Hall's north wing. Renovations were completed in 2006 at a total cost of \$9,710,000. Expenditures relating to this renovation were initially categorized as building improvements under construction and are now included as building improvements.

7. Unclaimed Trust Funds

Section 59.6 of the *Law Society Act* permits a member who has held money in trust for or on account of a person for a period of at least two years to apply in accordance with the by-laws for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. Subject to certain provisions in the Act enabling the Society to recover its expenses associated with maintaining these funds, net income from the money held in trust shall be paid to the Law Foundation of Ontario. Unclaimed money held in trust amounts to \$1,416,000 (2005 – \$1,266,000).

8. Other Trust Funds

The Society administers client funds for members under voluntary or court-ordered trusteeships. These funds and matching liabilities are not reflected on the Balance Sheet. Money paid to the Society is held in trust until it is repaid to the clients or transferred to the Unclaimed Trust Funds. At December 31, 2006 total funds held in trust amount to \$1,168,000 (2005 – \$2,269,000).

9. Other Revenue

Included in other revenue is income from the Ontario Reports, catering, the Lawyer Referral Service, specialist certification and other miscellaneous revenues.

10. Other Expenses

Included in other expenses are payments to the Federation of Law Societies, County and District Law Presidents' Association, insurance, professional fees, termination payments, catering, other corporate expenses and governance related disbursements. The remuneration of elected and ex-officio benchers during the year was \$159,000 (2005 – \$134,000). The value of bencher expenses reimbursed was \$489,000 (2005 – \$509,000). The Treasurers' honoraria for the year was \$97,000 (2005 – \$103,000).

11. Pension Plan

The Society maintains a defined contribution plan for all eligible employees of the Society. Law Society employees can choose matching employee and employer contributions between 1% and 6% of annual earnings, with the exception of designated employees for whom the Society contributes 12% of annual earnings, up to the maximum deduction allowed by the Canada Revenue Agency. The Society's General Fund pension expense in 2006 amounted to \$1,356,000 (2005 – \$1,287,000).

12. Commitments

The Society is committed to monthly lease payments for property under leases having various terms up to April 2010. Aggregate minimum monthly payments to the expiry of the leases are as follows:

<u>Year</u>	<u>\$000's</u>
2007	535
2008	558
2009	575
<u>2010</u>	<u>194</u>
<u>Total</u>	<u>1,862</u>

13. Contingent Liabilities

A number of claims or potential claims are pending against the Society. It is not possible for the Society to predict with any certainty the outcomes of such claims or potential claims. Management is of the opinion that based on the information presently available, it is unlikely that any liability, to the extent not covered by insurance or inclusion in the financial statements, would be material to the Society's financial position.

14. Guarantees

In the normal course of business the Society has entered into agreements that meet the definition of a guarantee, including indemnities in favour of third parties, such as confidentiality agreements, engagement letters with advisors and consultants, outsourcing agreements, leasing contracts, information technology agreements and service agreements. Under the terms of these agreements, the Society agrees to indemnify the counterparties for various items including, but not limited to, all liabilities, loss, suits, and damages arising during, on or after the term of the agreement. The maximum amount of any potential future payment cannot be reasonably estimated.

The Society has also provided indemnification to all directors and officers of the Society. Under s.9 of the *Law Society Act*:

“No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power.”

Notwithstanding s.9, the Society has also purchased errors and omissions insurance for past and present officers, employees, committee members, benchers, agents and volunteers acting on behalf of the Society, its subsidiaries and affiliates, to mitigate the cost of any potential suit or action.

No estimate of the maximum exposure under these indemnifications can be made and historically the Society has not made any significant payments under such or similar indemnification agreements. Therefore no amount has been accrued in the financial statements with respect to these agreements.

15. Comparative Figures

Certain of the prior year's comparative figures have been reclassified to conform to the current year's financial statement presentation.

FOR DECISION

LAW SOCIETY OF UPPER CANADA, LAWYERS FUND FOR CLIENT COMPENSATION - AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2006

Motion

33. The Finance & Audit Committee recommends the annual financial statements for the Law Society of Upper Canada, Lawyers Fund for Client Compensation for the year ended December 31, 2006 be approved by Convocation.

Lawyers Fund for Client Compensation For the year ended December 31, 2006 Management Discussion and Analysis

34. The Lawyers Fund for Client Compensation (“the Compensation Fund”) is maintained by the Law Society, in accordance with the Law Society Act, to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's practice or in connection with any trust of which the member is or was a trustee. The Fund is financed by member's annual fees, recoveries and investment income.
35. The financial position of the Compensation Fund remains strong. Results for the year identify a surplus of \$1.4 million for the period compared to a deficit of \$1.6 million for

2005. This change is attributable to the downward revision of the Reserve for Unpaid Grants of \$1.4 million and recoveries in 2006 of just over \$1 million.

36. The fund balance at the end of December 2006 is \$19.4 million up from \$17.9 million at the same time last year. In five of the last six years the fund balance has increased.

BALANCE SHEET

Cash and short-term investments

37. The Compensation Fund's short-term investments, which together with cash total \$4.8 million, are invested in banker's acceptances and Government of Canada T-bills.

Portfolio investments

38. Portfolio, or long-term investments (\$23.7 million compared to \$22.6 million in 2005), are made up of fixed income (84%) and North American equities (16%). The portfolio is managed in compliance with the Compensation Fund's investment policy. Fixed income investments comprise a diversified mix of government, provincial and corporate bonds with an investment rating of "BBB" or better. Equity investments comprise a diversified mix of equities listed on the New York and Toronto stock exchanges. At December 31, 2006 the market value was \$1.2 million more than the book value of the portfolio.

Reserve for unpaid grants

39. Based upon the actuarial valuation of the grant reserve, the reserve for unpaid grants has decreased by \$1.4 million to \$9.2 million.

STATEMENT OF REVENUES AND EXPENSES AND CHANGE IN FUND BALANCE

Revenues

Membership fees

40. Membership fees increased from \$5.9 million in 2005 to \$6.1 million in 2006 due to membership numbers increasing by approximately 750.

Investment Income

41. Investment income comprises interest earned on fixed income investments, dividends earned on equities and net capital gains realized on the disposition of bonds or equities. Investment income has decreased from \$1.6 million in 2005 to \$1.3 million in 2006 as a result of a decrease in net realized gains in the current year. The annual return on the short-term portfolio was 4% for 2006, up from 2.6% in 2005, consistent with increased short-term interest rates. The return on bonds was 4.4% (8% in 2005). The total rate of return on the long-term portfolio including unrealized gains was 6.2% (2005: 7.2%).

Expenses

Net grants expense

42. Grants paid during the year increased from \$3.2 million in 2005 to \$4 million. These incurred payments, combined with favourable developments on previously reserved amounts and low claims in the current year, means the Reserve for Unpaid Grants has decreased by \$1.4 million during 2006.
43. Recoveries of \$1.1 million (2005: \$308,000) are unusually significant in 2006. Recoveries do not follow any pattern and the current receipts are sourced from court orders on trust accounts by the Law Society's Trustee Services department, the sale of some property and restitution orders.

Other expenses

44. The Compensation Fund's other expenses were generally stable compared to 2005. The share of investigations and discipline and also administrative expenses are allocated from the Law Society's General Fund employing a formula as part of the Society's full cost allocation.

Notes to Financial Statements

Stated in whole dollars except where indicated
For the year ended December 31, 2006

1. Description of Fund

The Lawyers Fund for Client Compensation (the "Fund") is maintained by The Law Society of Upper Canada (the "Society") pursuant to section 51 of the *Law Society Act* to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. The Fund is financed by members' annual fees and investment income.

The *Law Society Act* was amended by the *Access to Justice Act* in October 2006, which will come into full effect on May 1, 2007 to legislate the regulation of paralegals by the Society. The legislation resulted in the formation of the Paralegal Standing Committee. The legislation expands the function of the Society to ensure that:

- (a) all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law and persons who provide legal services in Ontario.

The Fund is not subject to income or capital taxes because it is a fund of the Society, a not-for-profit corporation.

The Fund reimburses the Society's General Fund for certain administrative expenses, spot audit expenses and a portion of the costs of operating the investigation and discipline functions of the Society. The charges for the year amount to \$4,022,000 (2005 – \$3,931,000).

2. Significant Accounting Policies

Basis of presentation

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations published by the Canadian Institute of Chartered Accountants, using the restricted fund method of reporting revenues. The Fund accounts for the program delivery, administration and payment of grants from the Fund. The Fund is restricted in use by the *Law Society Act*.

Cash and short-term investments

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy and are subject to an insignificant risk of change in value.

Portfolio investments

Portfolio investments are recorded at cost, net of amortization of premiums and discounts. Investments consist of a diversified portfolio of government bonds, corporate bonds and Canadian and U.S. equities, according to the Society's investment policy. Only if a loss in the value of an investment is other than a temporary decline is the investment written down to recognize the loss.

Revenue recognition

Membership fees are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Investment income is recognized when receivable if the amount can be reasonably estimated.

Grants

Pursuant to section 51(5) of the *Law Society Act*, the payment of grants from the Fund is at the discretion of Convocation, the governing body of the Society. Grants paid are subject to a \$100,000 limit per applicant. A reserve for unpaid grants is recorded as a liability on the balance sheet. This reserve represents an estimate of the present value of grants to be paid for unprocessed claims and the associated administrative costs, as determined by an actuary. The related net grants expense represents grant payments during the year plus the current year experience gain/loss of the reserve for unpaid grants, net of recoveries.

Financial instruments

The estimated fair values of short-term investments, interest and other receivables and accounts payable and accrued liabilities approximate their carrying amounts in the financial statements due to the relatively short period to maturity of these instruments.

3. Measurement Uncertainty

The valuation of unpaid grants anticipates the combined outcomes of events that are yet to occur. There is uncertainty inherent in any such estimation and therefore a limitation upon the accuracy of these valuations. Future loss emergence may deviate from these estimates. No provision has been made for otherwise unforeseen changes to the legal or economic environment in which claims are settled, nor for causes of loss which are not already reflected in the historical data. Management believes that the techniques employed and assumptions made are appropriate and the conclusions reached are reasonable given the information currently available. Estimates of unpaid grants are reviewed at least annually by an actuary and, as adjustments become necessary, they are reflected in current operations.

4. Portfolio Investments

(\$000's)	2006		2005	
	<u>Book Value</u>	<u>Market Value</u>	<u>Book Value</u>	<u>Market Value</u>
Debt Securities	19,891	20,152	18,426	18,964
Common Shares	<u>3,785</u>	<u>4,690</u>	<u>4,145</u>	<u>4,378</u>
	<u>23,676</u>	<u>24,842</u>	<u>22,571</u>	<u>23,342</u>

FOR DECISION

LAW SOCIETY AUDITOR

Motion

45. The Finance & Audit Committee recommends that Convocation approve Deloitte & Touche LLP as auditor of the Law Society's General Fund, Lawyers Fund for Client Compensation and Pension Fund for the 2007 financial year.
46. The Report to the Audit Sub-Committee from Deloitte & Touche was reviewed by the Finance & Audit Committee. The Report addresses:
 - Representations and audit scope
 - Management and Bencher responsibilities
 - Matters to be communicated to the Audit Committee
 - Reporting and control matters

There are no issues to be reported to Convocation.

47. Convocation appoints the Law Society auditors on the advice of the Finance & Audit Committee. This has been the fifth year for Deloitte & Touche as the Law Society auditor.

FOR INFORMATION

LIBRARYCO INC. - AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED
DECEMBER 31, 2006

48. The annual financial statements for LibraryCo Inc. are attached for information.

LibraryCo Inc
For the year ended December 31, 2006
Management Discussion and Analysis

Background

49. LibraryCo Inc. is mandated to carry on the central management of the Ontario County and District Law Library system on a not-for-profit basis for the purpose of developing and enhancing skills for the “competent lawyer” in Ontario.

Statement of Revenues and Expenses

50. LibraryCo experienced a surplus of \$26,000 in 2006 (2005 - \$313,000 deficit).

Revenues

51. The \$7.8 million total revenues in 2006 consisted of grants of \$6.8 million (2005 - \$6.2 million) from the Law Society of Upper Canada and \$995,000 (2005 - \$984,000) from the Law Foundation of Ontario. The 2006 County Library levy collected by the Law Society was \$219 per member (2005 - \$206). The increase is primarily to meet rising costs passed on by legal publishers and to maintain the Reserve fund.
52. The Law Foundation of Ontario grant finances the purchase of electronic products and the Virtual Reference Service – advoCHAT which permits real time, on-line reference services, employing software based on “chat” technology.

Expenses

53. Expenses required for the operation of the 48 County and District Law Libraries made up \$7.4 million of the \$7.8 million total expenses (2005 - \$7.1 million out of a total of \$7.5 million). These expenses were primarily for collections – traditional and electronic, advoCHAT, personnel and operations. Apart from increases in legal publishing costs, expenses increased due to staffing changes needed in order to meet established standards. LibraryCo continues to balance the demand for electronic and other materials from the various libraries and to provide education in the use of these materials.
54. In 2006, \$409,000 (2005 – \$413,000) was spent on head office operations, the Roving Law Librarian, travel to libraries, professional fees and administration of the library system.

Balance Sheet

55. The Reserve fund of \$1.1 million (2005 - \$1.07 million) is restricted for Country and District Law Library purposes as approved by the Board of Directors.

FOR INFORMATION

TRIBUNALS COMPOSITION TASK FORCE

69. The Tribunals Composition Task Force is placing a number of recommendations before Convocation in a separate report. The financial implications arising from the recommendations were considered by the Committee. According to the Task Force Report in Recommendation 3, the remuneration and expenses associated with adding non-benchers would be an amount not to exceed \$100,000 annually. The remuneration of a non-bencher chair or vice-chair in Recommendation 6 is estimated to cost \$100,000 annually plus costs associated with establishing an office.
70. It was proposed that the funding for 2007 be from the contingency account which currently has a balance of just over \$500,000.
71. The Committee does not consider the Tribunal Task Force recommendations to be financially viable and voted to not recommend approval of the funding from the contingency account.

Background

72. The Report of the Tribunals Composition Taskforce contains eight recommendations set out below:

Recommendation 1

That Convocation approve the eligibility of

- a. four non-bencher lawyers, and*
- b. four non-bencher non-lawyer persons*
to be members of the Law Society's Hearing Panel.

Recommendation 2

That if Convocation approves recommendation 1, all Hearing Panel members be remunerated on the same basis, except that the non-bencher lawyer and non-bencher non-lawyer members are not required to donate 26 days to the Law Society before being eligible for remuneration.

Recommendation 3

That Convocation budget annually an amount not exceeding \$100,000 for the remuneration and expenses associated with adding non-bencher lawyers and non-bencher non-lawyer persons to the Hearing Panel.

Recommendation 4

That if Convocation approves Recommendation 1, two years after implementing the recommendation, Convocation authorize a review of the manner in which the non-bencher

lawyers and the non-bencher non-lawyer persons have served as adjudicators on the Law Society's Hearing Panel, the results of which are to be reported to Convocation.

Recommendation 5

That Convocation approve four year terms of office for each of the Chair and Vice-Chair of the Hearing Panel.

Recommendation 6

That a non-bencher Chair or Vice-Chair be remunerated at a rate commensurate with the status and duties of the office.

Recommendation 7

That Convocation approve staggered terms of office for the Chair and Vice-Chair of the Hearing Panel.

Recommendation 8

That the Tribunals Committee be invited to consider the merits of establishing the office of Counsel to the Hearing Panel.

Financial Summary

73. The Committee noted that if Convocation approves any or all of the recommendations the timing for implementation is still to be determined. If implementation commences in 2007 the contingency account will be required for funding. The contingency account started the year with a balance of \$600,000 and has been reduced by a total of \$83,000 for the Gardens of Justice and the Accreditation Task Force initiatives. There are therefore sufficient funds available if required and a balance of just over \$300,000 would remain in the contingency account for the rest of 2007. If the recommendations are not implemented in 2007, the expenditures would be included when considering the 2008 budget.
74. A memorandum from the Chair of the Taskforce to the Chair of the Finance & Audit Committee is attached. The Task Force estimates the following financial implications arising from their recommendations.
 - a) Recommendation 3 - The addition of four non-bencher lawyer adjudicators and four additional non-bencher non-lawyer adjudicators will increase expenses by an amount not exceeding \$100,000.
 - The Committee deliberations included a discussion on the difficulties of capping these expenditures at \$100,000 per year. Funding could not be stopped for tribunals in process or planned.
 - The cap of \$100,000 was intended to ensure the balance between the roles of benchers and non-benchers was maintained.
 - It was also noted a provision of \$100,000 may be too much as it is possible the mix between benchers and non-bencher lawyers on hearing panels may not significantly change the costs of these hearing panels. The time spent on a hearing panel will be remunerated at the same rate for the two types of panelists (or contribute to a bencher's deductible) so a non-bencher may replace a bencher with offsetting costs.

- The Tribunals Task Force had concluded the choice to remunerate non-benchers on the same terms as benchers was the least problematic option.
- It was noted that financial efficacy could be improved if the existing pool of bencher adjudicators could be used more productively.
- An increased pool of Hearing Panel members may allow more hearings to be held, therefore increasing costs. Even ignoring the Task Force deliberations, the number of hearings is projected to increase.
- Another variable is whether acceptable adjudicators can be retained at the same remuneration rate as benchers. A review of the positions administered by the Public Appointments Secretariat of Ontario shows a lawyer board member on the Ontario Labour Relations Board earning a per diem equivalent to \$508. A lawyer board member on the Consent and Capacity Board earns a per diem of \$600. A lawyer board member on the Health Professions Appeal and Review Board earns a per diem of \$355. Adjudicators for arbitrations earn significantly in excess of these amounts, and other adjudicators are typically remunerated in full for documenting decisions, unlike the limit of one day imposed by the Law Society. If remuneration rates for non-bencher adjudicators differ significantly from the bencher per diem, costs will increase.
- The travel and accommodation costs for out-of-town adjudicators would typically average \$1,500 per two day hearing if required.
- Education for the new group of adjudicators had not been included in costing but would be incorporated into education offered to the new bench.

b) Recommendation 6 - The Task Force's report indicates that the position of a non-bencher chair would call for a person of eminent stature in the profession who should be compensated accordingly. The figure mentioned in the report is \$100,000 annually. A lesser amount, or the per diem noted above, depending on the duties assigned, would be paid to a non-bencher vice-chair. The Committee noted the following in assessing the reasonableness of this expenditure.

- If approved, this position was unlikely to be in place before late 2007 therefore decreasing projected costs for the year.
- Benefits may increase this figure by 20%
- According to the Public Appointments Secretariat of Ontario full time agency members with a Senior Management Group Classification earn from \$104,000 to over \$151,000 for Chair and Vice Chair positions.
- The Complaints Resolution Commissioner's office, on site at the Law Society, has salaries and expenses totaling \$263,000.
- The Discrimination and Harassment Counsel set up by the Law Society's equity departments on an off-site, contractual basis has a budget of \$100,000.
- The position contemplated by the task force may also require space. There is no available space at Osgoode Hall. Although it is difficult to estimate the cost of space we are, for example, paying LawPro \$67,000 per year for the Compensation Fund office of four people.

FOR INFORMATION
STATEMENT OF INVESTMENT COMPLIANCE – SHORT-TERM PORTFOLIO

FOR INFORMATION
STATEMENT OF INVESTMENT COMPLIANCE – LONG-TERM PORTFOLIO

FOR INFORMATION
INVESTMENT COMPLIANCE REPORT – COMPENSATION FUND –
FOYSTON, GORDON & PAYNE
FOR INFORMATION

INVESTMENT COMPLIANCE REPORT – GENERAL FUND - FOYSTON, GORDON & PAYNE

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

- (1) Copies of the Law Society's General Fund audited financial statements for the year ended December 31, 2006.
(Tab A, pages 11 – 15)
- (2) Copies of the Law Society's Lawyers Fund for Client Compensation audited financial statements for the year ended December 31, 2006.
(Tab B, pages 26 – 29)
- (3) Copies of LibraryCo Inc. audited financial statements for the year ended December 31, 2006.
(Tab D, pages 36 – 47)
- (4) Copy of a memorandum to Derry Millar, Chair, Finance and Audit Committee from Mark Sandler, Chair, Tribunals Composition Task Force dated April 2, 2007 re: Information on Costing Non-Bencher Adjudicators for the Hearing Panel.
(Tab D, pages 55 – 57)

Re: Audited Financial Statements for the Year Ended December 31, 2006 – General Fund

It was moved by Mr. Millar, seconded by Mr. Murray, that the annual financial statements for the Law Society of Upper Canada General Fund for the year ended December 31, 2006 be approved.

Carried

Re: Audited Financial Statements for the Year Ended December 31, 2006 – Lawyers Fund for Client Compensation

It was moved by Mr. Millar, seconded by Mr. Murray, that the annual financial statements for the Law Society of Upper Canada, Lawyers Fund for Client Compensation for the year ended December 31, 2006 be approved.

Carried

Re: Appointment of Law Society Auditor

It was moved by Mr. Millar, seconded by Mr. Murray, that Convocation approve Deloitte & Touche LLP as auditor of the Law Society's General Fund, Lawyers Fund for Client Compensation and Pension Fund for the 2007 financial year.

Carried

Items for Information

- LibraryCo Inc. – Audited Financial Statements for the Year Ended December 31, 2006
- *In Camera Matter*
- Tribunals Composition Task Force
- Investment Statements – Compliance Reports

REPORT OF THE TRIBUNALS COMMITTEE

Mr. Banack presented the Tribunals Committee Report.

Report To Convocation
April 26, 2007

Tribunals Committee

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

Purposes of Report: Decision

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

COMMITTEE PROCESS

1. The Committee met on April 12, 2007. Committee members Larry Banack (Chair), Mark Sandler (Vice Chair), Carole Curtis, Sy Eber, Derry Millar, and Bonnie Warkentin

attended. Benchers Heather Ross attended the meeting from the Professional Regulation Committee. Staff members Lesley Cameron, Katherine Corrick, Grace Knakowski, Dulce Mitchell, Zeynep Onen, Elliot Spears, Sophia Sperdakos, Sybila Valdivieso and James Varro attended.

FOR DECISION

APPOINTMENT OF MEMBERS OF HEARING AND APPEAL PANELS

MOTION

2. That Convocation appoint members of the Hearing Panel and the Appeal Panel and the Chair of the Hearing Panel and the Chair of the Appeal Panel in accordance with APPENDIX 2, pursuant to sections 49.21, 49.22, 49.29 and 49.30 of the *Law Society Act*.
3. That Convocation appoint a Vice-Chair of the Hearing Panel in accordance with APPENDIX 2, pursuant to sections 49.22(1) of the *Law Society Act*.

Introduction and Background

4. Amendments to the *Law Society Act*, including provisions respecting Hearing and Appeal Panels come into effect on May 1, 2007. The relevant provisions respecting the Hearing and Appeal Panels are set out at APPENDIX 1.
5. Pursuant to sections 49.21 (8) and 49.29(8) the persons who are members of the Hearing Panel and of the Appeal Panel immediately before the day sections 49 and 54 of Schedule C of the Access to Justice Act, 2005 come into force (May 1, 2007) cease to be members on that day, unless reappointed under sections 49.21 and 49.29 of the *Law Society Act*.
6. Pursuant to section 49.22(6) and section 49.30(6) the persons who are chairs of the Hearing Panel and the Appeal Panel before the day sections 49 and 54 of Schedule C of the Access to Justice Act, 2005 come into force cease to be the chairs on that day unless reappointed under sections 49.22 and section 49.30.
7. Pursuant to section 49.22(1) of the *Law Society Act* Convocation shall appoint a Vice Chair of the Hearing Panel. Previous to the amendments, the Act referred only to the appointment of a Chair of the Hearing Panel. Convocation appointed the current Vice Chair of the Hearing Panel in October 2006 by way of motion.
8. Sections 49.21(4) and 49.29(4) of the Act provide that the appointments as members of the Hearing and Appeal Panels are for such term, not exceeding four years, as Convocation may fix. For convenience, it is proposed that the re-appointments be for one year. It is expected that following the benchers election revisions will be made to the appointments.
9. Proposed appointments to the Hearing Panel include elected lawyer benchers, appointed lay benchers, former treasurers, ex officio life benchers, and appointed paralegal benchers. Proposed appointments exclude members of the Proceeding

Authorization Committee. They also exclude former Attorneys General, who are not eligible to be appointed to the Hearing Panel. Proposed members of the Appeal Panel are also named to the Hearing Panel.

APPENDIX 1

Hearing Panel

49.21 (1) The Law Society Hearing Panel is continued under the name Law Society Hearing Panel in English and Comité d'audition du Barreau in French

Composition

(2) The Hearing Panel shall consist of at least three persons appointed by Convocation, of whom at least one shall be a person who is not a licensee.

Eligibility for appointment

- (3) A person is not eligible to be appointed to the Hearing Panel unless he or she is,
- (a) a bencher;
 - (b) a licensee; or
 - (c) a person approved by the Attorney General for Ontario.

Term of office

(4) Subject to subsections (5) and (6), an appointment as a member of the Hearing Panel shall be for such term, not exceeding four years, as Convocation may fix.

Cessation of eligibility

(5) A person ceases to be a member of the Hearing Panel if he or she ceases to meet the eligibility requirements in subsection (3).

Appointment at pleasure

(6) A person appointed as a member of the Hearing Panel holds office at the pleasure of Convocation.

Reappointment

(7) A person appointed as a member of the Hearing Panel is eligible for reappointment if he or she meets the eligibility requirements in subsection (3).

Transition

(8) The persons who are members of the Hearing Panel immediately before the day section 49 of Schedule C of the *Access to Justice Act, 2005* comes into force cease to be members on that day, unless they are reappointed under this section.

Same

(9) A person who ceases to be a member of the Hearing Panel under subsection (8) may continue to act as a member of the Hearing Panel with respect to any proceeding commenced before he or she ceases to be a member of the Hearing Panel.

Chair and vice-chair

49.22 (1) Convocation shall appoint one of the members of the Hearing Panel as chair, and another as vice-chair, of the Hearing Panel.

Term of office

(2) Subject to subsections (3) and (4), an appointment as chair or vice-chair of the Hearing Panel shall be for such term, not exceeding four years, as Convocation may fix.

Cessation of membership

(3) A person ceases to be the chair or vice-chair of the Hearing Panel if he or she ceases to be a member of the Hearing Panel.

Appointment at pleasure

(4) A person appointed as chair or vice-chair of the Hearing Panel holds office at the pleasure of Convocation.

Reappointment

(5) A person appointed as chair or vice-chair of the Hearing Panel is eligible for reappointment.

Transition

(6) The person who is the chair of the Hearing Panel immediately before the day section 49 of Schedule C of the Access to Justice Act, 2005 comes into force ceases to be the chair on that day, unless he or she is reappointed under this section.

...

APPEAL PANEL

Appeal Panel

49.29 (1) The Law Society Appeal Panel is continued under the name Law Society Appeal Panel in English and Comité d'appel du Barreau in French.

Composition

(2) The Appeal Panel shall consist of at least five persons appointed by Convocation, of whom at least one shall be a person who is not a licensee.

Eligibility for appointment

- (3) A person is not eligible to be appointed to the Appeal Panel unless he or she is,
- (a) a bencher;
 - (b) a licensee; or
 - (c) a person approved by the Attorney General for Ontario.

Term of office

(4) Subject to subsections (5) and (6), an appointment as a member of the Appeal Panel shall be for such term, not exceeding four years, as Convocation may fix.

Cessation of eligibility

(5) A person ceases to be a member of the Appeal Panel if he or she ceases to meet the eligibility requirements in subsection (3).

Appointment at pleasure

(6) A person appointed as a member of the Appeal Panel holds office at the pleasure of Convocation.

Reappointment

(7) A person appointed as a member of the Appeal Panel is eligible for reappointment if he or she meets the eligibility requirements in subsection (3).

Transition

(8) The persons who are members of the Appeal Panel immediately before the day section 54 of Schedule C of the Access to Justice Act, 2005 comes into force cease to be members on that day, unless they are reappointed under this section.

Same

(9) A person who ceases to be a member of the Appeal Panel under subsection (8) may continue to act as a member of the Appeal Panel with respect to any proceeding commenced before he or she ceases to be a member of the Appeal Panel.

Chair and vice-chair

49.30 (1) Convocation shall appoint one of the members of the Appeal Panel as chair, and another as vice-chair, of the Appeal Panel.

Term of office

(2) Subject to subsections (3) and (4), an appointment as chair or vice-chair of the Appeal Panel shall be for such term, not exceeding four years, as Convocation may fix.

Cessation of membership

(3) A person ceases to be the chair or vice-chair of the Appeal Panel if he or she ceases to be a member of the Appeal Panel.

Appointment at pleasure

(4) A person appointed as chair or vice-chair of the Appeal Panel holds office at the pleasure of Convocation.

Reappointment

(5) A person appointed as chair or vice-chair of the Appeal Panel is eligible for reappointment.

Transition

(6) The person who is the chair of the Appeal Panel immediately before the day section 54 of Schedule C of the *Access to Justice Act, 2005* comes into force ceases to be the chair on that day, unless he or she is reappointed under this section.

APPENDIX 2

MOTION FOR APPOINTMENTS TO THE HEARING AND APPEAL PANELS PURSUANT TO THE *LAW SOCIETY ACT*

1. THAT Convocation appoint the following persons to the Law Society Hearing Panel:

Andrea Alexander
Robert Aaron
Constance Backhouse
Larry Banack
Gordon Bobesich

Marion Boyd
John A. Campion
Kim A. Carpenter-Gunn
James R. Caskey
Ronald W. Cass
Abdul A. Chahbar
W. Dan Chilcott
Andrew F. Coffey
Austin M. Cooper
Paul Copeland
Marshall Crowe
Carole Curtis
Anne Marie Doyle
W. Paul Dray
Sy Eber
E. Susan Elliott
Abraham Feinstein
Richard Filion
Neil Finkelstein
George D. Finlayson
Patrick Garret Furlong
Avvy Yao Yao Go
Alan D. Gold
Allan Gotlib
Gary Lloyd Gottlieb
Holly Harris
Paul J. Henderson
Vern Krishna
Brian J. Lawrie
Laura L. Legge
Gavin MacKenzie
Ronald D. Manes
Robert Martin
W.A. Derry Millar
Janet E. Minor
Daniel J. Murphy
Ross W. Murray
Brendan O'Brien
Tracey O'Donnell
Laurie H. Pawlitza
Julian Porter
Judith M. Potter
Sydney L. Robins
Allan M. Rock
Heather J. Ross
Clayton Ruby
Mark Sandler
Arthur R.A. Scace
Alan G. Silverstein
William J. Simpson
Joanne St. Lewis

Harvey T. Strosberg
 Gerald A. Swaye
 Robert Topp
 J. James Wardlaw
 Bonnie R. Warkentin
 Bradley H. Wright
 Roger D. Yachetti

2. THAT the appointment of each person listed in paragraph 1 be for a term of one year, commencing on May 1, 2007.
3. THAT Convocation appoint Larry Banack as chair of the Law Society Hearing Panel.
4. THAT the appointment of Larry Banack as chair of the Law Society Hearing Panel be for a term of 1 year, commencing on May 1, 2007.
5. THAT Convocation appoint Mark Sandler as vice-chair of the Law Society Hearing Panel.
6. THAT the appointment of Mark Sandler as vice-chair of the Law Society Hearing Panel be for a term of 1 year, commencing on May 1, 2007.
7. THAT Convocation appoint the following persons to the Law Society Appeal Panel:

Alan D. Gold
 W. Dan Chilcott
 Anne Marie Doyle
 Laurie H. Pawlitza
 Mark Sandler
 William J. Simpson
 Bradley H. Wright
8. THAT the appointment of each person listed in paragraph 7 be for a term of one year, commencing on May 1, 2007.
9. THAT Convocation appoint Alan D. Gold as chair of the Law Society Appeal Panel.
10. THAT the appointment of Alan D. Gold as chair of the Law Society Appeal Panel be for a term of 1 year, commencing on May 1, 2007.

Report To Convocation
 April 26, 2007

Tribunals Committee (addendum)

Committee Members
 Larry Banack, Chair
 Mark Sandler, Vice Chair

Carole Curtis
 Sy Eber
 Derry Millar
 Janet Minor
 Bonnie Warkentin

Purposes of Report: Decision

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

FOR DECISION

APPOINTMENT OF MEMBERS OF HEARING AND APPEAL PANELS

MOTION

1. THAT Convocation appoint William J. Simpson as Vice-Chair of the Appeal Panel pursuant to sections 49.30(1) of the *Law Society Act*.
2. THAT the appointment of William J. Simpson as vice-chair of the Law Society Appeal Panel be for a term of 1 year, commencing on May 1, 2007.

Introduction and Background

3. The Tribunal Committee Report to Convocation contains the motions for the appointment of members to the Hearing and Appeal Panels, as Chairs of the Hearing and Appeal Panels and as Vice Chair of the Hearing Panel to meet the requirements of amendments to the *Law Society Act* respecting Hearing and Appeal Panels. These amendments come into effect on May 1, 2007.
4. This addendum to the Committee Report addresses one additional appointment. Pursuant to section 49.30(1) of the *Law Society Act* Convocation shall appoint a Vice Chair of the Appeal Panel. This is a new provision and there is no current Vice Chair of the Appeal Panel.

Re: Appointment of Members of Hearing and Appeal Panels

An addendum to the Report was distributed to Convocation.

It was moved by Mr. Banack, seconded by Mr. Sandler, that Convocation appoint members of the Hearing Panel and the Appeal Panel and the Chair of the Hearing Panel and the Chair of the Appeal Panel in accordance with Appendix 2, pursuant to sections 49.21, 49.22, 49.29 and 49.30 of the *Law Society Act*.

That Convocation appoint a Vice-Chair of the Hearing Panel in accordance with Appendix 2, pursuant to section 49.22(1) of the *Law Society Act*.

That Convocation appoint William J. Simpson as Vice-Chair of the Appeal Panel pursuant to section 49.30(1) of the *Law Society Act*.

That the appointment of William J. Simpson as Vice-Chair of the Law Society Appeal Panel be for a term of 1 year, commencing May 1, 2007.

Carried

REPORT OF THE PARALEGAL STANDING COMMITTEE

Mr. Dray presented the Report.

Report to Convocation
April 26th, 2007

Paralegal Standing Committee

Committee Members

Paul Dray, Chair
William Simpson, Vice-Chair
Andrea Alexander
Marion Boyd
James Caskey
Anne Marie Doyle
Michelle Haigh
Abraham Feinstein
Thomas Heintzman
Brian Lawrie
Margaret Louter
Stephen Parker
Bonnie Warkentin

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
Julia Bass and Allyson O'Shea 416 947 5228

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COMMITTEE PROCESS

1. The Paralegal Standing Committee met on March 28th, 2007. Committee members participating were Paul Dray, Chair, William Simpson, Vice-Chair, Andrea Alexander, Marion Boyd, Anne Marie Doyle, Abe Feinstein, Michelle Haigh, Thomas Heintzman, Brian Lawrie, Margaret Louter, Stephen Parker and Bonnie Warkentin. Staff members in attendance were Malcolm Heins, Diana Miles, Terry Knott, Roy Thomas, Elliot Spears, Sheena Weir, Allyson O'Shea and Julia Bass.
2. The Committee further met on April 12th, 2007. Committee members participating were Paul Dray, Chair (by telephone), William Simpson, Vice-Chair, Andrea Alexander, Marion Boyd, James Caskey, Michelle Haigh, Abe Feinstein, Thomas Heintzman, Brian Lawrie (by telephone), Margaret Louter, Stephen Parker, and Bonnie Warkentin. Staff members in attendance were Malcolm Heins, Katherine Corrick, Zeynep Onen, Elliot Spears, Terry Knott, Roy Thomas, Jim Varro, Sheena Weir, Andrea Waltman, Judith Young, and Allyson O'Shea.

FOR DECISION

EXEMPTIONS BY-LAW

MOTION

3. That Convocation approve the policy on exemptions set out below.

Background

4. On March 29th, Convocation approved the policy on exemptions attached at APPENDIX 1, with the proviso that the exemption for 'individuals supervised by a lawyer' should be clarified.

Exemption for individuals supervised by a lawyer

5. At the meeting on April 12th, the Committee reviewed this category of exemption in light of the discussion at Convocation, and determined that it should cover only those individuals who are doing non-advocacy work under the supervision of a lawyer. Individuals exempted under this category would include law clerks in law firms and also independent contractors such as document-preparers and title searchers whose only clients are lawyers.

6. This limitation means that in-house advocates such as litigation law clerks who appear before courts or tribunals must have a licence, unless they fit under one of the specifically exempted categories. Supervised law clerks will of course be able to draft pleadings and other documents in connection with the law firm's litigation practice, and will only need a licence if they are to appear on behalf of clients.

Specific requests for Exemptions

7. The Committee also continued its consideration of specific requests for exemptions. In some cases, it is appropriate and in keeping with the Law Society's public interest mandate to grant a specific exemption. Certain organizations meet a particular public need for legal services that would otherwise go unmet, but do not enjoy the funding or resources to withstand the burden of mandatory licensing at this time. For such organizations or individuals, the requirement to become licensed at this time could result in the elimination of the service they offer to the public.
8. It is anticipated that over time, many of these organizations will be able to work towards having their staff licensed to provide legal services. It is also anticipated that the new regulatory scheme will have a significant impact on the legal services market such that many exempted individuals will wish to enter the licensing process voluntarily, to enhance their professional standing. Encouraging such groups of individuals to seek grandparent status voluntarily will be important.
9. The Committee is of the view that the Law Society should review the exemption categories in two years' time. (This would be in keeping with section 63.0.1 of the *Law Society Act*, as amended by Bill 14, which requires the Law Society to "review the manner in which persons who provide legal services in Ontario have been regulated under this Act . . . and the effect that such regulation has had on those persons and on members of the public," two years after the passing of Bill 14).
10. This two-year period will provide these groups with an opportunity to plan for the possibility of becoming subject to the licensing scheme, while ensuring that the public continues to receive the benefit of the assistance they provide. The two-year period will also provide the Law Society with the opportunity to gather information about the impact of the regulatory scheme on the legal market and on these particular groups. With this information, the Law Society will be in a better position to decide how best to ensure that the public continues to receive competent legal services.
11. With these considerations in mind and with a commitment to undertake a review of all exemptions in two years' time, the Committee determined that the by-law should exempt the following additional groups from the requirement to possess a Class P1 licence:
 - a. Constituency Assistants working in MPPs' offices;
 - b. staff of the Office of the Worker Adviser;
 - c. staff of the Office of the Employer Adviser; and
 - d. law students working in Student Legal Aid Services Societies provided they are supervised by a lawyer and covered by the lawyer's insurance (SLASS lawyers have LAWPRO coverage).
12. The exemptions categories will be set out in PART V of the licensing by-law, By-law 4. Drafting of PART V of By-law 4, in conformity with the policy approved by Convocation and the Committee's latest instructions, has been commenced. The wording will be

reviewed by the Committee on April 25th and circulated at Convocation on April 26th as part of the complete By-law 4.

Further Requests for Exemptions

13. The Law Society continues to receive requests for exemptions from groups and organizations. The Committee will consider these as they arise with a view to making further recommendations to Convocation, if appropriate.

APPENDIX 1

EXCERPT FROM REPORT TO CONVOCATION OF MARCH 29, 2007

EXEMPTIONS BY-LAW

MOTION

22. That Convocation approve the policy on exemptions at paragraphs 28 to 32, below.

Background

23. The model of regulation of legal services set out in Bill 14, now incorporated into the *Law Society Act*, reflects the recommended approach in the 2004 Report to Convocation of the Task Force on Paralegal Regulation, including the following:

67. *The objective is to permit the Law Society to regulate the delivery of all legal services. . . Exemptions can then be created for those whom it is not necessary or appropriate for the Law Society to regulate.*

68. *Many of the details that remain to be settled need not be embodied in the legislation, and can be developed for inclusion in the regulations and by-laws, simultaneously with the progress of the legislative framework.*

24. Accordingly, the *Law Society Act* now contains a very broad definition of the provision of legal services and it is necessary to create exemptions for persons it is not necessary or appropriate for the Law Society to regulate.

25. The exemptions created by the bylaws will be in addition to the exclusions that Bill 14 placed in the *Law Society Act*, which are as follows:

(7.1) *For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:*

1. *A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.*
2. *An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.*
3. *An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.*

4. *An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.*

5. *A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws.*

26. Paragraph 5 in the above section provides for exemptions by by-law. Given that the regulatory model is new and original, it was anticipated that over time the Law Society would receive further requests for exemptions, to fine-tune the model. A by-law is a much more flexible mechanism for creating exemptions than, for example, a statute or a regulation requiring Cabinet approval.
27. The starting point for the policy on exemptions is the discussion of the issue in the 2004 Report to Convocation, attached at APPENDIX 3. Some key points are in the following paragraphs:

137. *Throughout the consultations, there were representations about who should be included in or excluded from the regulatory model. There is no disagreement that independent paralegals representing clients for a fee before courts and tribunals should be regulated, while law clerks and other persons providing services to lawyers should be exempted, as should family members or friends representing a person free of charge. There are also good reasons for excluding union stewards and corporate human resources representatives appearing at labour arbitrations, who represent sophisticated clients in a specialized area. However, the Task Force heard extensive representations about other groups.*

140. *The rationale for paralegal regulation is based on the need for consumer protection, particularly in the case of vulnerable clients. The problem areas do not generally involve salaried, in-house paralegals.*

149. *The Task Force was aware of the challenge involved in bringing a large number of persons into a system of regulation in a short period of time. For that reason, it makes sense to start with the areas where most of the problems have occurred.*

150. *The Task Force is proposing a model with initially, three categories of persons:*
- a. *Licensees, who will be authorized to provide prescribed advocacy services for a fee, so long as they hold a valid licence;*
 - b. *Those providing the same services as those in paragraph (a), but without charging a fee to the public, such as*
 - i *Family members or friends acting free of charge;*
 - ii *In-house, salaried non-lawyer advocates, such as municipal prosecutors, community legal workers, insurance company representatives, etc., regardless of whether they are supervised by a lawyer. They will not be required to hold a licence, but will be encouraged to obtain a licence so that they would be entitled to move to private practice at a later date. (Their scope of practice would be limited in the same way as those in category (a), except for files that are supervised by a lawyer).*
 - c. *Persons providing services under the supervision of a lawyer, such as law clerks, legal assistants, etc., and those working for independent service*

providers whose only clients are law firms. (This model does not change their situation, although some persons in this category may be interested in acquiring a licence voluntarily).

The Committee's Deliberations

28. At the meeting on February 21st, the Committee reviewed the exemption for in-house paralegals recommended in the 2004 Report to Convocation, and decided that this exemption should be implemented during the start-up phase of the model, but every effort should be made to encourage such paralegals to become licensed voluntarily.
29. At the meeting on March 8th, the Committee commenced a review of the groups that have requested specific exemptions and concluded that the following groups should be exempted by by-law:
 - a. In-house paralegals employed by a single employer, such as municipal prosecutors;
 - b. Persons whose work is supervised by a lawyer, whether or not they are employed by the lawyer;
 - c. Persons who are not in the business of providing legal services and occasionally provide assistance to a friend or relative for no fee;
 - d. Articling students;
 - a. Employees of legal clinics funded by Legal Aid Ontario;
 - b. Employees of organizations similar to legal clinics that provide free services to low-income clients, provided they meet certain criteria as to their non-profit status and funding;
 - c. Aboriginal Court Workers;
 - d. Paralegals who comply with the requirements for grandparent applicants – this exemption should last until November 1st 2007 (the end of the grandparent application phase), unless a completed application is received;
 - e. Paralegals who have completed a grandparent application – this exemption should last until April 30th, 2008, unless there are continuing hearings into the person's eligibility for a licence.
30. Paragraph h. in the preceding paragraph is designed to address concerns raised by some paralegals that judges or justices of the peace may not permit them to appear after May 1st until their completed 'grandparent' application is received.
31. To conform to the Law Society's understanding with the Financial Services Commission of Ontario (FSCO), the by-law should provide that persons representing Statutory Accident Benefit claimants at FSCO should continue to comply with FSCO's by-laws and regulations until the Law Society's regulation of paralegals is in full effect, at which point FSCO intends to repeal its regulatory system.
32. In addition to the provisions governing paralegals, the by-law should provide for an exemption for lawyers using the 'temporary mobility' provisions of the National Mobility Agreement.
33. The drafting of a by-law in conformity with the Committee's instructions has been commenced and if completed in time will be reviewed by the Committee on March 28th and then circulated at Convocation on March 29th.

Further Requests for Exemptions

34. The Law Society has received requests for exemptions from a number of other groups and organizations. The Committee will be considering these at the next meetings with a view to making further recommendations to Convocation prior to May 1st, if appropriate.

FOR INFORMATION

COMPETENCY PROFILE AND EXAMINATION DEVELOPMENT

Background

14. In preparation for the development of the licensing examination for paralegals, the Paralegal Standing Committee has developed a paralegal competency profile, setting out the required competencies for an entry-level paralegal professional. This will be used to develop the examination that all applicants will be required to pass, starting in January 2008. The profile is attached at APPENDIX 2.
15. The report of the Director of Professional Development and Competence, Diana Miles, is attached at APPENDIX 3. This report describes how the competencies were developed and the role that they play in examination development.
16. The Competency Profile is designed to reflect the Paralegal Rules of Professional Conduct that Convocation approved in March. It is not based on substantive areas of law within the permitted scope of practice for paralegals (such as provincial offences and small claims court), but rather on generic issues involving professional responsibility, practice management and ethics. The Law Society will be working with the college sector to ensure that the substantive areas are covered in the curricula of the approved college programmes.
17. The Law Society aims to provide reference materials and supporting information about the examination process to all applicants who have been approved to write the examination, by October 1, 2007. To meet this tight timeline, the Professional Development and Competence Department must proceed immediately to derive the necessary examination questions and reference materials.

The Committee's Deliberations

18. The Committee approved the Competency Profile at the meeting on March 28th.

Appendix 2

PARALEGAL COMPETENCY PROFILE

<i>RULES OF CONDUCT</i>	<u>RELATED COMPETENCY (IES)</u>
<i>RULE 1 – CITATION AND INTERPRETATION</i>	No related competencies as section contains definitions and interpretations.
<i>RULE 2 – PROFESSIONALISM</i> 2.01 Integrity and Civility ➤ Outside Interests ➤ Public Office ➤ The Paralegal as Mediator 2.02 Undertakings 2.03 Harassment and Discrimination	Demonstrates integrity (e.g., honesty, meeting financial obligations, responsibility to the Law Society, responsibility to other licensees). Demonstrates civility and professionalism in dealings with others (e.g., courtesy, respect, good faith, candour and fairness). Understands the obligations related to acting in a public capacity and engaging in outside interests. Understands the obligations related to acting as mediator (e.g., cannot represent parties, ensuring parties understand the role of the mediator). Understands the meaning and enforceability of an undertaking. Fulfills all undertakings and does not give an undertaking that cannot be fulfilled. Maintains appropriate professional relationships with clients, other licensees, employees and others (e.g., does not engage in sexual harassment, discrimination and human rights violations, respects multi-cultural issues).
<i>RULE 3 – DUTY TO THE CLIENT</i> 3.01 Competence	Demonstrates and maintains competence (e.g., skill and knowledge, care and diligence, client service). Demonstrates knowledge of legal principles, substantive law and procedure related to practice area. Demonstrates an ability to investigate matters, ascertain client objectives, and implement appropriate courses of action to realize objectives.

RULES OF CONDUCT	RELATED COMPETENCY (IES)
<p>3.02 Advising Clients</p> <p>➤ General</p>	<p>Declines to act or seeks appropriate assistance when matter is beyond own abilities.</p> <p>Declines to act when matter is outside the permitted scope of practice.</p> <p>Understands the obligation to keep the client informed.</p> <p>Communicates with clients in a timely and effective manner (e.g., returns messages in a timely manner, copies the client on correspondence as appropriate, advises on developments).</p> <p>Manages and updates the client's expectations with respect to timeframes, results and costs.</p> <p>Recognizes and is sensitive to clients' circumstances, special needs and intellectual capacity (e.g., multi-cultural, language rights [need for interpreters], gender, disability, socioeconomic status, demeanour).</p> <p>Explains to clients the risk of communicating extraordinarily sensitive information about a case by means of electronic media (e.g., cell phones, e-mail).</p> <p>Maintains an electronic or written record for each matter for which the paralegal is retained.</p> <p>Approaches ethical issues in accordance with the Law Society model (e.g., adheres to the law, acts according to the <i>Rules of Conduct</i>, seeks guidance from Practice Management Helpline and experienced licensees, exercises caution when in "gray areas").</p> <p>Understands duties related to advising clients (e.g., honesty and candour).</p> <p>Demonstrates an understanding of the obligation to represent the client within the limits of the law (e.g., declines to assist or encourage dishonesty, fraud, crime or illegal conduct).</p> <p>Takes appropriate steps to determine who the client is and the client's role in the matter (e.g., multiple parties, spouses/family members, business partners, corporations, authority to bind).</p>

RULES OF CONDUCT	RELATED COMPETENCY (IES)
<p>➤ Settlement</p> <p>➤ Client Under a Disability</p> <p>➤ Medical-Legal Reports</p> <p>➤ Errors</p> <p>3.03 Confidentiality</p> <p>➤ General</p> <p>➤ Justified or Permitted Disclosure</p> <p>3.04 Conflicts of Interest</p> <p>➤ Acting Against Clients</p> <p>➤ Joint Retainers</p> <p>➤ Withdrawal Because of Conflict</p>	<p>Takes appropriate steps to avoid problems associated with phantom clients.</p> <p>Avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, evidence, fraud).</p> <p>Accepts only retainers that are reasonable under the law, capable of performance under the law and within the permissible scope of practice.</p> <p>Demonstrates an understanding of the obligation to encourage settlement, compromise and alternative dispute resolution where reasonable.</p> <p>Understands the obligation owed to clients under a disability (e.g., maintain normal relationship, take appropriate steps to have a lawfully authorized representative appointed).</p> <p>Demonstrates an understanding of the obligations to the client when receiving medical-legal reports.</p> <p>Understands the obligations related to the discovery and reporting of errors or omissions (e.g., duty to disclose to client and insurer, advise client to obtain independent legal advice).</p> <p>Recognizes and fulfils duties related to confidentiality (e.g., cannot disclose without explicit or implied client consent).</p> <p>Recognizes that duties related to confidentiality survive termination of the retainer.</p> <p>Recognizes situations where disclosure is required, or may be justified (e.g., disclosure where required by law or order of tribunal, imminent risk of death or serious harm to identifiable person or group, to collect fees, where allegations that associates or employees are guilty of malpractice, misconduct, criminal offence, or civilly liable regarding client affairs).</p> <p>Recognizes situations that constitute a conflict of interest or potential conflict of interest (e.g., where the paralegal may be disloyal to a client, his or her judgment is impaired, where the paralegal is tempted to prefer his or her own interests to those of his or her client, where the paralegal may be tempted to</p>

RULES OF CONDUCT	RELATED COMPETENCY (IES)
3.05 Conflict from Transfer Between Paralegal Firms	prefer the interests of one client over another).
3.06 Doing Business with a Client	<p>Declines to advise or represent more than one side in a dispute.</p> <p>Avoids or manages conflicts of interest (e.g., acting against a client or former client, joint retainers, transfer between paralegal firms, doing business with a client [e.g., investment by client where Paralegal has an interest, borrowing from a client, guarantees]).</p> <p>Identifies potential conflicts of interest before acquiring confidential information (e.g., multiple parties).</p> <p>Recognizes and fulfills duties related to joint retainers (e.g., required disclosure prior to accepting retainer, obligations if a conflict develops that cannot be resolved).</p> <p>Takes appropriate action in situations where an actual or potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish firewall procedures where appropriate, advise the client of the consequences in the event the potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified).</p> <p>Withdraws from representation if conflict develops that cannot be resolved.</p>
3.07 Client Property	<p>Understands the obligations related to the preservation and handling of client property.</p> <p>Recognizes issues involving Law Society books and records (e.g., manages trust funds, maintenance of records).</p>
3.08 Withdrawal from Representation <ul style="list-style-type: none"> ➤ Optional Withdrawal ➤ Mandatory Withdrawal ➤ Withdrawal from Quasi Criminal and Criminal Proceedings ➤ Non-payment of Fees ➤ Manner of Withdrawal 	Withdraws from representation in compliance with the <i>Rules of Conduct</i> or Rules of tribunal (e.g., good cause, notice to the client, serious loss of confidence, non-payment of fees, mandatory withdrawal in cases of discharge by client, dishonourable conduct by client, lack of competence, withdrawal from quasi criminal and criminal

<i>RULES OF CONDUCT</i>	<u>RELATED COMPETENCY (IES)</u>
<p>➤ Duties of the Successor Paralegal</p>	<p>proceedings).</p> <p>Understands the obligations related to manner of withdrawal (delivery of documents, accounting of funds).</p> <p>Recognizes duties as successor Paralegal (e.g., confirmation that former licensee is no longer acting).</p>

<u>RULES OF CONDUCT</u>	<u>RELATED COMPETENCY (IES)</u>
<p>RULE 4 – ADVOCACY</p> <p>4.01 The Paralegal as Advocate</p> <p>➤ Disclosure of Documents</p> <p>➤ The Paralegal and the Tribunal Process</p> <p>➤ Guilty Pleas</p> <p>4.02 Interviewing Witnesses</p> <p>4.03 Communication with Witnesses Giving Testimony</p> <p>4.04 The Paralegal as Witness</p> <p>4.05 Dealing With Unrepresented Persons</p>	<p>Demonstrates an understanding of the obligations related to acting as an advocate (e.g., raise every issue and advance every argument, attempt to secure every lawful benefit, remedy or defence, advise and assist with the disclosure of documents).</p> <p>Discourages the client from resorting to tactics that delay or harass the other side (e.g., frivolous or vexatious objections, attempting to gain advantage from mistakes or oversights not going to the merits).</p> <p>Understands the obligation to treat the tribunal with candour, courtesy and respect (e.g., abstain from knowingly deceiving the tribunal, abstain from harassing a witness, abstain from offering a benefit or delivering a threat to procure withdrawal of a charge).</p> <p>Avoids commencing ill-advised legal proceedings (e.g., abstain from instituting vexatious, or malicious claims).</p> <p>Demonstrates an understanding of guilty pleas (e.g., when Paralegal can enter into a plea on client's behalf, advising client of implications, obtaining client instructions).</p> <p>Recognizes issues related to interviewing witnesses (e.g., declaring the Paralegal's interest, refrain from approaching or dealing with person who is represented by another licensee without that licensee's consent, dealing with corporations).</p> <p>Recognizes issues related to communicating with witnesses providing testimony (e.g., during and after examination-in-chief, cross-examination and re-examination, during out of court examinations).</p> <p>Understands the obligations related to acting as a witness (e.g., abstain from submitting own affidavit when acting as advocate, obtain other representation when acting as witness).</p> <p>Understands the obligations related to dealing with unrepresented persons.</p>

<i>RULES OF CONDUCT</i>	<u>RELATED COMPETENCY (IES)</u>
RULE 5 – FEES AND RETAINERS	<p>Retainers: Establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions).</p> <p>Identifies the instructing client (e.g., who has the authority to provide instructions).</p> <p>Confirms the actions to be taken by the parties in the retainer.</p> <p>Sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, hidden fees, rates for various personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements).</p> <p>Outlines the delegation of responsibilities in the retainer (within the firm, external consultants, client).</p> <p>Confirms the acceptable forms of client communication in the retainer (e.g., media and timeframes).</p> <p>Obtains all necessary consents at the time of the retainer respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation).</p> <p>Addresses conflict of interest issues in the retainer (e.g., termination, confidentiality, consent, joint retainers).</p> <p>Addresses termination issues in the retainer (e.g., non-payment of fees, no instructions, loss of confidence, conflict of interest).</p> <p>Confirms the retainer and any limitations in writing.</p> <p>Obtains monetary retainer where appropriate.</p> <p>Confirms changes to the retainer as appropriate (e.g., new client instructions, method/channels for making changes).</p>
5.01 Reasonable Fees and Disbursements	Charges fair and reasonable fees and disbursements (e.g., based on time, effort, difficulty or special skill, disclosure of fees, non-appropriation of funds).

RULES OF CONDUCT	RELATED COMPETENCY (IES)
<ul style="list-style-type: none"> ➤ Contingency Fees ➤ Fee Splitting ➤ Referral Fees 	<p>Clearly delineates fees and disbursements in statement of account.</p> <p>Advises client in a timely manner of changes to cost estimate of fees or disbursements.</p> <p>Demonstrates an understanding of contingency fees and the limitation on their use (e.g., calculation, reasonableness, vulnerable clients, usage limited to non quasi criminal or criminal matters).</p> <p>Demonstrates an understanding of fee splitting (e.g., apportionment of fees between multiple clients, splitting fees with other licensees).</p> <p>Abstains from splitting fees with non-licensees. Demonstrates an understanding of referral fees (e.g., reasonableness, cannot increase total fee, client consent).</p> <p>Abstains from providing or accepting referral fees in cases of conflict of interest.</p> <p>Abstains from paying referral fees to non-licensees.</p>
<p>RULE 6 – DUTY TO THE ADMINISTRATION OF JUSTICE</p> <p>6.01 Encouraging Respect for the Administration of Justice</p> <ul style="list-style-type: none"> ➤ Security of Court Facilities ➤ Public Appearances and Statements ➤ Unauthorized Practice 	<p>Recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice, assists to protect security of court facilities).</p> <p>Understands the obligations related to making public appearances and statements.</p> <p>Assists in preventing the unauthorized practice of law and the unauthorized provision of legal services.</p>

<i>RULES OF CONDUCT</i>	<u>RELATED COMPETENCY (IES)</u>
<p>RULE 7 – DUTY TO OTHER LICENSEES 7.01 Courtesy and Good Faith</p>	<p>Avoids engaging in sharp practice (e.g., taking advantage of slips by other licensees not going to the merits or involving a sacrifice of the client's rights).</p> <p>Maintains a professional tone in communications (e.g., avoids abusive or offensive language).</p> <p>Agrees to reasonable requests related to setting dates, adjournments and similar matters that do not prejudice the client's rights.</p> <p>Maintains appropriate professional relationships with other licensees (e.g., punctuality in fulfilling commitments, restrictions on the use of tape recorders, avoids communication with persons represented by other licensees).</p>
<p>RULE 8 – PRACTICE MANAGEMENT 8.01 General Obligation</p> <p>➤ File Management</p> <p>➤ Time Management</p> <p>➤ Use of Technology</p>	<p>Understands the obligation to maintain a conflicts checking system.</p> <p>Understands the obligation to properly open and maintain client files (e.g., file organization, file storage, preservation of client property).</p> <p>Understands the obligation to properly store client files (e.g., closing, retaining and disposing of client files, closed file storage).</p> <p>Understands the obligation to maintain reminder systems (e.g., limitation periods, important dates).</p> <p>Understands the obligation to complete tasks in an efficient, timely and cost effective manner.</p> <p>Understands the obligation to use technology in compliance with the <i>Rules of Conduct</i> (e.g., confidentiality, conflicts, advertising, offering services).</p> <p>Understands the obligation to use technology in a competent manner (e.g., adopts adequate security measures, employs back-up and disaster recovery plans, considers obsolescence).</p>

<i>RULES OF CONDUCT</i>	<u>RELATED COMPETENCY (IES)</u>
➤ Financial Responsibility	<p>Meets all financial obligations (e.g., obligations incurred by the paralegal, obligations incurred on the client's behalf).</p> <p>Understands the need to manage client expectations regarding fees (e.g., recording time spent on client matter, sending out frequent billings).</p> <p>Understands the difference between a general account and a trust account.</p> <p>Understands the obligations related to trust accounts (e.g., preservation of client property, types of monies to be deposited, withdrawal of trust monies).</p> <p>Demonstrates an understanding of the Law Society's books and record keeping requirements (e.g., maintenance of appropriate trust and general books and records).</p> <p>Understands and uses general accounting principles (e.g., meets financial and record keeping obligations, understands benefit of employing accountant or bookkeeper to assist).</p>
➤ Supervisory Responsibility	Ensures that staff is properly trained to understand and adhere to relevant <i>Rules of Conduct</i> (e.g., confidentiality, conflicts, integrity, honesty, civility, discrimination and harassment).
➤ Delegation	Delegates and supervises staff appropriately (e.g., enhances cost efficiencies for client, does not delegate unless employee is competent and permitted to perform task, ensures employee does not provide legal services, perform work only a paralegal can perform, or hold him or herself out to be a paralegal).
8.02 Advertising	Understands the obligation to offer and advertise services ethically as per the <i>Rules of Conduct</i> (e.g., advertising in good taste, advertising which does not mislead, advertising which does not compare services or charges with other firms, advertise and offer services only within the permitted scope of practice and jurisdiction).
8.03 Paralegal Firm Names, Letterhead and signs	Demonstrates an understanding of restrictions regarding firm name, letterhead and signs (e.g., does not mislead regarding firm, paralegals employed,

<i>RULES OF CONDUCT</i>	<u>RELATED COMPETENCY (IES)</u>
8.04 Compulsory Errors and Omissions Insurance	<p>jurisdiction where services are offered).</p> <p>Understands the requirement to maintain sufficient insurance.</p> <p>Understands the requirement to cooperate with the insurer regarding any claims made against the Paralegal.</p>
<p>RULE 9 – RESPONSIBILITY TO THE LAW SOCIETY</p> <ul style="list-style-type: none"> ➤ Communications from the Society ➤ Duty to Report Misconduct ➤ Duty to Report Criminal Charges/Convictions ➤ Discipline 	<p>Demonstrates an understanding of the general duty owed to the Law Society.</p> <p>Understands the obligation to reply promptly to any communication from the Society.</p> <p>Demonstrates an understanding of the duty to report own or other licensee's misconduct (e.g., mishandling of trust funds, abandonment of practice, participation in criminal activity, mental instability where clients likely to be prejudiced).</p> <p>Understands the requirement to persuade a client having a claim against a dishonest licensee to report it to the Society before pursuing private remedies.</p> <p>Demonstrates an understanding of the duty to report to the Law Society criminal charges/convictions in accordance with applicable By-laws.</p> <p>Recognizes the disciplinary authority of the Law Society (e.g., professional misconduct, conduct unbecoming).</p>

APPENDIX 3

Report on Competency Profile and Examination Development

Paralegal Licensing Examination

Prepared by:

Diana Miles
 Director, Professional Development & Competence
 (416) 947-3328
 dmiles@lsuc.on.ca

March 2007

Competency Profile and Examination Development for Paralegals

Objective

1. To review and approve the competencies expected of an entry-level paralegal professional, which will be used to establish a licensing examination for the grandparent paralegal group.
2. The achievement of a passing score on the licensing examination is one of the requirements to be licensed as a paralegal.
3. In the process of grandparenting, paralegal candidates have three opportunities to achieve a passing score on the licensing examination.
4. The examination is multiple-choice, open book and paralegals that are approved to write the examination will be provided with a complete set of reference (study) materials to support their preparation for the assessment.
5. The examination for grandparented paralegals will be written on January 15, 2008. For those who fail an examination(s), further sittings will be held on February 27, 2008 and April 2, 2008.

Defining Competencies

6. Competencies form the most basic building blocks for examinations and assessments and in turn a licensure system. Any valid test must be based on the results of a competency review.
7. In the case of paralegal licensure, competencies refer to the knowledge, skills, abilities, attitudes and judgments required to safely and effectively fulfill the requirements of the paralegal profession at entry-level.
8. The Professional Development and Competence Department has conducted a review of the scope of practice for the paralegal profession for the purpose of deriving a competency profile for this profession.
9. That review included participation in the development and analysis of the new Rules of Professional Conduct for the paralegal profession. During this process consultations were conducted with various groups involved in or with the paralegal profession including tribunal and agency representatives, college representatives and paralegals. In addition, the Department undertook a review and analysis of legal services programs offered by colleges currently providing legal services vocational programs that are approved by the Ministry of Training, Colleges and Universities.
10. Given the diversity of paralegal practice, the recognition that grandparented paralegals will be receiving a general licence, and the inability to gauge the pre-licensing educational achievements of this entry group, it is not feasible or fair to test in all of the unique substantive areas that may fall within the scope of paralegal practice. Such a

broad-based assessment may establish barriers to entry for those paralegals that have been successfully practising in only one or two discreet areas within the scope of practice.

11. As a result, to support the licensing assessment of the grandparent paralegal applicants, it is strongly recommended that emphasis be placed on the Rules of Professional Conduct for paralegals as the common entry-level knowledge that should be required of all grandparent paralegals.
12. Therefore, the scope of testing for grandparent paralegals will focus on: the application of the Rules of Professional Conduct, principles of professional responsibility, establishing and maintaining ethical standards, and supporting appropriate practice management practices. These areas of assessment are traditionally the most active areas of complaint and misconduct for lawyers and are anticipated to be the most active areas of complaint for paralegals.
13. These competencies will form the foundation of the grandparent paralegal examination and will also support all subsequent examinations following the grandparenting period.
14. This continuity and consistency will contribute significantly to the standardization, reliability, validity, fairness and defensibility of the Law Society's new licensure program for paralegals in both the grandparenting and regular licensing processes.
15. The competencies that will be tested in the grandparenting process are attached as Appendix 1. The competency profile is set out in relation to the Rules of Professional Conduct and outlines all related competencies and underlying principles that will form part of the licensing assessment for paralegals.
16. If any Rules, concepts or principles of conduct are revised between now and the time of distribution of the materials for the examination, the examination bank and reference materials will be revised to mirror those changes.
17. Just as legal services practice will evolve and change, the competency profile must remain a flexible assessment that will move with the profession in order to ensure a fair and transparent system of testing, now and in the future.
18. Review and possible revision of the competency profile will take place when the college accreditation process is completed and the scope of the learning requirements for paralegal candidates entering the system via an accredited vocational program has been determined and approved.

Next Steps: Licensing Examinations

19. Moving forward, the competencies for the licensing examination will receive a rating of relevance in a process referred to as blueprinting. In that process the competencies will be reviewed to determine the relative importance to be attached to each single competency for an entry-level paralegal.
20. Importance of a competency is determined by the applicability, frequency and consequence (risk factor) of each competency as applied to an entry-level paralegal practitioner. Based on the levels of importance and risk, the competencies will be

assigned ratings, which will translate into the level and amount of testing that will be established for each competency in the licensing examination process. The higher the rating of importance and risk for the entry-level practitioner, the more that particular competency will be tested in the examination.

21. Blueprinting will also take the competencies that have been defined and determine the test questions that will be used. The test questions on an examination may vary, but they will always be linked to the competencies.
22. The Professional Development and Competence Department, having recently completed a similar development process for the new lawyer licensing process, is highly versed in the requirements for the production of a valid and defensible examination system for entry-level candidates in a legal services profession. This expertise will be applied to all aspects of the paralegal licensing examination development.
23. Based on the scope of the competencies to be tested as set out in the profile, it is anticipated that the grandparent paralegal licensing examination will be no more than 3 hours in length with approximately 100 questions.
24. Licensure examinations are not tests of speed, but of knowledge application and analytical ability. As such, ample extra time will be integrated into the 3-hour period to allow candidates to review, analyze and respond to all questions on the examination.
25. As a comparison, the lawyer licensing examinations are each 7 hours in length divided into two, 3.5-hour segments. There are approximately 240 questions per examination, or 120 questions per 3.5-hour segment.
26. To support the three paralegal licensing examination sittings to be held in early 2008, approximately 300 test questions and the supporting reference materials must be completed by the end of June 2007.
27. To put this task into perspective and emphasize the constraints under which this development process will be undertaken, groups of 6 to 8 skilled examination developers are capable of deriving approximately 10 test questions per day. The questions are four-option multiple choice and it is important to understand that the development of “distractors”, or the three out of four incorrect options to each question, is just as difficult and as important to the testing environment as the derivation of the original question and its correct response.
28. In addition, the supporting reference materials can only be finalized once the examination questions are completed. This will ensure that all required information is included for purposes of study.
29. In order to meet the grandparenting deadlines, the reference materials supporting the examinations are already being organized based on the drafts of the Rules of Professional Conduct for Paralegals and other materials available in the areas of professional responsibility and ethics in advocacy practices.
30. As test questions are derived, the reference materials will continue to be written and refined. At this time, it is anticipated that the reference materials will be approximately 200 to 250 double-sided pages of information.

31. Following the derivation of test questions, all questions will then be vetted by examination question developers and external assessors who are individuals involved in the paralegal licensing process, paralegal appearances process and/or college training system. Given that all paralegals will be required to write this examination, only non-paralegals may be used to assess the questions.
32. Finally, each question in the examination bank will be put through a scoring methodology that will result in the setting of a passing score for each individual question housed in the bank. The passing score for each question represents the expected performance of entry-level paralegals on that question. Examinations are scored on a pass or fail basis. This methodology of scoring is used in the Law Society's lawyer licensing system.
33. Based on the final bank of examination questions, the reference materials will undergo another review and edit and all examination questions will be "tagged" to ensure that the reference materials support the ability to answer every question in the paralegal examination bank.
34. All reference materials and examination questions must then be translated into French, which will take a minimum of 8 weeks.
35. The reference materials must be completed for distribution to grandparent candidates beginning October 1, 2007 so that they may prepare for the first sitting of the examination.
36. Effective October 1, 2007 the Law Society will be providing reference materials and supporting examination process information to all applicants who have been approved to write the examination.
37. Given the extremely tight timelines on this development process, the Professional Development and Competence Department must proceed immediately to derive examination questions and reference materials.

LICENSING BY-LAW

19. On March 29th, Convocation approved Part I of the licensing by-law in principle.
20. During the discussion at Convocation, a suggestion was made that the word "paralegal" could be inserted after the term "Class P1" license, which first appears at section 5 of the by-law under "License to Provide Legal Services". The suggestion to change the name of this licence from "Class P1" to "Class P1-Paralegal" was intended to clarify that this licence is required for paralegals, while the Class L1 and Class L2 licences are required for lawyers. There was some discussion about whether the names of the three licences were sufficiently clear.
21. The Paralegal Standing Committee considered this issue at its meeting on April 12th. The Committee determined that changing the name of the Class P1 licence to "Class P1-Paralegal" would not enhance the clarity of the by-law and could result in confusion. Some of the persons to whom the Law Society will be issuing Class P1 licences consider themselves 'court agents', 'law clerks', or various other titles, rather than 'paralegals', but they will be required to have a licence in order to continue to provide

legal services. The Committee concluded that, in the interest of clarity, the name of the Class P1 licence should remain as it is.

22. The final version of the by-law will be presented to Convocation separately, in the report of the By-Law Review Committee.

INSURANCE REQUIREMENTS

23. In January, the CEO sent out a request for proposals (RFP) to insurance companies, soliciting detailed proposals from insurers to meet the Law Society's requirements for appropriate Errors & Omissions insurance for paralegals. Two proposals were submitted; one from A.M. Fredericks Underwriting Management Ltd. and the other from ENCON Group Inc.
24. Negotiations between the Law Society and these insurers have resulted in both insurers providing a satisfactory insurance package for licensed paralegals that is to be in place for May 1, 2007. In each case, the Law Society will be a named insured. The Law Society is satisfied that licensed paralegals will have a choice of two insurers when seeking the Errors & Omissions insurance coverage required by the regulatory scheme.

INTERACTIVE INFORMATION SESSION FOR PARALEGALS

25. The Director of Communications, Roy Thomas, described the plans for an information session for paralegals, to take place on April 24th at 5.30 p.m., permitting paralegals from anywhere in the province to participate by telephone.
26. Those who registered to participate in the information session were given the option of providing a question that they wanted addressed. The Law Society received several hundred registrations for the session and a large number of questions. The Communications Department coordinated the development of responses to the questions, and answers were to be provided in writing to the questioner in advance of the session, as well as during the session.
27. The panel for the information session was to be composed of Terry Knott, Zeynep Onen, and Diana Miles, with an external media consultant acting as moderator, and the participation of the Treasurer and the Chair of the Paralegal Standing Committee.

Re: Exclusions and Exemptions Policy

It was moved by Mr. Dray, seconded by Mr. Simpson, that Convocation approve the policy on exemptions set out in the Report.

Carried

It was moved by Ms. Curtis, seconded by Ms. Potter, that a review of the exemptions take place in one year.

Lost

ROLL-CALL VOTE

Aaron	For	Harris	Against
Alexander	Against	Heintzman	Against
Backhouse	Against	Henderson	Against
Banack	For	Krishna	Against
Boyd	Against	Lawrie	Against
Campion	Against	Legge	For
Carpenter-Gunn	Against	Martin	For
Caskey	Against	Millar	Against
Chahbar	Against	Minor	Against
Cherniak	Against	Murray	Against
Coffey	Against	Pawlitza	Against
Crowe	Against	Potter	For
Curtis	For	Robins	Against
Dickson	Against	Ruby	Against
Doyle	Against	St. Lewis	Against
Dray	Against	Sandler	Against
Eber	Against	Silverstein	Against
Feinstein	Against	Simpson	Against
Filion	For	Swaye	Against
Go	Against	Topp	For
Gotlib	Against	Warkentin	Against
Gottlieb	Abstain	Wright	Against

Vote: 8 For; 35 Against; 1 Abstention

It was moved by Mr. Silverstein, seconded by Mr. Aaron, that anyone who provides legal services without a license may not charge a fee.

Withdrawn

Items for Information

- Paralegal Competency Profile
- Licensing By-Law
- Insurance Requirements
- Communications

REPORT OF THE TRIBUNALS COMPOSITION TASK FORCE

Messrs. Sandler and Banack presented the Report.

Report to Convocation
April 26, 2007

Task Force Members
Mark Sandler, Chair
Larry Banack
Carole Curtis
Anne-Marie Doyle
Allan Gotlib
Bonnie Warkentin
Bradley Wright
S. Ron Ellis
Bryan Finlay
Professor Lorne Sossin

Purpose of Report: Decision

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

RECOMMENDATIONS OF THE TRIBUNALS COMPOSITION TASK FORCE

Motion

Recommendation 1

That Convocation approve the eligibility of

- a. four non-bencher lawyers, and
 - b. four non-bencher non-lawyer persons
- to be members of the Law Society's Hearing Panel.

Recommendation 2

That if Convocation approves recommendation 1, all Hearing Panel members be remunerated on the same basis, except that the non-bencher lawyer and non-bencher non-lawyer members are not required to donate 26 days to the Law Society before being eligible for remuneration.

Recommendation 3

That Convocation budget annually an amount not exceeding \$100,000 for the remuneration and expenses associated with adding non-bencher lawyers and non-bencher non-lawyer persons to the Hearing Panel.

Recommendation 4

That if Convocation approves Recommendation 1, two years after implementing the recommendation, Convocation authorize a review of the manner in which the non-bencher lawyers and the non-bencher non-lawyer persons have served as adjudicators on the Law Society's Hearing Panel, the results of which are to be reported to Convocation.

Recommendation 5

That Convocation approve four year terms of office for each of the Chair and Vice-Chair of the Hearing Panel.

Questions for Consideration

1. Should the Chair of the Hearing Panel be an elected bencher or a non-bencher lawyer?
2. Whatever decision is made about the Chair, should the Vice-Chair be an elected bencher or a non-bencher lawyer?

Recommendation 6

That, depending on the answers to the questions following Recommendation 5, a non-bencher Chair or Vice-Chair be remunerated at a rate commensurate with the status and duties of the office.

Recommendation 7

That Convocation approve staggered terms of office for the Chair and Vice-Chair of the Hearing Panel.

Recommendation 8

That the Tribunals Committee be invited to consider the merits of establishing the office of Counsel to the Hearing Panel.

Introduction and Comments on the Recommendations

1. In May 2005 Convocation accepted the recommendation of the Tribunals Task Force that Convocation examine different models for the composition of Law Society tribunals. The Tribunals Composition Task Force ("the Task Force") was established on November 24, 2005 to undertake this examination and report to Convocation.
2. In accordance with its terms of reference, the Task Force examined the five tribunals models identified in the Tribunals Task Force report to April 2005 Convocation.¹ The Task Force also explored variations of these models based on issues that arose from a review of the models.
3. The Task Force, after considering questions and comments at recent bencher information sessions on a draft of the report now before Convocation, prepared the motion appearing in this report.
4. The Task Force was guided by the structure for the Hearing Panel in the amended *Law Society Act*.² For the reasons articulated in the report, the Task Force believes that additional members should be added to the Hearing Panel.

¹ See Appendix 1 for the models.

² Composition

49.21 The Hearing Panel shall consist of at least three persons appointed by Convocation, of whom at least one shall be a person who is not a licensee.

Eligibility for appointment

A person is not eligible to be appointed to the Hearing Panel unless he or she is,

- (a) a bencher;
- (b) a licensee; or
- (c) a person approved by the Attorney General for Ontario.

5. With respect to the non-bencher lawyer complement, the Task Force is requesting that Convocation consider adding four non-bencher lawyers to the Hearing Panel.
6. The Task Force is also requesting that Convocation consider adding four additional non-bencher non-lawyer persons to the Hearing Panel. The Task Force believes that adding lay members will ease the scheduling difficulties that can be experienced when arranging hearing panels to ensure that a lay representative is available to sit on each panel. Experience has shown that the lay members of the panel (currently lay benchers) who fulfill a necessary function as public representatives are dedicated adjudicators who take their responsibilities seriously. The addition of four lay members would be a worthwhile enhancement.
7. With respect to the addition of the eight Hearing Panel members discussed above, the Task Force is recommending that Convocation authorize a review, after a period of time, of the manner in which these adjudicators have carried out their responsibilities. The review would occur two years after implementation of the recommendation to add these members to the Hearing Panel and would include a report to Convocation on the results.
8. The Task Force assessed the cost implications of adding non-bencher members to the Hearing Panel. The costs are based on the Task Force's recommendation that non-bencher members of the Hearing Panel be remunerated at the same rate as bencher members, but not subject to the 26-day deductible period for bencher remuneration. The Task Force has provided information to the Finance and Audit Committee on the estimated cost of adding eight additional members to the Hearing Panel. The result is a proposal that the Law Society budget annually an amount not to exceed \$100,000 for this purpose.
9. The Task Force members had differing views about the merits of appointing a non-bencher member of the profession as chair or vice-chair of the Hearing Panel. However, the Task Force considers the issue of sufficient importance to be placed before Convocation for discussion. The questions for discussion are set out in the motion under Recommendation 5. A decision by Convocation to approve the appointment of a non-bencher chair or vice-chair will have financial implications, and these are discussed at page 28 and following.

Context for the Task Force's Review

10. The Task Force undertook its examination in the context of the following circumstances and developments involving or related to the Society's Hearing Panel:
 - a. From time to time, difficulty is experienced in scheduling benchers for hearings;
 - b. The pool of bencher volunteers who make up the Society's Hearing Panel includes individuals who have different levels of adjudicative knowledge, skill, experience and writing ability. Given the varying degrees of expertise among the adjudicators, the Law Society needs to take steps to ensure that its adjudicators have the temperament, skills, expertise and experience required for sound adjudication;
 - c. As a result of b., there is a concern about achieving consistency in adjudicative functions and decision-making. Consistency is becoming more crucial as the
-

- cases before the Hearing Panel become more complex and lengthy. Also, the majority of members in the hearing process now retain counsel, which means that the Hearing Panel's jurisprudence figures prominently in many hearings;
- d. There is a question about whether there is an inherent conflict of interest where regulatory adjudicators are also regulatory policy makers³ ;
 - e. There is a question about whether there are perceptions of systemic bias in a tribunals structure like that of the Law Society which may be a drawback to the effectiveness of the process even in the absence of actual bias.
11. Early in its deliberations, the Task Force decided that the following ideas and considerations should guide its deliberations on the most appropriate model for a Law Society tribunal:
- a. independence of the adjudicators and avoidance of conflict and bias (perceived or real);
 - b. expertise of the adjudicators;
 - c. timely adjudication;
 - d. accountability, organization and administration (including the notion of a structure for recruitment or appointment) of the tribunal;
 - e. lay (public) representation;
 - f. facility to hear cases in the French language;
 - g. consistency and coherency in both procedure and substantive decision-making⁴ ;
 - h. education and ongoing professional development required for tribunal members;
 - i. whether the model can be implemented now, or requires legislative (i.e. Law Society Act or regulation) changes; and
 - j. costs of the model, including remuneration of the adjudicators.

Preliminary Considerations on the Independence of a Tribunal

12. Preliminary to its other considerations, the Task Force addressed the issue of institutional bias and tribunal independence. In particular, it considered whether the requirement for an independent tribunal as a key element of fundamental justice requires a Hearing Panel that operates separately from the Law Society. There are two components to the issue, namely, whether an independent tribunal is necessary for fair adjudication and as an indicia of effective self-regulation.

The Independent Tribunal

13. The Task Force reviewed the common law on this issue and focused on the ability of an integrated regulatory institution to maintain overlapping regulatory functions (e.g. policy making, adjudication and enforcement) without being open to an attack on the basis of an apprehension of bias. The law affirms that a tribunal, such as the Law Society's Hearing Panel, that operates within a regulatory scheme that includes overlapping

³ This is the nature of the Law Society's unitary structure where benchers are both policy makers and adjudicators.

⁴ In *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, and cases that followed it, the Court said that coherence in administrative decision-making should be fostered and that appropriate measures should be taken to ensure that conflicting results are not inadvertently reached in similar cases.

regulatory functions does not, because of that structure alone, lack the requisite independence.⁵

14. Beyond the issue of structure, the Task Force considered whether the issue of bias, which as a matter of perception may arise from the adjudicators (benchers) also serving as policy-makers, required comprehensive treatment in this report. In this regard, the Task Force reviewed with interest the assessment of these issues as they related to the Ontario Securities Commission (OSC) in the Report of the Fairness Committee.⁶ The Task Force's primary question was whether parallels could be drawn between the OSC and the Law Society that would require the Society to consider the issues that faced the Fairness Committee. The Task Force benefited from the insights of Bryan Finlay, one of the authors of the Fairness Committee's report and a member of the Task Force.
15. The Task Force recognized that the Fairness Committee Report's conclusions were contextual. After assessing the OSC, the Committee concluded that the particular scope and breadth of the policy-making role at the OSC rendered it advisable to separate the policy function from the adjudicative one. The nature of the apprehension of bias became acute to the point that it not only undermined the OSC's adjudicative process but the integrity of the OSC among its constituents. It developed as a result of several things, including concerns about an institutional loyalty on the part of the Commissioners and the effect this had on dispassionate adjudication, the appearance of an aggressive enforcement policy authorized by the Commissioners as a whole with little accountability, and concerns that unarticulated policy considerations were brought by the Commissioners from the policy-making function to inform sanction hearings.
16. In the Task Force's view, the OSC situation is unique to that organization, and the same circumstances do not exist at the Law Society. The Law Society is not facing a similar crisis, and apart from the *Forget* case noted above, the Task Force is unaware of any challenge to the Society's adjudicative function based on a conflict with the policy-making role. As such, the Task Force does not believe that the policy-making and

⁵ *Forget v. Law Society of Upper Canada*, (2002) 58 O.R. (3d) 142 (Div. Ct.). In this case, the Court, referring to Supreme Court of Canada authority, said:

There is ample authority for the proposition that where a statute provides for overlapping functions on the part of an administrative body, the exercise of those functions is within its jurisdiction and, in and of itself, does not give rise to a reasonable apprehension of bias -- or "institutional bias", as it is sometimes called in such circumstances: see *Ringrose v. College of Physicians and Surgeons of Alberta*, [1977] 1 S.C.R. 814 at p. 823, 67 D.L.R. (3d) 559, per de Grandpré J.; *W.D. Latimer Co. v. Bray* (1974), 6 O.R. (2d) 129, 52 D.L.R. (3d) 161 at p. 172 (C.A.), per Dubin J.A.; *Duncan v. Law Society of Alberta (Investigating Committee)* (1991), 80 D.L.R. (4th) 702 at p. 717, 79 Alta. L.R. (2d) 228 (C.A.), per Foisy J.A.

⁶ *Report of the Fairness Committee to David A. Brown, Q.C. Chair of the Ontario Securities Commission*, The Honourable Coulter A. Osborne, Q.C., Professor David J. Mullan, Bryan Finlay, Q.C., March 5, 2004.

adjudicator roles of benchers create an issue that is determinative of the tribunal model to adopt.

Self-Regulation and Independence of the Bar

17. The Task Force believes that the independence of the bar requires the Law Society to maintain control over member disciplinary processes, including the tribunal function. It is a fundamental precept of self-regulation that the profession itself discharge its regulatory responsibilities. As Mr. Justice Blair said in *Davies v. Ontario College of Pharmacists* (2003), 63 O.R. (3d) 122 (Div. Ct.):

In *Re Milstein and Ontario College of Pharmacy* (No. 2) (1976), 13 O.R. (2d) 700, 72 D.L.R. (3d) 201 (Div. Ct.) at p. 707 O.R., Cory J. (as he then was) expressed the essence of the rationale behind the need for deference towards self-governing discipline bodies in the following fashion:

One of the essential *indicia* of a self-governing profession is the power of self-discipline. That authority is embodied in the legislation pertaining to the profession. The power of self-discipline perpetuated in the enabling legislation must be based on the principle that members of the profession are uniquely and best qualified to establish the standards of professional conduct. Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are deemed to have, and indeed, they must have special knowledge, training and skill that particularly adapts them to formulate their own professional standards and to judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.

The Principles for the Structure of the Tribunal

18. Against this background, the Task Force considered the five tribunal models set out in its terms of reference. After examining each of the models, the Task Force identified a number of common principles to assist it in assessing the appropriate structure for the Hearing Panel. While the Task Force unanimously agreed on some principles, others reflect a consensus of Task Force members, and others are presented with options for consideration as consensus was not reached on these matters.
19. The principles on which the recommendations in this report are based are as follows:
 Principle #1 - Benchers should continue to serve on the Hearing Panel (page 10);
 Principle #2 – The Appeal Panel should remain as constituted in the *Law Society Act* as amended by Bill 14⁷ (page 12);
 Principle #3 - Non-bencher lawyers and non-bencher non-lawyer persons should be added as Hearing Panel members (page 12);

Principle #4 – Two options – The Hearing Panel should

⁷ Bill 14, the *Access to Justice Act*, 2005 in Schedule C contains extensive amendments to the *Law Society Act* primarily for the purpose of paralegal regulation. The Bill received Royal Assent on October 19, 2006.

1. continue to have an elected benchers as chair and have a non-benchers lawyer vice-chair,
- or
2. have a non-benchers lawyer as chair and an elected benchers vice-chair (page 22);

Principle #5– Non-benchers adjudicators should be remunerated for adjudicator duties on the same basis as benchers adjudicators, except for the 26-day “deductible” period applicable to benchers (page 28).

Principle #6 – A non-benchers lawyer chair or non-benchers lawyer vice-chair, as the case may be, should be remunerated for his or her duties (page 28).

PRINCIPLE #1 - Benchers should continue to serve on the Hearing Panel

20. The consensus among Task Force members is that benchers have a crucial role to play as adjudicators. Noting the words of Justice Blair above, as a self-regulating profession, those elected or appointed to govern should have a “hands-on” responsibility in regulating the profession. They should be available to participate as adjudicators in matters of conduct, capacity and competence and other hearings the Hearing Panel conducts.
21. While the Task Force’s conclusions on independence contributed significantly to the formation of this principle, the Task Force did not automatically dismiss the merits of a Law Society tribunal model that would exclude benchers adjudicators or even a model where the tribunal is completely independent of the Law Society.
22. A model structured to consist of exclusively non-benchers adjudicators would preserve peer assessment of conduct, capacity and competence matters, which is important to the continued viability of self-regulation. The concept of this model is an institutionalized “in-house” tribunal – that is, structurally within the Law Society. Its members would be recruited in a structured selection process so that people who have the temperament and skills for adjudication may be chosen. Tribunal members would make *tribunal* – that is, Law Society – decisions, and conform to tribunal standards of procedure, consistency, quality and performance. Tribunal members would be accountable to the Tribunal Chair for complying with these standards. The tribunal would promote strategies for quality adjudication and collegiality among the adjudicators, and would provide supports and training for the adjudicators and other tools they need to do their job. A culture where the decision-making function becomes that of the institution, and not the individual adjudicators who make up each panel, would ensure the accountability of the organization under which the institution operates.
23. The majority of the Task Force ultimately rejected the exclusively non-benchers adjudicator model and determined that retaining benchers adjudicators is a necessary component of the Society’s tribunal model.⁸ The majority felt that the non-

⁸ One member of the Task Force is of the view that benchers should not be members of the Hearing Panel. His view, the basis for which is explained below, is that the Hearing Panel should be constituted as a Tribunal that makes decisions with a corporate institutional responsibility for the quality of those decisions, as described in paragraph 22. Benchers owe obligations to the Law Society and its members, and exercise privileges attendant on their

bencher/independent tribunal is not viable for the Society's processes. There is no serious perception of systemic bias in the current structure. However, there is uncertainty about the possible negative implications of the non-bencher/independent tribunal model for the Law Society's governance structure and on the bencher role, both elected and appointed. Fundamental changes to the Society's structure and the roles of its governors may affect the public and the profession's understanding of the Society's role. For example, there is a risk that in moving to a structure like these models, the inadvertent result may be a perception that the Society is somehow giving up part of its self-regulatory responsibility.

24. While the Task Force did not pursue these models, it determined that certain aspects of these models would help to inform an improved structure for the Hearing Panel, as discussed in the following sections of this report.

PRINCIPLE #2 – The Appeal Panel should remain as constituted in the *Law Society Act* as amended by Bill 14

25. The Task Force was mindful that its recommendations with respect to the Hearing Panel might also relate to the Appeal Panel. However, in the Task Force's view, circumstances relevant to the Hearing Panel are not the same for the Appeal Panel.
26. The Appeal Panel, composed of not less than five persons appointed by Convocation⁹, does not face the same scheduling issues as the Hearing Panel. It convenes less frequently, with one appeal heard on average each month. This has allowed the chair of the Appeal Panel, as much as possible, to sit on hearings to promote consistency in decision-making.
27. For these reasons, the Task Force is not proposing any changes to the structure of the Appeal Panel.

PRINCIPLE #3 - Non-bencher lawyers and non-bencher non-lawyer persons should be added as Hearing Panel members

28. The Tribunals Task Force report noted the concerns arising from a pool of adjudicators limited to bencher volunteers. That report noted that the exclusive use of benchers for the tribunal function makes it difficult to address concerns that have arisen about timeliness and, on occasion, subject expertise. These are real issues, given that the

bencher status. This would make it inappropriate in principle to require benchers to submit to the Tribunal's institutional requirements, direction and discipline, and improbable in practice to expect a Tribunal Chair to enforce those requirements, give that direction or impose that discipline on benchers. The role of benchers would be to design the Tribunal, approve its strategies and policies, monitor its overall institutional performance, approve the Chair's recommendations for the appointment and renewal of individual Tribunal members, and hire (and dismiss - or not renew) the Chair. An individual bencher could not appropriately fulfill these latter functions and at the same time be a member of the Tribunal, nor could other benchers comfortably fulfill those functions if their bencher colleagues were members of the Tribunal.

⁹ According to s. 49.21(2) (Bill 14) the Appeal Panel is composed of at least five persons appointed by Convocation, of whom at least one shall be a person who is not a licensee.

cases before the Law Society's tribunals are becoming increasingly diverse and complex and the demands on bench time are increasing.

29. The number of cases to be heard is also increasing. According to statistics from the Professional Regulation Division, at the beginning of 2005, there were 117 members in discipline. By December 2005, that number had risen to 187, and by December 2006 the number was 235. The increase is a function of an increased number of complaints in 2005¹⁰, a backlog reduction over the past two years in the Investigations Department and improved processes instituted by the Director of Professional Regulation over the past four years. This activity has created a corresponding increase in the number of cases referred to the Proceedings Authorization Committee for authorization of a Conduct Application.
30. Tribunals Office statistics confirm this trend. In 2004, the Office opened 101 files. This number rose to 134 in 2005, an increase of 32%. Open files at the end of 2005 were 106 compared with 92 in 2004. As at December 31, 2006, 160 files were opened and the office had 125 open files.
31. The Investigations Task Force report, the recommendations of which were adopted by Convocation on May 25, 2006, noted the following:

The Task Force acknowledges that the trend is to more complaints and more complex complaints. Mortgage fraud is an example. The Task Force believes that the Professional Regulation Division is well-equipped to deal with these matters and that the Director will continue to make operational improvements and suggestions for necessary policy changes as the work unfolds, and set realistic goals for the timely completion of investigations.

The Task Force also understands that increased timeliness in complaints handling will likely mean an increase in the number of matters that will be scheduled for hearing before the Society's Hearing Panel. As the mandate of the Task Force did not extend to an examination of this phase of the complaints process, the Task Force's comment in this respect is that it is likely that increased human and financial resources will in time be required for the increasing number of cases at the hearing stage...
32. In the Task Force's view, the Society should do what is required to prepare for the increased demand on the Hearing Panel.
33. In its discussion of this model, the Tribunal Task Force's report noted that other law societies and other professions include or have the authority to include the equivalent of non-bench lawyer¹¹. The amendments to the *Law Society Act* in Bill 14 permit non-benchers and non-licensees to be members of the Hearing Panel.¹²

¹⁰ In 2005, the Law Society received 8227 complaints, of which 4866 were within the Society's mandate to review. This was an increase over 2004, when the Society received 8188 complaints, of which 4310 were within the Law Society's mandate to review. In 2006, the Law Society received 6821 complaints of which 4268 were within the Society's mandate to review.

¹¹ For example:

34. The majority of Task Force members agree that non-bencher lawyers should be added as members of the Hearing Panel.¹³ Having an expanded pool of adjudicators available for hearings should alleviate difficulties in finding benchers available to sit on hearings. Expanding the Hearing Panel is necessary to have a pool of adjudicators ready and able to sit and to meet the need for increased adjudicative or area of law expertise. There will be cases where specific expertise would be of great value to the hearing process. In the Task Force's view, the risk of inconsistency in the quality of adjudicators and the need to select adjudicators who are capable of handling certain cases must be addressed. Otherwise, the pool of appropriate adjudicators for some matters is narrowed considerably, and scheduling and timeliness issues arise.
 35. An expanded pool of adjudicators would include non-bencher lawyers who not only have particular practice area expertise, but who represent regional and other diversity interests. This may broaden the profession's understanding of the regulatory issues that the Law Society must address and enhance members' understanding of the adjudicative process and its consequences to them. This in turn may have a salutary effect among members of the profession, the benefit of which would accrue to the public, the profession and the Society.
-
- a. A number of other law societies, including British Columbia, Alberta, Saskatchewan, and Manitoba, Yukon, Northwest Territories, Nunavut, New Brunswick and Prince Edward Island, have authority to name non-bencher lawyers to sit on hearing panels. Some make use of these provisions; others do not. Some have determined that only lawyers who were former benchers should be invited to sit; others make regular use of non-bencher lawyers and, on occasion, have a non-bencher lawyer chair a panel;
 - b. Many other professions have adjudicative structures that include, for each hearing, a representative of the governing board or council who is also a member of the profession in question, a member of the profession who is not a member of the board or council, and a lay representative. These organizations include:
 - i. The College of Physicians and Surgeons of Ontario;
 - ii. The College of Nurses of Ontario;
 - iii. The Institute of Chartered Accountants of Ontario;
 - iv. The Certified General Accountants of Ontario;
 - v. The Ontario College of Teachers;
 - vi. The Professional Engineers of Ontario; and
 - vii. The Ontario Association of Architects.

Appendix 2 contains information on and a chart listing other professional organizations' structures.

¹² Bill 14 provides for a hearing panel that consists of at least three persons appointed by Convocation, at least one of whom is not a licensee. Those eligible to sit on the Hearing Panel are benchers, licensees and "a person approved by the Attorney General for Ontario".

¹³ One Task Force member did not agree that non-bencher lawyers (excluding those appointed to sit on French hearings as permitted by the *Law Society Act*) should be added as adjudicators.

36. The bench/non-bench lawyer pool may also assist in addressing any perception outside of the Law Society that discipline applied by an exclusive group of elected governors is a “closed shop.” The public’s view of the Society is important to the health of the self-regulatory authority it has been granted. The Society must be mindful not only of what the Society thinks is in its best interests as a regulator, but also what the public perceives and sees.
37. In choosing the adjudicators, attention would be paid to availability and to the attributes of a good adjudicator. These attributes include the following:
 - a. Understanding the role of the adjudicator in the Society’s process;
 - b. Familiarity with the process and the procedural rules of the tribunal;
 - c. A judicial temperament, including an open mind, empathy and the ability to consider persuasive argument;
 - d. Ability to render timely and reasoned decisions;
 - e. Good writing skills; and
 - f. Openness to learn and be trained as an adjudicator.
38. The Task Force believes the flexibility gained by the addition of non-bench lawyers as adjudicators will be beneficial. It will give the chair more options in creating panels for hearings and a larger pool from which to choose the most appropriate adjudicators for a matter.
39. The Task Force considered the merits of a rigid protocol whereby each panel would be composed of an elected bench or an *ex officio* bench entitled to be a member of the Hearing Panel, a lay bench and a non-bench lawyer. However, the Task Force acknowledges the following development which it accepts as an appropriate approach to the composition of panels.
40. On March 29, 2007 Convocation approved amendments to O. Reg. 30/99, which deals with the composition of the Hearing Panel and the Appeal Panel for specified matters, in anticipation of the coming into force of amendments to the *Law Society Act* as a result of Bill 14.¹⁴ The Act and the Regulation leave open the option contemplated by the Task Force for the composition of the Hearing Panel.¹⁵
41. The composition of a panel for the purposes of paralegal regulation, once paralegals become licensees, is also dealt with in the proposed amendments to the Regulation.
42. Ultimately, the purpose of expanding the Hearing Panel to include non-bench lawyers would be to establish a pool of adjudicators best suited to the task. The selection

¹⁴ See Appendix 3 for a copy of the proposed Regulation.

¹⁵ New Section 49.21(2) reads:

Composition

(2) The Hearing Panel shall consist of at least three persons appointed by Convocation, of whom at least one shall be a person who is not a licensee.

process for non-bencher lawyer members of the Hearing Panel would be merit-based, according to specific criteria drawn from the attributes described in paragraph 37 above. The non-bencher lawyer members of the tribunal would be recruited in a structured selection process designed to find lawyers who have the temperament and skills for adjudication.

Should there be a fixed number of bencher and non-bencher lawyer adjudicators on the Hearing Panel?

43. Bencher members of the Society's Hearing Panel have varying degrees of experience and expertise as adjudicators. Quality and consistency in the adjudicative function and decision-making is becoming more important as the cases before the Hearing Panel become more complex.
44. This led the Task Force to discuss whether a fixed number of adjudicators (both benchers and non-bencher lawyers) would address this issue. The various options are discussed below, followed by a summary reflecting the Task Force's proposals for Convocation's consideration.

A Fixed Number of Adjudicators

45. To address the issue of variable experience and expertise in adjudication, an option is to have the Hearing Panel composed of specifically assigned benchers and non-bencher lawyers. In this model benchers would indicate their desire to serve on the Hearing Panel. The Treasurer or the chair of the Hearing Panel or both would select benchers as members of the Hearing Panel to be confirmed by Convocation.
46. A fixed number of bencher and non-bencher lawyer adjudicators would help foster a more consistent approach to decision-making, make ongoing training initiatives easier and encourage dialogue between the chair and adjudicators on issues that arise in the tribunal function.
47. An important attribute of an adjudicator is openness to learn and be trained. The Task Force considers adjudicator education very important, and expects that anyone who chooses to serve on the Hearing Panel would make a commitment to learning. A fixed number of adjudicators would permit a more focused and administratively easier adjudicator education program.
48. A fixed number of adjudicators would change the current arrangement for the Hearing Panel composition. It is understood that benchers have always taken their role as adjudicators seriously and are dedicated to the task. However, the fact that a bencher has been elected to serve as a governor, and by virtue of that office, adjudicate at hearings, does not mean that the bencher has the requisite judicial temperament or other necessary attributes of an adjudicator.
49. The Task Force recognizes that such a structure risks a perception of two "tiers" of bencher, in which only some are chosen to sit on hearings. However, the choice of benchers would be focused on choosing those whose attributes best fulfill the Hearing Panel's needs in terms of requisite skills and also in terms of other considerations such as
 - a. the representative nature of the panel members, in terms of diversity, area of practice expertise, and the particular legal community from which they come,
 - b. any relevant adjudicator experience, and

- c. the availability to sit on panels.
50. In fixing the number of adjudicators, the goal is to achieve a balance among these aspects so that the tribunal is well-equipped for the important duty it is required to perform.
 51. In a model with a fixed number of adjudicators, the benchers and non-bencher lawyer component of the Hearing Panel would be approximately equal. Information from the Tribunals Office indicates that for the first half of 2006, 43 elected, life or *ex officio* benchers and eight lay benchers were available and were scheduled for hearings. Given this statistic, it may be appropriate to compose a Hearing Panel of 30 benchers (including lay benchers) and 30 non-bencher lawyers to ensure that the scheduling concerns are addressed.
 52. The Task Force is mindful of the fundamental change this structure would mean for benchers. However, the benefits of this change would be significant for the Law Society as an organization, the profession and the public. As with any administrative tribunal that deals with the disciplinary aspects of professional regulation, the focus is on timely adjudication by knowledgeable individuals who have the trust and respect of the public in whose interests they serve and of the profession.
 53. Consistency and expertise in adjudication are greatly enhanced when the adjudicators understand their task and the implications of the task, understand the procedural components of the process and engage in education to enhance their adjudication ability. Adding non-bencher lawyers to the Hearing Panel together with fixing the number of adjudicators would increase the Society's ability to achieve these goals.

A Fluid Number of Adjudicators

54. A second option is to continue with the current structure. Currently, each bencher, subject to the exceptions in the *Law Society Act*, is eligible to sit as an adjudicator. The Hearing Panel Chair has discretion to choose appropriate adjudicators for hearings. In the same way, the number of non-bencher lawyer adjudicators should not be fixed, although it is anticipated that some optimum number of adjudicators from the profession would be achieved after recruitment.
55. As noted above, not all benchers sit on hearings. The available pool, including lay benchers, is approximately 50 benchers.¹⁶ With a fluid number of adjudicators, through the responsible selection of adjudicators for a panel, the chair would ensure an appropriate composition. The chair would have the added benefit of choosing from among non-bencher lawyers who would alleviate scheduling concerns and provide expertise as needed.
56. The Task Force noted that, as with the current structure, all matters that relate to the Hearing Panel, including training initiatives, information exchanges and advisory information from the chair, must include all benchers, and all non-bencher lawyer adjudicators, once chosen. One question raised by some members of the Task Force was whether this is the best use of resources if all benchers do not sit on hearings.

¹⁶ The total eligible pool is 62.

A "Not Less Than" Number of Adjudicators

57. A third option would be to structure a Hearing Panel that must have "not less than" a fixed number of benchers. For example, the Hearing Panel could be structured to include not less than 30 benchers, with an indeterminate number of non-bencher lawyers.
58. This would avoid the effect that a fixed number of benchers may have on those who do not serve on the Hearing Panel. It would provide for a virtually unlimited number of adjudicators, who would be chosen from among the benchers and members of the profession. It would provide an opportunity, if the Society so wished, to informally limit the number of adjudicators, once an adequate complement was recruited, to better facilitate training and other initiatives for the benefit of the Hearing Panel members. In the Task Force's view, this would likely occur in any event as a result of budgetary considerations.
59. This structure would also operate to achieve an informal balance between the bencher adjudicator and non-bencher lawyer adjudicator numbers, should this be desired. It would also provide flexibility to include more non-bencher lawyers should that be necessary for scheduling or expertise requirements.

The Task Force's Proposal

60. The Task Force concluded that at this stage, there is merit to taking a small step to increase the number of adjudicators on the Hearing Panel to address the issues discussed earlier in this report. This will permit Convocation to focus on a qualitative rather than quantitative measure to enhance the adjudicative pool.
61. The Task Force is proposing that a fixed number of four non-bencher lawyers be added to the Hearing Panel, to be selected in accordance with the criteria described in this report. In choosing the four new members for Convocation's approval, it is expected that the chair of the Hearing Panel will focus on the most pressing medium term resource issues for the Hearing Panel, and recommend appointments accordingly.
62. The Task Force is also of the view that expanding the pool of adjudicators to include additional non-bencher non-lawyer persons would be appropriate. As noted in paragraph 6 of this report, and further to comments received at bencher information sessions on the subject of this report, the Task Force is of the view that a lay representative should form part of every hearing panel.
63. The proposed additional persons, who would not be lay benchers but would be recruited as lay adjudicators, would be selected according to the criteria described in the report for Hearing Panel members. Adding lay members will address the issue of scheduling difficulties that can be experienced when arranging hearing panels to ensure that a lay or public representative is available to sit on each panel. This is an important feature of the composition of the Hearing Panel as it is a practical application of the principle that the Society regulates lawyers in the public interest.
64. Experience has shown that the lay members of the Hearing Panel (currently lay benchers) who contribute to the hearing process as public representatives are dedicated adjudicators who take their responsibilities seriously.

65. In the Task Force's view, the addition of four lay adjudicators would be a worthwhile enhancement to the composition of the Hearing Panel.
66. As a means to ensure the effectiveness of the addition of these eight adjudicators to the Hearing Panel, the Task Force is proposing that after a period of time, the manner in which these individuals have carried out their responsibilities as Hearing Panel members be reviewed. The Task Force recommends that two years after implementing the recommendation to add these individuals to the Hearing Panel, Convocation should authorize such a review through the appropriate committee.¹⁷ The results of the review should then be reported to Convocation. The review may also help in assessing whether additional non-bencher members should be added to the Hearing Panel in future.

PRINCIPLE #4 – Two options – The Hearing Panel should

1. continue to have an elected bencher as chair and have a non-bencher lawyer vice-chair, or
 2. have a non-bencher lawyer as chair and an elected bencher vice-chair.
67. The Task Force's discussion of the tribunal's chair focused on the intended role of the chair.
 68. Pursuant to the *Law Society Act* as amended by Bill 14, Convocation must appoint one of the members of the Hearing Panel as chair, and another as vice-chair, of the Hearing Panel. The term of office is at Convocation's discretion but may not exceed four years.¹⁸
 69. The chair selects panel members for hearings and provides administrative oversight for the function of the Hearing Panel.
 70. In the Task Force's view, the chair of the tribunal should exercise a number of functions and responsibilities. These include:
 - a. ensuring that the tribunal provides a decision-making process that is timely, coherent, consistent and a model of quality for the benefit of all parties and stakeholders;
 - b. ensuring a consistent adjudicative approach to hearings, resulting in jurisprudence that illustrates a common approach in deciding a matter on its facts and the merits of the arguments made to the panel;
 - c. through a. and b., contributing to the development of a body of jurisprudence upon which parties and counsel can rely;
 - d. participating as an adjudicator to gain an understanding and appreciation of his or her colleagues' experiences, concerns and issues as adjudicators, and participating on cases of importance. This will assist in legitimizing the chair's leadership role and creating a better written product through reasons for decision,
 - e. communicating to panelists the responsibilities of the chair;

¹⁷ Given its mandate, the Tribunals Committee would appear to be the appropriate committee to undertake such a review.

¹⁸ On October 26, 2006 Convocation appointed Mark Sandler as vice-chair of the Hearing Panel. Convocation created this office as a matter of policy. The amended *Law Society Act* now provides for a vice-chair of the Hearing Panel.

- f. exercising appropriate judgment and discretion in selecting the appropriate panelists and chair for each hearing panel;
 - g. fulfilling an institutional role to deal with the myriad administrative inquiries that arise among adjudicators, and concerns or problems that arise as a function of their duties; and
 - h. overseeing professional development and training initiatives for adjudicators. Nothing in the current structure prevents the chair from exercising any of these responsibilities.
71. In light of concerns about timeliness and consistency in adjudication, the Law Society's Hearing Panel must be structured and maintained as an institution with standard procedures under the leadership of a chair who understands and is dedicated to fulfilling the responsibilities set out above. This institutionalized tribunal would promote strategies for quality adjudication, a collegial environment, and training and other tools the adjudicators need to perform their tasks. Much of this responsibility rests with the chair.
72. Two options for Convocation's consideration for the chair are presented, as the Task Force members were almost evenly split on how the office of chair should be structured.
1. The chair will be an elected bencher. The vice-chair will be a non-bencher.
73. While the Task Force recognizes that having a bencher chair has both positive and negative consequences, some Task Force members believe that the advantages outweigh the disadvantages.
74. A bencher chair is obviously not independent of the tribunal or Convocation, and exercises the chair's authority as a colleague of the adjudicators. This can at times make for sensitive interaction, as the Law Society's culture tends to foster a tight-knit relationship among benchers who, as a group, take their responsibilities very seriously.
75. That said, a bencher chair knows the Society's bencher (adjudicator) complement, which is invaluable in informing the chair's selection of appropriate adjudicators for particular hearings. Further, bencher adjudicators may be more amenable to dealing with a bencher colleague as chair than someone who is not from their "ranks". The collegiality of the benchers can work in favour of the task of creating appropriately constituted panels and working through issues that arise in the adjudicative function.
76. Making the vice-chair a non-bencher lawyer, chosen on the basis of ability, experience and expertise, would give the bencher chair an opportunity to obtain valuable insights from a non-bencher perspective. A non-bencher lawyer vice-chair would give the tribunal the benefit of independent views outside the ranks of the benchers. He or she would contribute to the public's understanding of the tribunal to the extent that the public appreciates the independent nature of a non-bencher lawyer vice-chair, and may assist in creating more awareness about the tribunal function among members of the profession.
2. The chair will be a non-bencher lawyer. The vice-chair will be an elected bencher.
77. While some members of the Task Force acknowledge the positive aspects of continuing with a model where the chair of the Hearing Panel is a bencher, they consider the better alternative to be a non-bencher, "independent" chair appointed by Convocation. All of

the non-bencher members of the Task Force, who are Bryan Finlay, Lorne Sossin and Ron Ellis, agree with this proposal.

78. The following outlines the key features of a tribunal model with a non-bencher chair.

A non-bencher chair is independent of the benchers and Convocation

79. A key advantage of a non-bencher chair appointed from the profession is the opportunity to benefit from an individual outside the ranks of the benchers with solid adjudicative experience and expertise. The independent chair would not be subject to the vagaries of the bencher appointment process that takes place annually when Convocation fills committees and other offices. The chair would be free from the political workings of Convocation and would be in a position to offer candid advice to tribunal members and Convocation on issues or concerns with the tribunal, and suggest ways to appropriately deal with them.
80. A non-bencher chair would not be subject to the considerations that bear on the bencher role. While the collegial nature of benchers as a group has its advantages, it can occasionally complicate matters for a bencher chair in making sensitive decisions on how panels should be constituted, how to instruct bencher panelists or how to deal with problems that arise from adjudication. For example, in many cases it is expected that the bencher with greater seniority will chair a Hearing Panel. In some cases, it may be more appropriate for a bencher with less seniority, but more relevant experience, to chair a particular panel.

A non-bencher chair elevates the focus on the public interest

81. A non-bencher chair may enhance the public's understanding of the tribunal's role in the Law Society's regulatory scheme to the extent that the public appreciates the distinction between an elected bencher who serves as an adjudicator and a non-elected chair who, while still a member of the legal profession, is independent of the governors. In the public's mind, the tribunal should be seen as uncompromisingly professional and, within the restrictions of self-regulation, independent in its decision-making function. A non-bencher chair in a leadership role would help to promote this understanding, with the anticipated effect of increasing the tribunal's and the Law Society's credibility with the public.
82. The proponents of this choice of chair do not believe that this structure would undermine self-regulation. The non-bencher chair, while independent of the Society's bencher structure, would still be a member of the profession and would oversee a tribunal that continues to draw its members from the profession. This important feature of self-regulation would continue and, in the view of the proponents of the non-bencher chair, be enhanced through this change.

A non-bencher chair should be someone of eminent stature in the legal profession, accountable to Convocation, and appointed for a set term of years

83. The Task Force recognizes the significant change that a non-bencher chair would mean for bencher adjudicators, and agrees that much would turn on the quality of the first permanent chair and the way the office is structured.

84. For this reason, the proponents of this choice of chair determined first that the non-bencher chair, drawn from the profession, should be someone with significant experience and influence whose expertise and authority would engender the respect of the benchers, the legal profession and the public. Second, a structure should be created to provide the scope of the chair's authority and ensure the chair's accountability.
85. The profile of a suitable non-bencher chair appointed from the profession would be informed by the nature of the duties the chair would have to perform. In addition, the "independent" chair must have an understanding of the Law Society's culture and the role the benchers play respecting the Society's adjudicative function.
86. The independent chair would be accountable to Convocation. The chair would be charged with bringing tribunal matters that require decision to Convocation through the Tribunals Committee. In this way, the committee would provide direction to the chair for Convocation's ultimate review.
87. The chair should be given a mandate for a specific number of years, renewable depending upon performance. The suggested term is four years, which would coincide with the maximum term included in the amendments to the *Law Society Act* noted above.

The non-bencher chair would be assisted by an elected bencher vice-chair.

88. With a non-bencher member of the profession in the position of chair, the elected bencher vice-chair gains importance as a source of information and support to the chair on matters related to bencher adjudicators.
89. The vice-chair would be appointed for a term similar to that of the chair, but the term would be staggered with that of the chair to ensure continuity when the term of the chair or vice-chair is completed.
90. As noted earlier, Bill 14 amends to the *Law Society Act* to provide that Convocation shall appoint one of the members of the Hearing Panel as chair and another as vice-chair of the Panel, and fix the term for a period of not more than four years. The chair and vice-chair continue to hold office at the pleasure of Convocation.

PRINCIPLE #5 – Non-bencher adjudicators should be remunerated for adjudicator duties on the same basis as bencher adjudicators, except for the 26-day "deductible" period applicable to benchers.

PRINCIPLE #6 – A non-bencher lawyer chair or non-bencher lawyer vice-chair, as the case may be, should be remunerated for his or her duties.

91. The Task Force believes that no distinction should be made between bencher and non-bencher lawyer and non-lawyer adjudicators for the purpose of remuneration.. This is the easiest and fairest way, and the most sensible administratively.
92. Remuneration at the same rate for all adjudicators is also necessary to ensure that they are on an equal footing. The tribunal must be and must be seen to be consistent and fair in its administrative functions to ensure the integrity of the hearing function.

93. Currently, elected benchers may be remunerated at a rate of \$500 per day, or \$300 per half day.¹⁹
94. The profile of the non-bencher chair calls for an individual of eminent stature who has distinguished himself or herself in the legal profession and has a wealth of expertise and experience to offer as a leader. Given this profile, a level of remuneration commensurate with that stature, within the confines of a professional regulator, would be required.
95. The level of remuneration of the non-bencher vice-chair lawyer would depend on the types of duties undertaken by this office. A role that demands a more “active” vice-chair may require an annual rate of remuneration, but less than that given to the non-bencher chair. In the alternative, the duties may be structured so that the bencher per diem rate described above may be fair compensation for a non-bencher vice-chair.

Financial Implications of the Model Based on Principles Adopted

96. The specific financial implications of the Task Force’s recommendations will be influenced by such things as
 - a. the number of adjudicators, both benchers and non-bencher lawyers and non-lawyers,
 - b. the rate at which the adjudicators are remunerated, including any maximum or limit on remuneration, and any variation between remuneration (e.g. the chair and vice-chair vs. adjudicators),
 - c. the items for which adjudicators are remunerated (e.g. the actual hearing, preparation time, reason writing time),
 - d. the expenses associated with training and ongoing adjudicator education, and
 - e. staffing and operational implications for the Society, including facilities for hearings.
97. The Task Force has attempted to bring some precision to the costs associated with adding additional non-bencher adjudicators. These costs are based on the addition of four non-bencher lawyer adjudicators and four additional non-bencher non-lawyer adjudicators, as set out in the motion in this report.

¹⁹ The following are the eligible activities for bencher remuneration, according to the policy adopted by Convocation:

- i) Convocation, meeting of committees, task forces, and working groups, special Convocations, calls to the bar, bencher information sessions, mandatory bencher education sessions,
- ii) *Hearing panels, appeal panels, pre-hearing conferences*
- iii) meetings attended as the Law Society’s official representative at the direction of the Treasurer or Convocation as well as
- iv) time spent as the Law Society’s appointed representative to boards of external organizations, and other roles in external organizations where that external organization permits remuneration.

(Emphasis added)

See Appendix 4 for the complete policy on bencher remuneration and an excerpt from By-Law 7 (Benchers), which was amended on February 22, 2007 to include bencher remuneration.

98. In calculating the projected costs, the Task Force used the number of hours benchers devoted to hearings in the period September 2005 to September 2006. In that time period, on average, benchers who sat on hearings sat for approximately 10 hours per month (1.5 days). If the assumption is that eight non-bencher lawyer and lay adjudicators will do the same, and are remunerated at the same rate as benchers (\$300 for a half day and \$500 for a full day), the approximate yearly cost would be \$76,800. As this figure in terms of total cost is imprecise, given the variables that are discussed above, the Task Force is proposing that the costs be budgeted in an amount not to exceed \$100,000 to ensure that costs associated with this initiative are contained.
99. With respect to staffing and operational implications for the Society, increased human resources may be required in both the Tribunals Office and the Discipline Department if the Hearing Panel is expanded. The logical implication is that a larger Hearing Panel would adjudicate more hearings that must be staffed operationally and before which Law Society prosecutors must appear. A greater number of hearings are going to result in any event from the increased efficiency with which matters are processed through the Investigations Department of the Professional Regulation Division.
100. With respect to an appropriate figure for remuneration for a non-bencher chair appointed from the profession, there was consensus that payment at an annual rate not exceeding \$100,000 for the chair may not be unreasonable for the best appointee.²⁰

Other Issues

Counsel to the Tribunal

101. As a matter related to the integrity of the decision-making function of the tribunal, the Task Force considered the merits of counsel to the chair of the tribunal. Unlike the broader duties of counsel to some administrative tribunals, the Task Force envisaged a counsel whose primary duty would be to review draft panel decisions to ensure that the decision is consistent with existing jurisprudence of the Hearing Panel. This type of resource is common in most sophisticated administrative tribunals.
102. The Law Society's Tribunals Office currently includes the position of Publications Counsel, whose responsibilities include coordinating the production of reasons of the Hearing Panel and preparing the reasons for publication on Quicklaw and CanLII.²¹
103. The counsel the Task Force conceived would not replace the Publications Counsel, as the role is different. The new counsel would be available to provide guidance to the chair, and through him or her, to the panels, with respect to the written reasons for decision. The advice would be provided in a neutral way to ensure consistency in the body of jurisprudence created by the Hearing Panel, with instruction on how, but not what, to write. In complex cases or where intricate procedural or jurisdictional issues are raised, counsel to the hearing panels may be of added benefit.
104. The Task Force is suggesting that Convocation consider the merits of counsel to the Hearing Panel. The Task Force recognizes that the suggestion for such a counsel

²⁰ It is contemplated that this will not be a full-time position.

²¹ See Appendix 5 for more detailed information on the structure of the Tribunals office.

position is only peripherally related to the Task Force's specific mandate. The Task Force also acknowledges that creating a new position within the operational departments is a matter for the Chief Executive Officer, the relevant senior manager and the Human Resources Department.

105. However, to the extent that the position of counsel may, broadly speaking, assist in improving the tribunal function, and in that sense is an extension of the policy recommendations reflected in this report, the Task Force is bringing the matter to the attention of Convocation. Convocation may wish to refer this matter to the Tribunals Committee for review.

Appendix 1

THE FIVE MODELS

Model One - the continuation of the current Law Society model ²²

In this model, only benchers (including lay benchers) adjudicate conduct, capacity and competence matters. A limited exception is made where there are insufficient French-speaking benchers to allow a hearing to be held in French. In such a case, s. 49.24(2) of the *Law Society Act* permits the Chair of the Hearing Panel to appoint one or more French-speaking members as temporary panelists.

The current model is based on the belief that an integrated regulatory system, imbued with the proper internal safeguards to ensure separation between the investigative/prosecutorial branch and the adjudicative branch in which benchers adjudicate, is the most appropriate and balanced model and operates in the public interest. This model operates on the theory that benchers are best suited to adjudicate competence, capacity, and conduct matters because:

- a. they have in-depth knowledge of the legislation, rules, by-laws and *Rules of Professional Conduct* that govern the profession;
- b. bencher involvement with policy development enriches their knowledge, thereby assisting their adjudicative functions and *vice versa*;
- c. they are elected by members of the profession to govern the profession in the public interest, including adjudicating issues of lawyer conduct, capacity and competence; the election process demonstrates the profession's confidence in the benchers' ability to perform this function; and
- d. the presence of lay benchers ensures the adjudicative system is a balanced one of lawyers and lay people.

The system of bencher adjudication is well ingrained in the self-regulation of the profession and has not been the subject of rigorous complaint or attack. The issues the model raises, however, are reflected in varying degrees in the other models set out below. These include whether

²² The Tribunals Task Force Report said: "Within this model, the decision could be made to make no changes to the process and procedures (the status quo) or to enhance them to make the tribunals composition more effective. In Part III of this report the Task Force recommends such enhancements, regardless of whether the Law Society explores the other models at a future date;" Convocation agreed with the recommendations in Part III.

- g. a model in which the adjudicators are also the policy makers gives rise to systemic bias (perceived or actual);
- h. a system premised on volunteers is increasingly less able to address issues such as timeliness, consistency, and subject expertise; and
- i. in an environment in which professions are increasingly scrutinized and consumers are less willing to accept the philosophy that professionals are best able to regulate their own, regulators should be proactive in enhancing quality and adapting their approaches.

Model Two: addition of non-bencher lawyers on panels - a tribunal model made up of elected benchers, lay benchers and non-bencher lawyers, the latter either for general participation on panels or for selected cases

One of the issues arising from the current model (Model One) is whether an adjudicative system based entirely on bencher volunteer resources is sufficient in the 21st century, given that the issues that face tribunals are becoming increasingly diverse and the demands on bencher time are increasing.

Model Two's main feature is the introduction of non-bencher lawyers to sit on panels, by way of the development of a roster of panelists. Model Two could take a number of forms:

- a. A mandatory system in which each panel has a lay bencher member, an elected bencher member and a non-bencher lawyer member;
- b. A mandatory system in which each panel has a lay bencher member, but the lawyer members could be either elected benchers or non-bencher lawyers;
- c. The development of a roster of non-bencher lawyers to whom the Chairs of the Hearing Panel and Appeal Panel could turn should they have scheduling difficulties or need particular expertise on a matter. This would mirror the current flexibility respecting French hearings.

The Tribunal Task Force's review of other law societies and other professions showed that including non-governor members of the profession, or at least the authority to include such members, is common. For example:

- a. A number of other law societies²³ have authority to name non-bencher lawyers to sit on hearing panels. Some make use of these provisions; others do not. Some have determined that only lawyers who were former benchers should be invited to sit; others make regular use of non-bencher lawyers and, on occasion, have a non-bencher lawyer chair a panel;
- b. Many other professions have adjudicative structures that include, for each hearing, a representative(s) of the governing board or council who is also a member of the profession in question, a member(s) of the profession who is not a member of the board or council, and a lay representative. These organizations include:
 - i. The College of Physicians and Surgeons of Ontario;
 - ii. The College of Nurses of Ontario;
 - iii. The Institute of Chartered Accountants of Ontario;
 - iv. The Certified General Accountants of Ontario;

²³ These include British Columbia, Alberta, Saskatchewan, and Manitoba, Yukon, Northwest Territories, Nunavut, New Brunswick and Prince Edward Island.

- v. The Ontario College of Teachers;
- vi. The Professional Engineers of Ontario; and
- vii. The Ontario Association of Architects.

In reviewing Model Two, the Tribunals Task Force noted the following:

- a. To the extent that finding benchers available to sit on hearings, continuations of hearings, or lengthy hearings is a problem, either currently or in the future, the availability of non-bencher lawyers to sit on panels could alleviate this problem;
- b. A roster of non-bencher lawyers could enlarge the availability of panelists with particular practice area expertise and who represent regional and other diversity, as well as broaden the profession's direct experience with the issues that the Law Society must address;
- c. The approach would bring the Law Society more into line with what is available to, or used by, other law societies and professions;
- d. The model is a fairly modest addition to Model One. It would not address the issues the Task Force identified under Model One concerning possible systemic bias, the possible conflict between benchers as adjudicators and policy makers or the issue of consistency of decision-making. It might, however, been seen as a further way to enhance Model One, while retaining its value.

Any further discussion of Model Two would necessitate a consideration of a number of issues, including,

- a. appropriate recruitment of non-bencher lawyers;
- b. whether adoption of this approach might increase inconsistency of decision making, given the increase in the number of adjudicators;
- c. what form of the model should be adopted; and
- d. remuneration for non-bencher lawyers.

Model Three: a tribunal model with a permanent Chair and one or two permanent Vice-Chairs who occupy one seat on every panel; the remaining members of each panel to be either elected lawyer benchers and/or lawyer members, and lay benchers

Under a model that relies primarily on volunteer adjudicators, one of the criticisms might be that decision-making is not always consistent or timely. The development of jurisprudence upon which parties and counsel can rely is important to the integrity of the adjudicative system.

Model Three could retain the basic Model One structure, but would create the new positions of a permanent Chair and possibly one or two permanent Vice-Chair(s). Non-bencher lawyers would be appointed to these positions, probably in a part-time capacity, and would be paid. The Chair or a Vice-Chair would sit on all panels. The remaining panel members would be an elected bencher and a lay bencher. Model Three could be structured so that the Chair/Vice-Chair writes all decisions or, alternatively, other panel members might write decisions as well.

In reviewing Model Three, the Tribunals Task Force noted the following:

- a. While this model would necessitate acceptance of non-bencher lawyers on the panels, the role of the non-bencher lawyers would be different from Model Two, both in terms of numbers and purpose. The number of non-bencher lawyers would be limited to two or three. The primary purpose for introducing this adjudicative change would be to further a

- decision-making process that is timely, coherent, consistent and a model of quality for the benefit of all parties.
- b. Given the consistent presence on all panels of either the Chair or Vice-Chair, the manner in which hearings were held would likely become fairly consistent.
 - c. Given that one member of each panel would be either the Chair or a Vice-chair and a second member would be a lay benchner (as is currently the case) the demand on volunteer benchner time would be reduced. Benchner time would be freed up for policy work.
 - d. The Chair's/Vice-Chairs' roles could also include responsibility for adjudicator professional development.
 - e. It is important to note, however, that this model would preclude the broader inclusion of non-benchner lawyers on panels, unless it was possible to constitute a panel without a benchner lawyer.
 - f. This model would not address the issue the Task Force identified above under Model One concerning possible systemic bias and the possible conflict between benchners as adjudicators and policy makers. Like Model Two, it might be seen as a further way to enhance Model One, while retaining Model One's value as described in paragraphs 38 and 39.

Any further discussion of Model Three would necessitate consideration of a number of issues, including,

- a. appropriate recruitment of the Chair and Vice-Chairs;
- b. the scope of the job, including responsibility for adjudicator professional development;
- c. the implications of a "specialist" adjudicator in the form of the Chair or Vice-chair on the adjudicative process;
- d. the possible implications of reducing the range of practice experience and diversity on each panel; and
- e. remuneration for the Chair and Vice-Chairs.

Model Four: a non-benchner adjudicative tribunal within the Law Society - a model that establishes a tribunals unit within the Law Society made up entirely of non-benchner lawyers and lay people

One of the issues identified under Model One is the fact that benchners currently act as policy makers and adjudicators, a dual role that could raise the perception of bias. This issue was raised in the assessment of the regulatory structure of the Ontario Securities Commission (report of the Fairness Committee). The assessment concluded that the particular scope and breadth of the policy-making role at the OSC rendered it advisable to separate the policy function from the adjudicative one.

Model Four would eliminate the dual benchner role, while still keeping the adjudicative function within the Law Society. Under this model, non-benchner lawyers and non-benchner lay representatives would adjudicate conduct, capacity and competence matters. On each panel the majority of members would be lawyers. A variation of this model would be to also adopt the Chair/Vice-Chair approach in Model Three. This variation would address the consistency of decision-making issues discussed above.

In reviewing Model Four, the Tribunals Task Force noted the following:

- a. This model frees up benchers (both elected and lay) to focus on policy issues that affect the regulation of the profession. In so doing, it addresses any concerns that exist about systemic bias in a system in which benchers who make policy decisions then adjudicate on issues that enforce those policies.
- b. While retaining the Law Society's regulatory control over all aspects of self-regulation, Model Four goes further in enshrining separation of the adjudicative branch from the investigative/prosecutorial branch.
- c. Model Four broadens the profession's direct involvement in self-regulation and has the potential to better highlight to members and educate them on the adjudicative process and its consequences to them.
- d. If one of the goals is to enhance consistency in decision-making, there would likely be fewer adjudicators under this model than in Model One. Adoption of the Chair/Vice-Chair component could enhance consistency even further.

Any further discussion of Model Four would necessitate consideration of a number of issues, including,

- a. whether there is a perception of systemic bias currently that would necessitate such a change;
- b. whether there are reasons to make such a change even if a serious perception of systemic bias does not exist about the current structure;
- c. assessing carefully the changes that would be made to the bencher role to accomplish this shift;
- d. the need for two classes of lay representatives (policy-makers and adjudicators);
- e. appropriate recruitment of panel members;
- f. to whom appeals from hearing panel decisions would be taken;²⁴
- g. the possible effect of the model on the policy making and enforcement roles of the benchers;
- h. the possible implications, financial and otherwise, for the Law Society of such a model; and
- i. the possible financial implications to the Law Society and to government of a change in the lay representative role.

Model Five: a model that establishes a tribunal that is completely independent of the Law Society.

The Law Society of England and Wales, the Bar Council and the Law Society of New South Wales are examples of regulatory bodies that have discipline tribunals that are independent of the regulator.

Where barristers in England and Wales are alleged to have committed professional misconduct, the Council of the Inns of Court is responsible for the tribunals process. The Bar Council acts as prosecutor before the Tribunal. The composition of the Tribunal is approximately 29 lay representatives and 100 barristers. A judge chairs each panel. An appeal lies to "visitors" who are High Court Judges appointed by the Lord Chief Justice. Inns' Council pays for the staff. Bar

²⁴ Since January 2000 discipline panels in Newfoundland and Labrador consist of two lawyers who are not benchers and a lay representative. Currently, appeals from their decisions must go to a panel of benchers.

Council pays for lay representatives' fees and other tribunal expenses. Barrister members are not paid.

The Solicitors Disciplinary Tribunal in England and Wales is independent of, but funded by, the Law Society of England and Wales (with the exception of lay members who are paid by the Department for Constitutional Affairs). The Master of the Rolls appoints the members. Anyone may apply to the Tribunal, but currently the Law Society makes most applications, following investigations. Most hearings take place before three members: two solicitors and one layperson.

In New South Wales the Law Society does not hear discipline matters. Instead, the Legal Services Division of the Administrative Decisions Tribunal hears these matters. A District Court Judge is the head of the Tribunal. Other members include additional judges and magistrates, barristers, solicitors and lay members. Members of the New South Wales Law Society Council do not sit on the Tribunal. Panels are made up of three members – a judicial member, a legal practitioner and a lay member. Each panel is appointed administratively, with a presiding member, usually based on seniority, and is inevitably a legally qualified member. There is no permanent Chair. The Law Society does not fund the Tribunal. The Tribunal is an umbrella organization with divisions dealing with a number of professions. The legal division is funded by money from clients' trust account income.

It was recommended that the Ontario Securities Commission separate its policy and adjudicative functions through the creation of an independent securities adjudicative tribunal located in offices separate from those of the Commission. The Lieutenant Governor in Council would make appointments to the tribunal, which would have no more than 12 members. The tribunal would be accountable to a committee of the Legislative Assembly.

In reviewing Model Five the Task Force noted the following:

- a. Model Five preserves peer assessment of conduct, capacity and competence matters, which is important to the continued viability of self-regulation. Because of this, however, it may still be open to a conflict of interest argument.²⁵ Nonetheless, this model could display the greatest degree of adjudicative separation from the Law Society of any of the models.
- b. The model completely separates the policy and enforcement component from the adjudicative, so that there is no argument that the same people who determine rules and standards to govern the profession enforce them against individual members.
- c. The model separates the investigators and the prosecutors of discipline matters from those who adjudicate the matters. This separation is more than just a separation of departments within the same organization (ring-fencing). There is a structural separation. It is more difficult for anyone to allege that the regulator controls the process.
- d. Along with Model Four, Model Five can be designed to ensure,
 - i. availability of panel members;
 - ii. adjudicator attendance at education sessions;
 - iii. substantive expertise on panels; and
 - iv. establishment of decision timelines.

²⁵ This argument is based on the premise that no profession is capable of fair adjudication of its own members. The argument has not been generally accepted.

- e. Model Five is the most radical shift from Model One, requiring the greatest statutory and philosophical change.
- f. In the case of the recommended change to the Ontario Securities Commission, Model Five was recommended, among other reasons, because “the apprehension of bias has become sufficiently acute as to not only undermine the Commission’s adjudicative process, but also the integrity of the Commission as a whole”.²⁶ This does not appear to be a concern about the Law Society’s processes.

Any further discussion on Model Five would necessitate consideration of a number of issues, including,

- a. whether there is a perception of systemic bias currently that would necessitate such a change;
- b. whether there are reasons to make such a change even if a serious perception of systemic bias does not exist about the current structure;
- c. the possible implications for the Law Society’s governance structure of such a model;
- d. under whose auspices would such a tribunal operate and to whom it would report;
- e. whether moving the process to an outside body would result in greater formalization of that process, with more rigidity, longer hearings, and more challenges to the process;
- f. to whom would appeals from tribunal decisions go;
- g. the size of the tribunal;
- h. appropriate appointment of panel members;
- i. the impact of the model on the bench role, both elected and lay bench; and
- j. the possible financial implications to the Law Society and to government of establishing an entirely separate entity.

Appendix 2

SUMMARY OF TRIBUNALS PROCESSES OF OTHER REGULATORS

This is a brief outline setting out how a number of other regulators structure their tribunal panels. As well, for each Canadian regulator, there is general information on how the profession is governed, so the composition of panels is placed in some context.

Generally speaking, the majority of the regulators use a hybrid approach of council members, lay people and non-council members from the profession being regulated. The exception is the legal professions in England and Wales and New South Wales whose discipline tribunals are independent of the regulator.

COLLEGE OF PHYSICIANS AND SURGEONS

Regulated Health Professions Act, Schedule 2: Health Professions Procedural Code (s. 38 (2), (3) and (4))

The Council is the governing body of the College. The RHPA stipulates that the Council consist of at least 32 and no more than 34 members:

- 16 physicians elected by their peers on a geographical basis every three years;

²⁶ *Report of the Fairness Committee to the Ontario Securities Commission*, March 5, 2004, p.32.

- three physicians appointed from among the five faculties of medicine (at the University of Western Ontario, McMaster, University of Toronto, Queen's and the University of Ottawa) for a maximum four year term;
- no fewer than 13 and no more than 15 non-physician or 'public' members appointed by the provincial government for terms decided by the government.

Both medical faculty members and public members may be re-appointed at the end of their terms. The College President is elected from and by Council and serves a one-year term.

Each discipline panel must have at least three and no more than five members. In practice each usually has five members.

Two members must be Lieutenant Governor in Council appointees;
One must be a Council and College member; and
The remaining two are College members.

Physician panel members are paid \$750 per day and public appointees are paid \$150 a day (government guideline).

THE COLLEGE OF NURSES OF ONTARIO

Regulated Health Professions Act, Schedule 2: Health Professions Procedural Code s.38(2), (3) and (4) (the discipline panel requirements are the same as those for the CPSO).

The governing Council is composed of 39 members: 18 public members, 14 RNs, and seven RPNs. RNs and RPNs from around the province are elected to Council by their peers to carry out self-regulation, while public members are appointed by the provincial government. The term of office, set in accordance with the regulations related to the election of Council members made under the *Nursing Act* (1991), is three years, and is limited to two consecutive terms. Each discipline panel must have at least three and no more than five members. In practice each usually has five members.

Two members must be Lieutenant Governor in Council appointees; and
One must be a Council and College member.

The remaining panel members are College members who must be the same category (RN or RPN) as the member against whom the allegations are made.

INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

Chartered Accountants Act, 1956: By-law 530(2)

The governing Council is to have not more than 16 who are members of the Institute elected by the members and four persons who are not members of the Institute or of any other self-regulating licensing body and who are appointed by the Lieutenant Governor in Council.

There is a discipline committee to consist of as many members of the Institute and public representatives as Council appoints.

A formal hearing before the discipline committee shall be heard by no fewer than five members of a discipline panel, one of who must be a Lieutenant Governor in Council appointment.

Public representatives are paid \$200 a day. Other panelists are not paid.

CERTIFIED GENERAL ACCOUNTANTS OF ONTARIO

Certified General Accountants of Ontario Act, 1983: By-law 4, article 9. s.7(1)(d)

The Board shall consist of not fewer than fifteen or more than thirty-five members of the Association, as the Board may from time to time determine, elected from the membership of the Association.

The Association may by by-law provide for the appointment to the Board of up to three persons who are not members of the Association.

There is a Professional Conduct Tribunal. The Tribunal sits in panels of three, chosen from a roster of members appointed by the President (not Council Members). In each case a panel will consist of two members of the Association and either one non-member governor or one public representative.

ONTARIO COLLEGE OF TEACHERS

Ontario College of Teachers Act s.17(2), (3), and (4); By-law 33

A 31-member Council that develops and approves Council policies governs the College. Council is made up of 17 members of the College elected by their peers and 14 members of the public appointed by the provincial government.

Among other committees the Council has a Discipline Committee. A majority of the persons appointed to the Committee must be elected to the Council. The powers and duties of the committee may be exercised by a panel that satisfies the following rules:

1. The panel must consist of at least three persons.
2. A majority of the persons on the panel must be members of the committee.
3. The panel must include at least one member of the committee who was elected to the Council [from members of the College] and at least one member of the committee who was appointed to the Council by the provincial government.
4. A member of the panel who is not a member of the committee must be on a roster of eligible panellists for the committee.

The Council may establish a roster of eligible panellists for committees consisting of such persons as the Council considers qualified to serve as members of a panel of the committee. Section 33 of the By-laws describes the roster in more detail.

PROFESSIONAL ENGINEERS OF ONTARIO

Professional Engineers Act, s.27 (1) and (1.1)

The governing Council consists of (a) not fewer than fifteen and not more than twenty persons who are members of the Association and who are elected by the members of the Association as

provided by the regulations; (b) not fewer than five and not more than seven persons who are members of the Association and who are appointed by the Lieutenant Governor in Council; (c) not fewer than three and not more than five persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council; and (d) the holders of offices prescribed by the regulations who are not members of the Council under clause (a), (b) or (c).

The Discipline Committee shall be composed of,

- at least one person from among the members of the Council elected to the Council;
- at least one person who is a member of the Association and who is a member of the Council appointed by the Lieutenant Governor in Council; and
- the persons from among the members of the Association who have not less than ten years experience in the practice of professional engineering.

The Discipline Committee may also include one or more persons from among the members of the Council appointed by the Lieutenant Governor in Council

Five members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council and one of whom shall be a person elected to the Council, constitute a quorum. All disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Lieutenant Governor appointees are paid by the government. Engineer panel members are not paid for hearings under three days. If a hearing is longer than 2 days on the third day and thereafter panelists are all paid between \$150-\$200 per day.

ONTARIO ASSOCIATION OF ARCHITECTS

Architects Act, R.S.O. 1990 C. A26

The Council shall be composed of,

- not fewer than twelve and not more than twenty persons who are members of the Association and who are elected by the members of the Association as provided by the regulations;
- not fewer than three and not more than five persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council; and
- the immediate past president of the Council, if he or she is not an elected member of the Council.

The Discipline Committee is composed of,

- at least one person from among the members of the Council elected to the Council;
- at least one person who is a member of the Council appointed by the Lieutenant Governor in Council; and

- the persons appointed from among the members of the Association who have not less than ten years experience in the practice of architecture.

Three members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum. All disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

BAR COUNCIL OF ENGLAND AND WALES

Where barristers in England and Wales are alleged to have committed professional misconduct, the Council of the Inns of Court is responsible for the tribunals process. The Bar Council acts as a prosecutor before the Tribunal.

The composition of the Tribunal is approximately 29 lay representatives and 100 barristers. The members of individual panels are chosen by staff of the Inns based on a combination of random selection and availability.

Typically, where a matter goes before a disciplinary panel it will be made up of a mixture of barrister and lay representation. A judge chairs the panel, which also includes two barrister members and two lay members. An appeal lies to “visitors” who are High Court Judges the Lord Chief Justice appoints.

Inns’ Council pays for the staff. Bar Council pays for lay representatives’ fees and other tribunal expenses. Barrister members are not paid.

The Clementi Review, which resulted in changes to the framework of legal services in England and Wales, recommended no major changes to this process. This is in contrast to a recommendation to fundamentally change the handling of complaints.

LAW SOCIETY OF ENGLAND AND WALES

Solicitors Act, 1974, s.46

The Solicitors Disciplinary Tribunal is a creation of statute. It is independent of but funded by the Law Society (with the exception of lay members who are paid by the Department for Constitutional Affairs). The Master of the Rolls appoints the SDT members.

Anyone may apply to the SDT, but currently the Law Society makes most applications following investigations. Most hearings take place before three members: two solicitors and one layperson. The Tribunal usually makes its order immediately and publishes its findings about eight weeks later. Appeals lie to the High Court.

The Clementi Review recommended no major changes to this process.

LAW SOCIETY OF NEW SOUTH WALES

Disciplinary proceedings may be commenced by either of the Law Society in New South Wales or the Legal Services Commissioner. The Law Society does not conduct discipline hearings. The Legal Services Division of the Administrative Decisions Tribunal hears these matters.

A District Court Judge is the head of the Tribunal. Other members include additional judges and magistrates, barristers, solicitors and lay members. Members of the New South Wales Law Society Council do not sit on the Tribunal. Panels are made up of three members – a judicial member, a legal practitioner and a lay member.

Each panel is appointed administratively, with a presiding member, usually based on seniority and is inevitably a legally qualified member. There is no permanent Chair.

The Law Society does not fund the Tribunal. The Tribunal is an umbrella organization with divisions dealing with a number of professions. The legal division is funded by money from clients trust account income.

In almost all cases decisions are made in writing.

Members are remunerated.

Appendix 3

PROPOSED AMENDED O. REG. 30/99
(APPROVED BY CONVOCATION MARCH 29, 2007)

HEARINGS BEFORE THE HEARING AND APPEAL PANEL

HEARINGS BEFORE THE HEARING PANEL

Proceedings to be Heard by Three Members

1. (1) Subject to section 2, the chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to a hearing to determine the merits of a proceeding.

(2) If the subject of the proceeding is a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,

- (a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor; and
- (b) at least one of the members assigned under subsection (1) shall be any of the following:
 - (i) a lay bencher,
 - (ii) a person approved by the Attorney General for Ontario.

(3) Subsection (2) does not apply if the chair or the vice-chair of the Hearing Panel is of the opinion that compliance with subsection (2) would unduly delay the hearing.

(4) If the subject of the proceeding is a person licensed or applying to be licensed to provide legal services in Ontario,

- (a) one of the members assigned under subsection (1) shall be any of the following:
 - (i) an elected bencher licensed to provide legal services in Ontario,
 - (ii) a person licensed to provide legal services in Ontario,

- (iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.21 (3) of the Act;
 - (b) one of the members assigned under subsection (1) shall be any of the following:
 - (i) a bencher licensed to practise law in Ontario as a barrister and solicitor,
 - (ii) a person licensed to practise law in Ontario as a barrister and solicitor, and
 - (c) one of the members assigned under subsection (1) shall be any of the following:
 - (i) a lay bencher,
 - (ii) a person approved by the Attorney General for Ontario.
- (5) Subsection (4) does not apply if the chair or the vice-chair of the Hearing Panel is of the opinion that compliance with subsection (4) would unduly delay the hearing.
- (6) The chair or the vice-chair of the Hearing Panel may not assign more than one life bencher to a hearing to determine the merits of a proceeding.
- (7) The chair or the vice-chair of the Hearing Panel may not assign more than one bencher who holds office under section 14 of the Act to a hearing to determine the merits of a proceeding.

Proceedings to be Heard by One Member

2. (1) Subject to subsection (3), the chair or, in the absence of the chair, the vice-chair of the Hearing Panel may assign one member of the Panel to a hearing to determine the merits of any of the following applications:
1. An application under subsection 34 (1) of the Act for a determination of whether a licensee has contravened section 33 of the Act by one or more of the following means (but not by other means):
 - i. Practising law in Ontario or providing legal services in Ontario or holding himself or herself out as, or representing himself or herself to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario while his or her licence is suspended.
 - ii. Breaching an undertaking to the Society.
 - iii. Failing to honour a financial obligation to the Society.
 - iv. Failing to maintain an investment authority or a report on an investment as required by the by-laws.
 - v. Failing to maintain financial records as required by the by-laws.
 - vi. Failing to respond to inquiries from the Society.
 - vii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.
 - viii. Failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel.
 2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.
 3. An application under subsection 45 (1) of the Act.
 4. An application under subsection 49.42 (1) of the Act, if the order giving rise to the application was made by one member of the Hearing Panel.

5. An application under subsection 49.42 (3) of the Act.
6. An application under subsection 49.43 (1) of the Act.

(2) If one member of the Hearing Panel is assigned to a hearing under subsection (1), the member assigned to the hearing may, on motion by a party to the application or on his or her own motion, transfer the hearing to three members of the Panel assigned by the chair or, in the absence of the chair, the vice-chair of the Panel, and subsections 1 (2) to (7) apply for that purpose.

(3) If a hearing is transferred under subsection (2) to three members of the Hearing Panel, the hearing shall begin anew.

Motions in Proceedings to be Heard by Three Members

3. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair of the Hearing Panel, under section 1 or subsection 2 (2), assigns three members of the Panel to the hearing to determine the merits of the proceeding.

(2) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign the same three members of the Panel who are to determine the merits of the proceeding to the hearing of a motion in the proceeding if the motion relates to any of the following matters:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
2. The jurisdiction of the Society to initiate the proceeding.
3. The exclusion of the public from all or part of a hearing.
4. A stay of the proceeding.
5. The exclusion of witnesses from all or part of a hearing.
6. A constitutional issue.

(3) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

(4) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel may assign one member or three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is not described in subsection (2) or (3).

(5) If three members of the Hearing Panel other than the three members who are to determine the merits of the proceeding are assigned to the hearing of a motion, the members assigned to the hearing of the motion may, on motion by a party to the motion or on their own motion, transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding.

(6) If one member of the Hearing Panel is assigned to the hearing of a motion, the member assigned to the hearing may, on motion by a party to the motion or on his or her own motion, transfer the hearing,

- (a) to three members of the Panel assigned by the chair or, in the absence of the chair, the vice-chair of the Panel; or

- (b) to the three members of the Panel who are to determine the merits of the proceeding.
- (7) If a hearing is transferred under subsection (5) or (6), the hearing shall begin anew.
- (8) If three members of the Hearing Panel are assigned to the hearing of a motion under this section, subsections 1 (6) and (7) apply.

Motions in Proceedings to be Heard by One Member

- 4. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair of the Hearing Panel, under section 2, assigns one member of the Panel to the hearing to determine the merits of the proceeding.
- (2) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.
- (3) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign the member of the Panel who is to determine the merits of the proceeding to the hearing of a motion in the proceeding if the motion relates to any of the following matters:
 - 1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
 - 2. The jurisdiction of the Society to initiate the proceeding.
 - 3. The exclusion of the public from all or part of a hearing.
 - 4. A stay of the proceeding.
 - 5. The exclusion of witnesses from all or part of a hearing.
 - 6. A constitutional issue.
- (4) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign one member of the Panel to the hearing of a motion in the proceeding, and is not required to assign the member who is to determine the merits of the proceeding, if the motion is not described in subsection (2) or (3).
- (5) If a member of the Hearing Panel other than the member who is to determine the merits of the proceeding is assigned under subsection (4) to the hearing of a motion, the member assigned to the hearing may, on motion by a party to the motion or on his or her own motion, transfer the hearing to the member who is to determine the merits of the proceeding.
- (6) If a hearing is transferred under subsection (5) to the member of the Hearing Panel who is to determine the merits of the proceeding, the hearing shall begin anew.

HEARINGS BEFORE THE APPEAL PANEL

Appeals To Be Heard By Five Members

- 5. (1) The chair or, in the absence of the chair, the vice-chair of the Appeal Panel shall assign five members of the Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel in which three members of the Hearing Panel were assigned to the hearing to determine the merits of the proceeding.
 2. A costs order made in a proceeding before the Hearing Panel in which three members of the Hearing Panel were assigned to the hearing to determine the merits of the proceeding.
 3. An interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.
- (2) If the decision or order appealed from affects a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,
- (a) at least three of the members assigned under subsection (1) shall be elected benchers licensed to practise law in Ontario as barristers and solicitors; and
 - (b) at least one of the members assigned under subsection (1) shall be any of the following:
 - (i) a lay bencher,
 - (ii) a person approved by the Attorney General for Ontario.
- (3) If the decision or order appealed from affects a person licensed or applying to be licensed to provide legal services in Ontario,
- (a) two of the members assigned under subsection (1) shall be one or more of any of the following:
 - (i) an elected bencher licensed to provide legal services in Ontario,
 - (ii) a person licensed to provide legal services in Ontario,
 - (iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.29 (3) of the Act;
 - (b) two of the members assigned under subsection (1) shall be one or more of any of the following:
 - (i) a bencher licensed to practise law in Ontario as a barrister and solicitor,
 - (ii) a person licensed to practise law in Ontario as a barrister and solicitor; and
 - (c) one of the members assigned under subsection (1) shall be any of the following:
 - (i) a lay bencher,
 - (ii) a person approved by the Attorney General for Ontario.

Appeals To Be Heard By Three Members

6. (1) The chair or, in the absence of the chair, the vice-chair of the Appeal Panel shall assign three members of the Panel to a hearing of an appeal if the appeal is from any of the following:
1. A final decision or order made in a proceeding before the Hearing Panel in which one member of the Hearing Panel was assigned to the hearing to determine the merits of the proceeding.
 2. A costs order made in a proceeding before the Hearing Panel in which one member of the Hearing Panel was assigned to the hearing to determine the merits of the proceeding.

3. An order made under section 46, 47, 47.1, 48 or 49 of the Act.
 - (2) If the decision or order appealed from affects a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,
 - (a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor; and
 - (b) at least one of the members assigned under subsection (1) shall be any of the following:
 - (i) a lay bencher,
 - (ii) a person approved by the Attorney General for Ontario.
 - (3) If the decision or order appealed from affects a person licensed or applying to be licensed to provide legal services in Ontario,
 - (a) one of the members assigned under subsection (1) shall be any of the following:
 - (i) an elected bencher licensed to provide legal services in Ontario,
 - (ii) a person licensed to provide legal services in Ontario,
 - (iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.29 (3) of the Act;
 - (b) one of the members assigned under subsection (1) shall be any of the following:
 - (i) a bencher licensed to practise law in Ontario as a barrister and solicitor,
 - (ii) a person licensed to practise law in Ontario as a barrister and solicitor; and
 - (c) one of the members assigned under subsection (1) shall be any of the following:
 - (i) a lay bencher,
 - (ii) a person approved by the Attorney General for Ontario.

Appendix 4

BENCHER REMUNERATION

Convocation approved the following policy for bencher remuneration on September 22 and November 24, 2005. Benchers are required to submit activity sheets on a quarterly basis. Activity sheets are available on BencherNet under the "Forms" tab. A copy of the activity sheet is attached.

- A. Elected benchers, former treasurers and ex-officio benchers will be remunerated for eligible activities.
- B. Remuneration at \$300 per half day and \$500 per full day will be made with an annual inflation adjustment or adjustment after review by the Finance & Audit Committee.
- C. Half and Full Days
 - i) Inside Toronto Benchers: A half-day will be work up to 3 hours in a 24-hour period. A full day constitutes work for more than 3 hours in a 24-hour period. Any work on eligible activity in another area, e.g. Ottawa, will comprise a full day.
 - ii) Outside Toronto Benchers: Any work on eligible activity in Toronto will comprise a full day.
 - iii) For work on eligible activity in the bencher's office area, a half day will be work up to 3 hours in a 24-hour period. A full day constitutes work for more than 3 hours in a 24-hour period.

- D. There will be an annual deductible of 26 days before benchers can be remunerated for their time. For purposes of calculating the deductible of 26 days, half days and full days will all count as one day of attendance until the deductible of 26 days is exceeded.
- E. The remuneration cycle will be based on the bencher year (June 1 to May 31) not calendar year.
- F. Eligible activities will include
 - i) Convocation, meeting of committees, task forces, and working groups, special convocations, calls to the bar, bencher information sessions, mandatory bencher education sessions,
 - ii) Hearing panels, appeal panels, pre-hearing conferences
 - iii) meetings attended as the Law Society's official representative at the direction of the Treasurer or Convocation as well as
 - iv) time spent as the Law Society's appointed representative to boards of external organizations, and other roles in external organizations where that external organization permits remuneration.
- G. A bencher, other than a bencher appointed by the provincial government, shall not accept compensation from an external organization to which he or she is appointed as a bencher or otherwise accept compensation as a bencher except in accordance with this policy. [Approved by Convocation on November 24, 2005]
- H. Attending a meeting by telephone is an eligible activity.
- I. Questions relating to specific attendance and eligible activity issues can be directed to the Chief Executive Officer. Changes to these guidelines must be approved by the Finance & Audit Committee.
- J. Benchers who opt for remuneration must submit quarterly activity sheets on the prescribed form. Benchers will certify this form.
- K. Payment of remuneration will only be made directly to individual benchers or their firm.
- L. The Finance Department will report on attendance, remuneration and expense reimbursement paid to individual benchers to the Audit Sub-Committee. Total amounts paid for bencher remuneration and expense reimbursements will be reported to the Finance & Audit Committee and Convocation on a quarterly basis. In addition, remuneration will be reported in total in the Annual Report.

EXCERPT FROM BY-LAW 7 BENCHERS

REMUNERATION

Interpretation

2.1 (1) In this by-law,

“bencher year” means, as applicable,

- (a) the period beginning on the day, in one calendar year, on which Convocation has its first regular meeting after an election of benchers and ending, in the following calendar year, on May 31,
- (b) the twelve-month period beginning on June 1 in one calendar year and ending on May 31 in the following calendar year, and

- (c) the period beginning on June 1 in one calendar year and ending, in the following calendar year, on the day before the day on which Convocation has its first regular meeting after an election of benchers;

“elected bencher” does not include a person appointed under subsection 16 (6) of the Act;

“full day” means,

- (a) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is within the City of Toronto,
 - (i) a total of more than 3 hours, in a period of 24 hours, if work is performed within the City of Toronto, or within a reasonable distance of the City of Toronto, and
 - (ii) any number of hours, in a period of 24 hours, if work is performed anywhere outside a reasonable distance of the City of Toronto, and
- (b) in the case of a payee whose business address, or where the payee has no business address, whose home address, is outside the City of Toronto,
 - (i) a total of more than 3 hours, in a period of 24 hours, if work is performed at the payee’s business address, or home address, or within a reasonable distance of the payee’s business address or home address, and
 - (ii) any number of hours, in a period of 24 hours, if work is performed anywhere outside a reasonable distance of the payee’s business address or home address;

“half day” means,

- (a) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is within the City of Toronto, a total of not more than 3 hours, in a period of 24 hours, if work is performed within the City of Toronto or within a reasonable distance of the City of Toronto, and
- (b) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is outside the City of Toronto, a total of not more than 3 hours, in a period of 24 hours, if work is performed at the payee’s business address, or home address, or within a reasonable distance of the payee’s business address or home address;

“payee” means a person who is entitled to receive remuneration from the Society under section 2.2;

“work” means,

- (a) attending a Convocation,

- (b) attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is a member,
- (c) attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is not a member, at the request of the chair of the committee,
- (d) attending an information session organized by the Society for benchers,
- (e) attending a program of education or training required by the Society for benchers,
- (f) hearing a hearing before the Hearing Panel or Appeal Panel,
- (g) preparing reasons for a decision or order of the Hearing Panel or Appeal Panel,
- (h) conducting a pre-hearing conference in a proceeding before the Hearing Panel,
- (i) performing activities, as a chair of the Hearing Panel or Appeal Panel, that are integral to the office of chair of the Hearing Panel or Appeal Panel,
- (j) performing activities, as a member of the Hearing Panel or Appeal Panel, that relate to the management of a proceeding before the Hearing Panel or Appeal Panel,
- (k) performing activities, as a bencher appointed by Convocation for the purpose of making orders under sections 46, 47, 48, 49 and 49.1 of the Act, that are integral to the role of a bencher under sections 46, 47, 48, 49 and 49.1 of the Act,
- (l) attending a meeting, other than a Convocation or a meeting of a standing or other committee, at the direction of the Treasurer or Convocation, and
- (m) performing activities as a director of an organization, to which position the bencher was appointed, or nominated for appointment, by Convocation, provided that the performing of the activities would entitle any other director of the organization to be remunerated by the organization for performing the activities.

Interpretation: person elected as member of the Paralegal Standing Committee

(2) In this by-law, a person who is appointed under subsection 25.2 (2) of the Act is not a person who is elected as a member of the Paralegal Standing Committee.

Entitlement

2.2 (1) Subject to subsections (2) and (3), every elected bencher, every bencher who holds office under subsection 12 (1) of the Act, every bencher who holds office under subsection 12 (2) of the Act, every bencher who holds office under section 14 of the Act and every person who is elected as a member of the Paralegal Standing Committee is entitled to receive from the Society remuneration,

- (a) for each half day of work performed for the Society in a bencher year, after the first 26 half or full days of work performed for the Society in that bencher year, in an amount determined by Convocation from time to time; and
- (b) for each full day of work performed for the Society in a bencher year, after the first 26 half or full days of work performed for the Society in that bencher year, in an amount determined by Convocation from time to time.

Limits on remuneration: preparing reasons

(2) A payee is not entitled to receive from the Society remuneration for more than one full day of preparing written reasons for any decision or order of the Hearing Panel or Appeal Panel.

Limits on remuneration: performing activities as director of another organization

(3) A payee is not entitled to receive from the Society remuneration for performing activities as a director of an organization if the payee is remunerated, directly or indirectly, by the organization for performing the activities.

Claiming remuneration

2.3 (1) Subject to subsection (2), a payee may claim remuneration by submitting to the Society a claim for remuneration in a form provided by the Society.

Same

- (2) A payee shall,
 - (a) claim remuneration for work performed for the Society within a reasonable period of time after the payee has performed the work; and
 - (b) shall claim all remuneration in respect of a bencher year by not later than six months after the end of the bencher year.

Payment of remuneration to payee

- (3) Remuneration to which a payee is entitled shall be paid by the Society,
 - (a) within a reasonable period of time after the payee submits a claim for remuneration; and
 - (b) within the calendar year in which the payee submits a claim for remuneration.

Same

(4) Remuneration shall be paid to the individual payee claiming the remuneration or, at the direction of the individual payee, to the firm of which the payee is a partner or employee or to the professional corporation of which the payee is a shareholder or employee.

M E M O R A N D U M

TO: Tribunals Composition Task Force

FROM: Grace Knakowski, Sr. Counsel & Manager, Tribunals Office

DATE: March 30, 2007

RE: Overview of the Tribunals Office

The Tribunals Office is responsible for administering the adjudicative process of the Law Society's Hearing and Appeal Panels. This includes ensuring that matters are processed in an efficient, procedurally fair and transparent manner in accordance with the Law Society's mandate, governing legislation and policies.

In addition to administering the adjudicative process, the Tribunals Office responds to inquiries for access to file information from the public, including the media, and is responsible for ensuring that only public information is released. The Office also provides the Communications Department with a listing of upcoming hearings and summaries of Decisions and Orders for publication in the Law Society's website, media releases and the Tribunal Decisions of the Ontario Reports.

The Tribunals Office is composed of the following staff: Sr. Counsel & Manager, Counsel, Publications Counsel, Hearings Coordinator, Clerk to Tribunals (one permanent and one occasional employee) and Administrator. Staff functions include accepting filings of hearing materials; maintaining tribunal files, including electronic case management, for each matter; scheduling pre-hearing conferences, motions, hearings and appeals; acting as clerk in hearings and appeals; facilitating communication between parties and the Panel; truing up and reviewing orders of the Panels; service and delivery of orders and reasons; coordinating the production of reasons of the Panel; preparing reasons for publication on Quicklaw and CanLII and providing support to the Chair and Vice-chair of the Hearing Panel and Chair of the Appeal Panel, adjudicators and the Tribunals Committee.

In 2006, the Tribunals Office opened 160 files²⁷ and closed 138 files²⁸. The HMT, Hearing Panel, AMT and Appeal Panel heard a total of 548, 235, 4 and 6 files, respectively²⁹.

²⁷ A file is opened upon the filing of an originating process that has been served on the parties. An originating process includes a notice of application, a notice of hearing, a notice of motion for an interlocutory suspension and a notice of appeal. Files heard concurrently with respect to the same member are counted as separate files.

²⁸ A file is closed after service of the final order is deemed effective on the parties and the reasons, if any, have been delivered to the parties. These files may have been opened in 2006 or earlier.

²⁹ A file may have been heard on more than one occasion by a tribunal.

It was moved by Mr. Sandler, seconded by Mr. Banack, that:

Recommendation 1

Convocation approve the eligibility of

- a. four non-bencher lawyers to be members of the Law Society's Hearing Panel.

Carried

ROLL-CALL VOTE

Aaron	Against	Harris	Against
Alexander	For	Heintzman	For
Backhouse	For	Henderson	Against
Banack	For	Krishna	Against
Boyd	For	Lawrie	Against
Campion	For	Legge	Against
Carpenter-Gunn	Against	Martin	Against
Caskey	For	Millar	For
Chahbar	Against	Minor	For
Cherniak	For	Murray	Against
Coffey	Against	Pawlitza	For
Copeland	For	Potter	Against
Crowe	Against	Robins	For
Curtis	Against	Ruby	Against
Dickson	For	St. Lewis	For
Doyle	For	Sandler	For
Dray	Against	Silverstein	For
Eber	For	Simpson	For
Feinstein	For	Swaye	Against
Filion	For	Topp	Against
Go	For	Warkentin	For
Gotlib	For	Wright	For
Gottlieb	Against		

Vote: 26 For; 19 Against

Convocation approve the eligibility of

- b. four non-bencher non-lawyer persons to be members of the Law Society's Hearing Panel.

Carried

ROLL-CALL VOTE

Aaron	Against	Harris	For
Alexander	For	Heintzman	For
Backhouse	For	Henderson	Against
Banack	For	Krishna	For

Boyd	For	Lawrie	For
Campion	For	Legge	Against
Carpenter-Gunn	For	Martin	Against
Caskey	For	Millar	For
Chahbar	For	Minor	For
Cherniak	For	Murray	Against
Coffey	For	Pawlitza	For
Copeland	For	Potter	Against
Crowe	For	Robins	For
Curtis	Against	Ruby	Against
Dickson	For	St. Lewis	For
Doyle	For	Sandler	For
Dray	For	Silverstein	For
Eber	For	Simpson	For
Feinstein	For	Swaye	Against
Filion	Against	Topp	Against
Go	For	Warkentin	For
Gotlib	For	Wright	For
Gottlieb	Against		

Vote: 33 For; 12 Against

Recommendation 2

If Convocation approves Recommendation 1, all Hearing Panel members be remunerated on the same basis, except that the non-bencher lawyer and non-bencher non-lawyer members are not required to donate 26 days to the Law Society before being eligible for remuneration.

Carried

Mr. Gottlieb abstained.

Recommendation 3

Convocation budget annually an amount not exceeding \$100,000 for the remuneration and expenses associated with adding non-bencher lawyers and non-bencher non-lawyer persons to the Hearing Panel.

Carried

Mr. Gottlieb abstained.

Recommendation 4

If Convocation approves Recommendation 1, two years after implementing the recommendation, Convocation authorize a review of the manner in which the non-bencher lawyers and the non-bencher non-lawyer persons have served as adjudicators on the Law Society's Hearing Panel, the results of which are to be reported to Convocation.

Carried

ROLL-CALL VOTE

Aaron	For	Harris	For
Alexander	For	Heintzman	For
Backhouse	For	Henderson	For
Banack	For	Krishna	For
Boyd	For	Lawrie	For
Campion	For	Legge	For
Carpenter-Gunn	For	Martin	Abstain
Caskey	For	Millar	For
Chahbar	For	Minor	For
Cherniak	For	Murray	For
Coffey	For	Pawlitza	For
Copeland	For	Potter	For
Crowe	For	Robins	For
Curtis	For	Ruby	For
Dickson	For	St. Lewis	For
Doyle	For	Sandler	For
Dray	For	Silverstein	For
Eber	For	Simpson	For
Feinstein	For	Swaye	For
Filion	For	Topp	For
Go	For	Warkentin	For
Gotlib	For	Wright	For
Gottlieb	For		

Vote: 44 For; 1 AbstentionRecommendation 5

Convocation approve four year terms of office for each of the Chair and Vice-Chair of the Hearing Panel.

Questions for Consideration

1. Should the Chair of the Hearing Panel be an elected benchner or a non-benchner lawyer?
2. Whatever decision is made about the Chair, should the Vice-Chair be an elected benchner or a non-benchner lawyer?

Withdrawn

It was moved by Mr. Wright, but failed for want of a seconder that the word "four" be deleted from Recommendation 5.

Recommendation 6

Depending on the answers to the questions following Recommendation 5, a non-benchner Chair or Vice-Chair be remunerated at a rate commensurate with the status and duties of the office.

Withdrawn

Recommendation 7

Convocation approve staggered terms of office for the Chair and Vice-Chair of the Hearing Panel.

Withdrawn

Recommendation 8

The Tribunals Committee be invited to consider the merits of establishing the office of Counsel to the Hearing Panel.

Carried

It was moved by Mr. Sandler, seconded by Ms. Doyle, that the vice-chair of the Hearing Panel be a non-bencher.

Lost

ROLL-CALL VOTE

Aaron	Against	Harris	Against
Alexander	Against	Heintzman	Against
Backhouse	For	Henderson	Against
Banack	Against	Krishna	Against
Boyd	Against	Lawrie	Against
Campion	Against	Legge	Against
Carpenter-Gunn	Against	Martin	Against
Caskey	Against	Millar	Against
Chahbar	Against	Minor	For
Cherniak	Against	Murray	Against
Coffey	Against	Pawlitza	For
Copeland	Against	Potter	Against
Crowe	Against	Robins	Against
Curtis	Against	Ruby	Against
Dickson	Against	St. Lewis	For
Doyle	For	Sandler	For
Dray	Against	Silverstein	Against
Eber	Against	Simpson	Against
Feinstein	For	Swaye	Against
Filion	Against	Topp	Against
Go	Against	Warkentin	For
Gotlib	Against	Wright	Against
Gottlieb	Against		

Vote: 8 For; 37 Against

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:20 P.M. AND
RESUMED AT 2:30 P.M.

PRESENT:

The Treasurer, Alexander, Backhouse, Banack, Boyd, Carpenter-Gunn, Caskey, Chahbar, Cherniak, Copeland, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Feinstein, Fillion, Go, Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrence, Lawrie, Millar, Minor, Murphy, Murray, Pawlitza, Potter, Robins, Sandler, St. Lewis, Silverstein, Simpson, Swaye, Topp, Wardlaw, Warkentin and Wright.

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IN PUBLIC

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REPORT OF THE BY-LAW REVIEW COMMITTEE

Mr. Millar presented the Report.

Report to Convocation
April 26, 2007

By-Law Review Committee

Purpose of Report: Decision

Prepared by: Katherine Corrick

FOR DECISION

Background

1. The amendments to the Law Society Act contained in Bill 14, come into effect on May 1, 2007. The amendments necessitate the creation of additional by-laws to implement paralegal regulation, and the revision of the Law Society's current by-laws to align them with the amended Law Society Act.
2. The time frame for the creation and revision of the by-laws is very short. The new by-laws must be in place by May 1, 2007. The official versions of the annotated by-laws attached at Appendix 1 will be presented to Convocation by way of formal motion under separate cover in April.
3. Revisions to the current by-laws cut across many different functions of the Law Society, and affect the work of more than one standing committee. On the other hand, the revisions may not fall within the mandate of any committee.

4. In order to expedite the process of bringing the revised by-laws to Convocation, the Treasurer asked a small group of benchers to review the by-laws, and ultimately present them to Convocation. Derry Millar, Ross Murray, Bill Simpson and Bonnie Warkentin ("the By-Law Review Group") agreed to participate.
5. The By-Law Review Group reviewed the revisions to the current by-laws. The Paralegal Standing Committee will present to Convocation new by-laws that relate solely to paralegal regulation.
6. The By-Law Review Group met on March 6 and 16, and April 18, 2007 to review the by-laws.
7. Appendix 1 contains the proposed by-laws with annotations that describe the changes.

APPENDIX 1

BY-LAWS

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BY-LAW 1

BY-LAWS

MAKING, AMENDING AND REVOKING BY-LAWS

Making, amending and revoking by-law

1. (1) Convocation shall not make, amend or revoke a by-law unless a motion to make, amend or revoke a by-law is made in accordance with this By-Law.

Procedure for making, amending and revoking by-law

- (2) At any meeting of Convocation, a bencher who is entitled to vote in Convocation may make a motion to make, amend or revoke a by-law and, subject to subsection (3), Convocation shall vote on a motion to make, amend or revoke a by-law at the meeting of Convocation at which it is made.

Same

- (3) If a bencher who is entitled to vote in Convocation and who is present at a meeting of Convocation at which a motion is made to make, amend or revoke a by-law objects to the motion being voted on at that meeting, the motion shall not be voted on at that meeting but may be debated at that meeting and shall be voted on at the next regular meeting of Convocation or at the next special meeting of Convocation called for by the Treasurer for the purposes of voting on the motion.

TIME FOR COMMENCEMENT

Time for commencement: by-law and amendment to by-law

2. Unless otherwise provided in a by-law, an amendment to a by-law or the revocation of a by-law, a by-law, an amendment to a by-law or the revocation of a by-law comes into force on the day on which the motion making the by-law, amending the by-law or revoking the by-law is carried at a meeting of Convocation.

Sections 1 and 2 are lifted verbatim from sections 1 and 2 of current by-law 1. The current section mandating a review of all by-laws every four years has been deleted.

CHANGE POWERS

Editorial and other changes

3. (1) This section does not authorize any change that alters the legal effect of any by-law.

Same

- (2) Senior Counsel, Legal Affairs may make the following changes to the by-laws:
1. Correct spelling, punctuation or grammatical errors, or errors that are of a clerical, typographical or similar nature.
 2. Replace a description of a date or time with the actual date or time.
 3. If a provision provides that it is contingent on the occurrence of a future event and the event occurs, remove text referring to the contingency and make any other changes that are required as a result.
 4. When a reference to a body, office, person, place or thing has been altered to be a reference to another body, office, person, place or thing, change a reference to the original body, office, person, place or thing to a reference to the other.
 5. When the name, title, location or address of a body, office, person, place or thing has been altered, change references to the name, title, location or address to reflect the alteration, if the body, office, person, place or thing continues under the new name or title or at the new location or address.
 6. Correct errors in the numbering of provisions or other portions of a by-law and make any changes in cross-references that are required as a result.
 7. Make a correction, if it is patent both that an error has been made and what the correction should be.

This is a new section. It is based on a section of the Legislation Act, 2006, S.O. 2006, c. 21, Sched. F, which reads as follows:

Editorial and other changes

42. (1) This Part does not authorize any change that alters the legal effect of any Act or regulation. 2006, c. 21, Sched. F, s. 42 (1).

Same

(2) The Chief Legislative Counsel may make the following changes to consolidated laws:

1. Correct spelling, punctuation or grammatical errors, or errors that are of a clerical, typographical or similar nature.
2. Alter the style or presentation of text or graphics to be consistent with the editorial or drafting practices of Ontario, or to improve electronic or print presentation.
3. Replace a form of reference to an Act or regulation, or a provision or other portion of an Act or regulation, with a different form of reference, in accordance with Ontario drafting practices.

4. Replace a description of a date or time with the actual date or time.
5. After a bill has been enacted, replace a reference to the bill or a provision or other portion of the bill with a reference to the Act or provision or other portion of the Act.
6. If a provision provides that it is contingent on the occurrence of a future event and the event occurs, remove text referring to the contingency and make any other changes that are required as a result.
7. Make such changes to the title of an Act or regulation, including but not limited to omitting the year from the title of an Act, as are required to accord with changes in methods of citing Acts or regulations or changes in the electronic or print presentation of Acts or regulations, and make any other changes that are required as a result.
8. If an Act or regulation provides that references to a body, office, person, place or thing are deemed or considered to be references to another body, office, person, place or thing, replace a reference to the original body, office, person, place or thing with a reference to the other.
9. When the name, title, location or address of a body, office, person, place or thing has been altered, change references to the name, title, location or address to reflect the alteration, if the body, office, person, place or thing continues under the new name or title or at the new location or address.
10. Correct errors in the numbering of provisions or other portions of an Act or regulation and make any changes in cross-references that are required as a result.
11. If a provision of a transitional nature is contained in an amending Act or regulation, incorporate it as a provision of the relevant consolidated law and make any other changes that are required as a result.
12. Make a correction, if it is patent both that an error has been made and what the correction should be. 2006, c. 21, Sched. F, s. 42 (2).

BY-LAW 2

CORPORATE PROVISIONS

PART I

GENERAL

SEAL

1. The seal of the Society in use immediately before the day this By-Law comes into force shall continue to be the seal of the Society, that is, a shield in the centre whereof stands a Doric column, surmounted by a beaver, on the dexter side of the shield the figure of Hercules, and on the sinister the figure of Justice, with scales in her right hand and the sword in the left, and the words “Magna Charta Angliae” inscribed on a ribbon floating round the column, together with the words “Law Society of Upper Canada” upon the exterior circle.

COAT OF ARMS

2. The coat of arms of the Society in use immediately before the day this By-Law comes into force shall continue to be the coat of arms of the Society, that is, a sable on a chevron between two stags trippant in chief and a rose in base argent barbed and seeded an open book proper bound azure edged and clasped or between two maple leaves gules and for the crest on a wreath of the colours upon a rocky mount proper a mantle ermine lined murrey thereon a beaver proper in the mouth a sprig of two maple leaves or, together with the following supporters: on the dexter side a figure representing Hercules holding with the exterior hand a club and on the sinister side a figure representing Justice holding in the exterior hand a sword erect proper pommel and hilt or and with a balance suspended from the blade.

Sections 1 and 2 repeat sections 1 and 2 of current by-law 2 verbatim.
Current section 3, which specifies the way documents must be executed has been deleted as it is unnecessary to have such provisions in a by-law.

PART II

MEMBERS

HONORARY MEMBERS

Authority to make persons honorary members

3. (1) Convocation may make any person an honorary member of the Society.

Section 1 of current by-law 13 verbatim.

Rights and privileges

(2) An honorary member has only the rights and privileges prescribed by this Part.

Transition

4. Every person who is an honorary member of the Society immediately before May 1, 2007 is an honorary member of the Society.

MEETINGS OF MEMBERS

ANNUAL GENERAL MEETING

Sections 5 to 42 repeat the provisions of current by-law 10 verbatim, except for necessary changes in language. e.g. "licenses are not suspended," rather than "rights and privileges not suspended."

Meeting of members to be held annually

5. A meeting of members shall be held annually at a time and place determined by Convocation.

Notice of meeting

6. Notice of the annual general meeting, stating the date, time and place of the meeting, shall be given by publication in an issue of the Ontario Reports dated at least sixty days before the day fixed for the meeting.

Agenda for meeting

7. The annual general meeting shall consider the following matters:

1. Minutes of the previous annual general meeting.
2. Reports on the work of the Society and of the committees of Convocation.
3. Financial statements.
4. Matters of professional interest that are related to the work of the Society.

RULES OF PROCEDURE

GENERAL

Interpretation: "meeting"

8. (1) In this section and in sections 9 to 41, "meeting" means any meeting of members.

Same: "Treasurer"

(2) In this Part, except in section 10, "Treasurer" includes a benchner who presides at a meeting in accordance with section 6.

Reference text

9. Where a matter of order or procedure is not settled by this Part, it shall be settled in accordance with the rules of order set out in the most recent edition of *Bourinot's Rules of Order*.

Presiding benchner

10. The Treasurer shall preside at each meeting, but if the Treasurer for any reason is unable to preside at a meeting, one of the following benchners shall preside, in the following order of precedence:

1. The chair of the Finance and Audit Committee.
2. The chair of the Professional Development and Competence Committee.
3. A benchner selected from among and by the benchners present at the meeting.

Secretary to prepare agenda for meeting

11. For each meeting, the secretary shall prepare an agenda showing the order of business.

QUORUM

Quorum at a meeting

12. Fifty members, none of whose licence is suspended, constitute a quorum at a meeting.

Quorum not present

13. If within one hour after the time appointed for a meeting a quorum is not present, the Treasurer shall adjourn the meeting.

Quorum lost during meeting

14. (1) If a quorum is lost during a meeting, the Treasurer shall, subject to subsection (2), adjourn the meeting.

Same

(2) If a quorum is lost during a meeting, the Treasurer may permit the members remaining to continue to debate a motion, an amendment to a motion or an appeal of a ruling already put to the meeting but not yet disposed of if no member remaining objects.

No voting when quorum not present

(3) Even though debate on a motion, an amendment or an appeal may continue if a quorum is lost during a meeting, no motion, amendment or appeal shall be voted on when a quorum is not present.

Quorum regained

(4) If a quorum, having been lost during a meeting, is regained before the meeting is adjourned, the meeting shall continue as if the quorum had not been lost.

MOTIONS

Subject matter

15. All motions made at a meeting shall relate to the work of the Society.

Procedure for making motions

16. (1) Subject to subsection (2), a motion to be made at a meeting shall be,
- (a) in writing and signed by at least ten members, none of whose licence is suspended at the time of signature; and
 - (b) delivered to the secretary at least forty days prior to the day fixed for the meeting.

Same

(2) A motion may be made at any time during a meeting, even though the requirements set out in subsection (1) have not been complied with, if the motion relates to a matter then being debated.

Publication of motions

17. The secretary shall arrange for publication of the text of all motions delivered to him or her under section 16.

Introduction at meeting

18. (1) At a meeting, a motion described in subsection 16 (1) may be made by it being,
- (a) proposed by one of the ten members who signed the motion; and
 - (b) seconded by any other member whose licence is not suspended.

Same

- (2) At a meeting, a motion described in subsection 16 (2) may be made by it being,
- (a) proposed by one member whose licence is not suspended; and
 - (b) seconded by another member whose licence is not suspended.

Permitted amendments

19. (1) A motion made at a meeting may be amended by,
- (a) adding or deleting words;
 - (b) varying minor details; or
 - (c) rephrasing sentences.

Amendment not to alter substance of motion

- (2) An amendment to a motion shall not alter the substance of the motion.

Introduction of amendments

20. An amendment to a motion shall be,
- (a) proposed by one member whose licence is not suspended; and
 - (b) seconded by another member whose licence is not suspended.

Limit on number of amendments

21. No more than two amendments to a motion shall be before the meeting for debate at the same time.

Withdrawal

22. A motion or an amendment to a motion made at a meeting may be withdrawn if,
- (a) the member who proposed the motion or amendment consents to the withdrawal;
 - (b) the member who seconded the motion or amendment consents to the withdrawal; and
 - (c) no member present at the meeting objects to the withdrawal.

DEBATE

Debate on motions and amendments

23. (1) Subject to subsection (2), a motion and an amendment to a motion may be debated by the members present at the meeting.

Debate prohibited

(2) The following motions shall not be debated:

1. A motion to adjourn a debate.
2. A motion to proceed to the next business.
3. A motion to table.

Order of speaking

24. (1) In a debate, members are entitled to speak to a motion or an amendment to a motion in the following order:

1. The member who proposed the motion or amendment.
2. The member who seconded the motion or amendment.
3. Any other member present at the meeting when recognized by the Treasurer.

Reserving right to speak

(2) The member who seconds a motion or an amendment to a motion may reserve the right to speak until a later time in the debate.

Limits on speaking

25. (1) Subject to subsection (2), a member is entitled to speak to a motion or an amendment to a motion only once.

Exception

- (2) A member may speak to a motion or an amendment a second time if,
- (a) all members present at the meeting have exercised, or declined to exercise, their right to speak to the motion or amendment; and
 - (b) the member does not repeat anything already said by any other member.

RULING OF TREASURER

Treasurer may make rulings

26. The Treasurer may make rulings as to the conduct of the meeting and, without limiting the generality of the foregoing, the Treasurer may rule upon the propriety, acceptability, form and substance of any motion or amendment to a motion proposed at a meeting.

Appeal of ruling of Treasurer

27. (1) Subject to subsection (2), a ruling of the Treasurer may be appealed by any member present at the meeting.

Appeal prohibited

(2) No member is entitled to appeal a ruling of the Treasurer that a matter may not be made the subject of debate or motion by the meeting because,

- (a) it is a matter in respect of which a hearing may be conducted under the Act, regulations, by-laws or rules of practice and procedure; or
- (b) it is a matter that is pending before an adjudicative body for determination.

Time for making appeal

28. Where a member wishes to appeal a ruling of the Treasurer, the appeal shall be made immediately after the ruling.

Debate permitted

29. (1) Subject to subsection (2), an appeal of a ruling of the Treasurer may be debated by the members present at the meeting.

Debate prohibited

(2) An appeal of a ruling of the Treasurer relating to inappropriate language or behaviour shall not be debated.

Application of ss. 24 and 25

30. Sections 24 and 25 apply, with necessary modifications, to a debate of an appeal of a ruling of the Treasurer.

Treasurer's reasons for ruling

31. (1) After an appeal of a ruling of the Treasurer has been made, and before commencement of debate of the appeal, if permitted, the Treasurer is entitled to give the reasons, including any authority, for the ruling.

Same

(2) After debate of an appeal of a ruling of the Treasurer concludes, the Treasurer is entitled,

- (a) to answer any points raised during the debate; and
- (b) to give, or to repeat, the reasons, including any authority, for the ruling.

Disposition by vote

32. (1) An appeal of a ruling of the Treasurer shall be disposed of by a vote on the question: "Should the ruling of the Treasurer be upheld? "

Call for vote on appeal where debate on appeal prohibited

(2) Where debate on an appeal of a ruling of the Treasurer is prohibited, the Treasurer shall call for a vote on the appeal after exercising, or declining to exercise, the rights given to the Treasurer in subsection 31 (1).

Call for vote on appeal where debate on appeal permitted

(3) Where debate on an appeal of a ruling of the Treasurer is permitted, the Treasurer shall call for a vote on the appeal after debate has concluded and the Treasurer has exercised, or declined to exercise, the rights given to the Treasurer in subsection 31 (2).

VOTING

No appeal from call for vote

33. No member is entitled to appeal a call by the Treasurer for a vote on a motion, an amendment to a motion or an appeal of a ruling.

Order of voting on motions and amendments to motions

34. (1) All amendments to a motion shall be put to a vote before the motion is put to a vote.

Order of voting on amendments to motions

(2) Amendments to a motion shall be put to a vote in the following order:

1. The second amendment proposed.

2. The first amendment proposed.

Entitlement to vote

35. Every member present at a meeting, whose licence is not suspended, is entitled to one vote on each question put to the meeting.

Treasurer may not vote

36. Subject to section 40, the Treasurer shall not vote on any motion, amendment to a motion or appeal of a ruling.

Proxy voting prohibited

37. Votes may not be cast by proxy.

Manner of voting

38. Voting shall be by a show of hands unless a poll is required by the Treasurer or called for by a member.

Poll

39. (1) A poll may be required by the Treasurer or called for by a member either before a question is put to a vote or immediately after the question has been voted on by a show of hands.

Manner of conducting poll

(2) A poll shall be conducted either by ballot or by division, as determined by the Treasurer.

No appeal

(3) No member is entitled to appeal a determination by the Treasurer as to the manner of conducting a poll.

Resolution of question

40. (1) Subject to subsection (3), each question put to the meeting shall be determined by the majority of the votes cast.

Treasurer may exercise casting vote

(2) In the case of a tied vote, except on a vote of an appeal of a ruling of the Treasurer, the Treasurer shall have a casting vote.

Resolution of question: appeal of ruling of Treasurer

(3) A ruling of the Treasurer shall be upheld on appeal when,

(a) the majority of votes cast are in favour of upholding the ruling of the Treasurer; or

(b) the vote on the appeal results in a tie.

Entry in minutes

41. Whenever voting has been by a show of hands, unless immediately following the vote a poll on the same question is required by the Treasurer or called for by a member, an entry in the minutes of the meeting to the effect that the Treasurer declared a motion carried, an amendment to a motion approved or a ruling upheld is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion, amendment or ruling.

Communication of resolutions to Convocation

42. (1) All motions carried at a meeting of members shall be,

(a) communicated to Convocation at its first regular meeting after the meeting of members; and

(b) considered by Convocation within six months of the meeting of members.

Convocation not bound by resolutions of meeting

(2) A motion carried at a meeting of members is not binding on Convocation.

PART III

OFFICERS

CHIEF EXECUTIVE OFFICER

APPOINTMENT

Sections 43 to 45 repeat verbatim, (except as noted) sections 1 to 3 of current by-law 3.

Appointment of C.E.O.

43. Convocation shall, on such terms as it considers appropriate, appoint a person as Chief Executive Officer of the Society.

Current section provides that “Convocation **may**,” rather than “Convocation shall.” This accords with section 8 of the *Law Society Act*, which provides that the CEO “shall, under the direction of Convocation, manage the affairs and functions of the Society.”

REPORTING

Reporting

44. The Chief Executive Officer shall be responsible to Convocation.

DUTIES

Duties of C.E.O.

45. (1) The Chief Executive Officer shall be responsible for the management and co-ordination of all phases of the operation, administration, finances, organization, supervision and maintenance of all activities of the Society.

Same

(2) In addition to the duties set out in subsection (1), the Chief Executive Officer shall perform all the functions and duties ordinarily associated with the office of chief executive officer including,

- (a) putting into effect all policies and procedures established by Convocation or a standing committee of Convocation;
- (b) counselling and assisting Convocation or any standing committee of Convocation in the development, adoption and implementation and advancement of the various functions of the Society; and
- (c) advising and assisting in the engaging of officers and employees of the Society and directing such personnel in the on-going administration of approved policies and programmes.

Same

(3) In addition to the duties and functions set out in subsections (1) and (2), the Chief Executive Officer shall perform such functions and duties as may be assigned to him or her by Convocation.

SECRETARY

APPOINTMENT

Appointment of secretary

46. Convocation shall, on such terms as it considers appropriate, appoint a person as secretary of the Society.

DUTIES

Secretary's duties

47. The secretary shall perform the duties ordinarily associated with the office of the secretary, including having custody of the seal and coat of arms, the duties imposed upon the secretary by the by-laws and the duties that may be assigned to the secretary by the Chief Executive Officer.

Sections 46 and 47 repeat sections 1 and 2 of current by-law 4 verbatim. All of the delegation sections set out in section 3, current by-law 4, are no longer required as a result of the elimination of the word "Secretary" in the *Law Society Act*.

PART IV

FINANCIAL PROVISIONS

FINANCIAL YEAR

Sections 48 to 50 repeat section 4 to 6 of current by-law 2 verbatim.

48. The financial year of the Society shall be from January 1 to December 31.

AUDIT

Accounts to be examined and certified by public accountant

49. (1) The accounts and transactions of the Society shall be examined and certified annually by a public accountant to be appointed by Convocation annually and not later than at its regular meeting in May.

Same

(2) If Convocation fails to appoint a public accountant in any year, the accounts and transactions of the Society shall be examined and certified in that year by the public accountant most recently appointed by Convocation under subsection (1).

BUDGET ESTIMATES

Presentation of annual budget to Convocation

50. (1) The annual budget shall be presented to Convocation for final approval not later than November 30 each year.

Budget to be consistent with planned activities

(2) The budget shall be consistent with the activities planned by Convocation for the next financial year.

Projection of expenses and revenues

(3) The budget shall include a reasonable projection of all expenses and revenues.

Use of reserve funds

(4) The use of reserve funds to supplement estimated revenues requires the express approval of Convocation.

Cancellation of program, etc. included in budget approved by Convocation

(5) Where Convocation has approved a budget that provides for the continuation of a program, activity or service, any significant reduction or cancellation of that program, activity or service during the financial year requires the express approval of Convocation.

v2

BY-LAW 3

BENCHERS, CONVOCATION AND COMMITTEES

PART I

BENCHERS

ELECTION OF BENCHERS LICENSED TO PRACTISE LAW

GENERAL

Part 1 of this by-law repeats the provisions of current by-law 5. No changes have been made to this Part of the by-law other than to implement the language in the amended *Law Society Act*, e.g., licensee, and to make it clear that this part relates to the election of benchers licensed to practise law.

Definitions

1. In this Part,

“bencher” means a bencher licensed to practise law in Ontario as a barrister and solicitor;

“Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this Part;

“election of benchers” means an election of benchers licensed to practise law in Ontario as barristers and solicitors;

“elector” means a person who is entitled under this Part to vote in an election of benchers;

“holiday” means,

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

“licensee” means a licensee who holds a Class L1 licence.

Interpretation: reference to a day

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

Same: commencement, etc. of event

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

Same: residing in electoral region

(3) For the purposes of this Part, an elector resides in an electoral region if his or her business address, or, where an elector does not have a business address, home address, as indicated on the records of the Society on the fourth Friday in March, is within the electoral region.

ELECTION DAY

Election day

3. There shall be an election of benchers in 2007 and in every fourth year thereafter on the last day in April that is not a holiday.

ELECTION OFFICERS

Treasurer to preside over election

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

Appointment of assistant

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

Appointment of licensee to act in absence of Treasurer

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

Where Treasurer is candidate in election.

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

Elections Officer to conduct election

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

Elections Officer to establish procedures, *etc.*

(2) The Elections Officer shall,

- (a) by December 31 of the year immediately preceding an election year,
 - (i) establish all procedures, requirements and specifications required to be established with respect to the nomination of candidates for the election, and
 - (ii) establish the procedures by which electors may vote; and
- (b) by January 31 of an election year, publish all procedures, requirements and specifications established in respect of the election.

ELECTORAL REGIONS

Electoral regions

- 6. (1) The following electoral regions are established:
 - 1. The Province of Ontario "A" Electoral Region, composed of the City of Toronto.
 - 2. The Province of Ontario "B" Electoral Region, composed of the area in Ontario outside the City of Toronto.

Same

- (2) Within the Province of Ontario "B" Electoral Region, the following additional electoral regions are established:
 - 1. The Northwest Electoral Region, composed of the territorial districts of Kenora, Rainy River and Thunder Bay.
 - 2. The Northeast Electoral Region, composed of the territorial districts of Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury and Timiskaming.
 - 3. The East Electoral Region, composed of,
 - i. the counties of Frontenac, Hastings, Lanark, Lennox and Addington, Prince Edward and Renfrew,
 - ii. the united counties of Leeds and Grenville, Prescott and Russell and Stormont, Dundas and Glengarry, and
 - iii. the Regional Municipality of Ottawa-Carleton.
 - 4. The Central East Electoral Region, composed of,
 - i. the District Municipality of Muskoka,
 - ii. the counties of Haliburton, Northumberland, Peterborough, Simcoe and Victoria, and
 - iii. the regional municipalities of Durham and York.
 - 5. The Central West Electoral Region, composed of,

- i. the counties of Bruce, Dufferin, Grey and Wellington, and
 - ii. the regional municipalities of Halton and Peel.
- 6. The Central South Electoral Region, composed of,
 - i. the County of Brant, and
 - ii. the regional municipalities of Haldimand-Norfolk, Hamilton-Wentworth, Niagara and Waterloo.
- 7. The Southwest Electoral Region, composed of the counties of Elgin, Essex, Huron, Kent, Lambton, Middlesex, Oxford and Perth.

Province of Ontario "A" Electoral Region

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

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

Province of Ontario "B" Electoral Region

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

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

CANDIDATES

Who may be candidate

7. Every licensee is qualified to be a candidate in an election of benchers if, at the time of signing a nomination form containing his or her nomination as a candidate,

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

Time for close of nominations

8. (1) Subject to subclause 9 (3) (b) (ii), the close of nominations of candidates shall be 5 p.m. on the second Friday in February.

Nomination of candidates

(2) A candidate shall be nominated by at least ten licensees whose licences are not suspended at the time of signing the nomination form.

Consent to nomination

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

Nomination form

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

Signatures

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

Due date

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

Acceptance and rejection of nominations

9. (1) A licensee shall not be a candidate if a requirement specified in section 7 or 8 has not been complied with.

Examination of nomination form

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

- (a) if he or she is satisfied that the requirements specified in sections 7 and 8 have been complied with, he or she shall accept the nomination; or
- (b) if he or she is not satisfied that the requirements specified in sections 7 and 8 have been complied with, he or she shall reject the nomination.

Results of examination of nomination form

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

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

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

Nomination form: optional accompanying material

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

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

Deadline for receipt of accompanying material

(2) Subject to subclause 20 (3) (b) (iii), the material referred to in subsection (1) must be received in the office of the Elections Officer at Osgoode Hall before the close of nominations.

Withdrawal of candidates

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

ELIGIBILITY FOR ELECTION

Who may not be elected

12. (1) No candidate shall be elected as bencher if, at the time of his or her election, the candidate's licence is suspended.

Who may be elected for electoral region

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

ACCLAMATION

Election by acclamation

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

POLL

Poll

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

Secret ballot

15. A poll to elect benchers shall be conducted by secret ballot.

QUALIFICATION OF ELECTORS

Qualification of electors

16. A licensee who, on the fourth Friday in March, and whose licence is not suspended on the fourth Friday in March is entitled to vote in an election of benchers.

Eligibility to elect benchers for electoral regions

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

Same

(2) An elector is eligible to elect a bencher for an electoral region mentioned in paragraphs 1 to 7 of subsection 6 (2) if the elector resides in the electoral region.

LIST OF ELECTORS

Polling list

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

Same

(2) The polling list shall include the names of all licensees whose licences are not suspended on the fourth Friday in March.

ELECTION MATERIALS

Election materials: preparation

19. (1) The Elections Officer shall cause to be prepared,
- (a) an election ballot, showing the names of all candidates who may be eligible to be elected as bencher for each electoral region; and
 - (b) an election booklet, containing the names of all candidates and, if available, the photograph, biography and, subject to subsection (4), election statement of each candidate.
- (2) In causing the election ballot to be prepared, the Elections Officer shall ensure that it is prepared in a manner that preserves the anonymity of the voters and the secrecy of their votes.

All election statements included

(3) Subject to subsection (4), the Elections Officer shall include in the election booklet all election statements which he or she receives under section 10.

Certain election statements not be included unless approved

(4) The Elections Officer shall not include in the election booklet any election statement that in his or her opinion may be libelous, may be in breach of the Rules of Professional Conduct or is in bad taste unless the election statement has been approved by a committee of benchers in accordance with section 20.

Appointment of committee to approve election statements

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

Referral of election statements to committee

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

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

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

Consideration of redrafted election statements by committee

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

- (a) approve the redrafted election statement and direct the Elections Officer to include it in the election booklet; or
- (b) if the committee is of the opinion that the redrafted election statement may be libelous, may be in breach of the Rules of Professional Conduct or is in bad taste,
 - (i) return the redrafted election statement to the candidate who submitted it,

- (ii) provide the candidate a written explanation of the committee's objections to the redrafted election statement, and
- (iii) advise the candidate that no election statement shall be included in the election booklet under his or her name.

Committee's decision final

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

Election materials: distribution

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

- (a) the election materials prepared under section 19;
- (b) voting instructions; and
- (c) a return envelope.

VOTING

Voting for candidates

22. An elector may vote for,

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

Marking and casting ballots

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

COUNTING THE VOTES

Elections Officer to cause counting of votes

24. (1) Beginning immediately after the deadline for casting election ballots on election day and proceeding thereafter for so long as necessary, the Elections Officer shall cause the votes for each candidate to be counted in accordance with sections 25 to 29.

Presence of electors

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

Valid votes

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

Disqualified votes

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

Same

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

Same number of votes

26. (1) For the purposes of the count of votes under section 27, the declaration of results under subparagraph i of paragraph 1 of subsection 29 (2) and the declaration of results under paragraph 2 of subsection 29 (2), if two or more candidates have the same number of votes and that number is the largest, the Elections Officer shall, in the presence of the Treasurer, randomly select one candidate to be the candidate who has the largest number of votes.

Same

(2) For the purposes of the count of votes under section 28, the declaration of results under subparagraph ii of paragraph 1 of subsection 29 (2) and the declaration of results under paragraph 3 of subsection (2), if two or more candidates have the same number of votes, but the number of benchers remaining to be elected is fewer than the number of candidates having the same number of votes, the Elections Officer shall, in the presence of the Treasurer, randomly select the necessary number of candidates to be elected as benchers.

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

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

Same

(2) For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the votes cast by electors residing in the electoral region for each candidate eligible to be elected as benches for the electoral region shall be counted.

Removal of candidate from pool of candidates

(3) For the Province of Ontario "A" Electoral Region, the candidate eligible to be elected as benches for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection (1), shall be removed from the pool of candidates eligible to be elected as benches for the purposes of the count of votes under subsection 28 (1).

Same

(4) For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the candidate eligible to be elected as benches for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection (2), shall be removed from the pool of candidates eligible to be elected as benches for the purposes of the count of votes under subsection 28 (2).

Counting votes: Province of Ontario "A" Electoral Region

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

Same: Province of Ontario "B" Electoral Region

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

Report of result to Convocation

29. (1) Immediately after the count of votes under sections 27 and 28 has been completed, the Elections Officer shall report the results to Convocation.

Declaration of results

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

1. For the Province of Ontario "A" Electoral Region,
 - i. the candidate eligible to be elected as benchers for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection 27 (1), and
 - ii. the nineteen candidates eligible to be elected as benchers for the electoral region who have the largest number of votes from all electors, as determined by the count of votes under subsection 28 (1).
2. For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the candidate eligible to be elected as benchers for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection 27 (2).
3. For the Province of Ontario "B" Electoral Region, the thirteen candidates eligible to be elected as benchers for the electoral region who have the largest number of votes from all electors, as determined by the count of votes under subsection 28 (2).

Taking office

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

1. The day on which Convocation has its regular meeting in May.
2. The day on which Convocation has its first regular meeting of Convocation following the declaration of results under section 29.

Term of office

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

Failure to elect

31. (1) If in an election of benchers no candidate is elected as bencher for the Province of Ontario "A" Electoral Region on the basis of the votes cast by electors residing in the electoral region, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as a bencher for the electoral region,

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

Same

(2) If in an election of benchers no candidate is elected as bencher for an electoral region described in paragraphs 1 to 7 of subsection 6 (2) on the basis of the votes cast by electors residing in the electoral region, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as a bencher for the electoral region,

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

Same

(3) If in an election of benchers fewer than the required number of benchers are elected for the Province of Ontario "A" Electoral Region or the Province of Ontario "B" Electoral Region on the basis of the votes cast by all electors, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as benchers for the electoral region,

- (a) if there are candidates whose business addresses, or, where candidates have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation are within the electoral region, the required number of candidates who were not elected as bencher;
- (b) if there are no candidates available for election under clause (a), or if all candidates have already been elected under clause (a), the required number of licensees whose business addresses, or, where licensees have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

Who may not be elected

32. (1) No person shall be elected as benchers under section 31 if the person's licence is suspended.

Consent to election

(2) No person shall be elected as benchers under section 31 if he or she does not consent to the election.

Taking office and term of office

33. The benchers who are elected under section 31 shall take office immediately after their election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until their successors take office.

PETITIONS

Right to petition

34. Any elector may petition Convocation against the election of a benchers under section 29.

Time for making petition

35. No petition shall be made after fifteen days after the declaration of results under section 29.

Filing a petition

36. (1) A petitioner shall, within fifteen days after the declaration of results under section 29, file in the office of the Elections Officer at Osgoode Hall a written petition setting out the grounds upon which the election of a benchers is disputed.

Service of petition

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

Time for service

(3) Service under subsection (2) shall be effected not later than the twentieth day after the declaration of results under section 29.

Benchers's status during consideration of petition

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

Appointment of committee to consider petition

38. (1) Where a petition is filed under subsection 36 (1), Convocation shall appoint a committee of two or more benchers to consider the petition.

Procedure

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

Right to make submissions

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

Notice of appointment of committee, etc.

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

Report to Convocation

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

Decision of Convocation

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

Notice of decision

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

Payment of expenses

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

Same

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

DISPOSITION OF ELECTION MATERIALS

How long to be retained

41. (1) The Elections Officer shall retain all election materials and other documents relating to an election of benchers for at least thirty days after the declaration of results under section 29, or if Convocation is petitioned against the election of a benchner, for at least thirty days after Convocation gives notice of its decision on the last petition made.

Destruction

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

VACANCIES DURING TERM OF OFFICE

Interpretation – “candidate”

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

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

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

- (a) whose business address, or where a candidate has no business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region; and
- (b) who, among all similar candidates, had the largest number of votes from electors residing in the electoral region.

No candidate available for election under subsection (2)

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

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

43. (1) If a bencher, who was elected for the Province of Ontario “A” Electoral Region or the Province of Ontario “B” Electoral Region on the basis of the votes cast by all electors, resigns, is removed from office, is elected as bencher under section 42 or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect as bencher for the electoral region a candidate in the most recent election of benchers,

- (a) who was not elected as bencher;
- (b) whose business address, or where a candidate has no business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region; and
- (c) who, among all similar candidates, had the largest number of votes from all electors.

No candidate available for election under subsection (1)

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

Application of s. 42

44. (1) Section 42 applies, with necessary modifications, to,

- (a) a bencher elected under section 13 to fill the office of a bencher elected for an electoral region on the basis of the votes cast by electors residing in the region;

- (b) a bencher elected under subsection 31 (1);
- (c) a bencher elected under subsection 31 (2); and
- (d) a bencher elected under section 42.

Application of s. 43

- (2) Section 43 applies, with necessary modifications, to,
 - (a) a bencher elected under section 13 to fill the office of a bencher elected for an electoral region on the basis of the votes cast by all electors;
 - (b) a bencher elected under subsection 31 (3); and
 - (c) a bencher elected under section 43.

Who may not be elected to fill vacancy

45. (1) No person shall be elected as bencher under section 42 or 43 if the person's licence is suspended.

Consent to election

(2) No person shall be elected as bencher under section 42 or 43 if he or she does not consent to the election.

Term of office

46. A bencher who is elected under section 42 or 43 shall take office immediately after his or her election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until his or her successor takes office.

PART II

HONORARY BENCHERS

Convocation may make honorary benchers

47. Convocation may make any person an honorary bencher.

Section 47 repeats section 1 of current by-law 7 verbatim.

Transition

48. Every person who is an honorary bencher of the Society immediately before May 1, 2007 is an honorary bencher of the Society.

PART III

BENCHERS: ADMINISTRATION

REMUNERATION

Part III implements the by-law amendments related to benchers remuneration approved by Convocation on February 22, 2007.

Interpretation

49. (1) In sections 50 and 51,

“bencher year” means, as applicable,

- (a) the period beginning on the day, in one calendar year, on which Convocation has its first regular meeting after an election of benchers licensed to practise law in Ontario as barristers and solicitors and ending, in the following calendar year, on May 31,
- (b) the twelve-month period beginning on June 1 in one calendar year and ending on May 31 in the following calendar year, and
- (c) the period beginning on June 1 in one calendar year and ending, in the following calendar year, on the day before the day on which Convocation has its first regular meeting after an election of benchers licensed to practise law in Ontario as barristers and solicitors;

“elected bencher” does not include a person who becomes a bencher under subsection 16 (6) of the Act;

“full day” means,

- (a) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is within the City of Toronto,
 - (i) a total of more than 3 hours, in a period of 24 hours, if work is performed within the City of Toronto, or within a reasonable distance of the City of Toronto, and
 - (ii) any number of hours, in a period of 24 hours, if work is performed anywhere outside a reasonable distance of the City of Toronto, and
- (b) in the case of a payee whose business address, or where the payee has no business address, whose home address, is outside the City of Toronto,
 - (i) a total of more than 3 hours, in a period of 24 hours, if work is performed at the payee’s business address, or home address, or within a reasonable distance of the payee’s business address or home address, and
 - (ii) any number of hours, in a period of 24 hours, if work is performed anywhere outside a reasonable distance of the payee’s business address or home address;

“half day” means,

- (a) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is within the City of Toronto, a total of not more

than 3 hours, in a period of 24 hours, if work is performed within the City of Toronto or within a reasonable distance of the City of Toronto, and

(b) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is outside the City of Toronto, a total of not more than 3 hours, in a period of 24 hours, if work is performed at the payee's business address, or home address, or within a reasonable distance of the payee's business address or home address;

"payee" means a person who is entitled to receive remuneration from the Society under section 50;

"work" means,

- (a) attending a Convocation,
- (b) attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is a member,
- (c) attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is not a member, at the request of the chair of the committee,
- (d) attending an information session organized by the Society for benchers,
- (e) attending a program of education or training required by the Society for benchers,
- (f) hearing a hearing before the Hearing Panel or Appeal Panel,
- (g) preparing reasons for a decision or order of the Hearing Panel or Appeal Panel,
- (h) conducting a pre-hearing conference in a proceeding before the Hearing Panel,
- (i) performing activities, as a chair or vice-chair of the Hearing Panel or Appeal Panel, that are integral to the office of chair or vice-chair of the Hearing Panel or Appeal Panel,
- (j) performing activities, as a member of the Hearing Panel or Appeal Panel, that relate to the management of a proceeding before the Hearing Panel or Appeal Panel,
- (k) performing activities, as a bencher appointed by Convocation for the purpose of making orders under sections 46, 47, 47.1, 48 and 49 of the Act, that are integral to the role of a bencher under sections 46, 47, 47.1, 48 and 49 of the Act,
- (l) attending a meeting, other than a Convocation or a meeting of a standing or other committee, at the direction of the Treasurer or Convocation, and

- (m) performing activities as a director of an organization, to which position the benchner was appointed, or nominated for appointment, by Convocation, provided that the performing of the activities would entitle any other director of the organization to be remunerated by the organization for performing the activities.

Interpretation: person elected as member of the Paralegal Standing Committee

(2) In this by-law, a person who is appointed under subsection 25.2 (2) of the Act is not a person who is elected as a member of the Paralegal Standing Committee.

Entitlement

50. (1) Subject to subsections (2) and (3), every elected benchner, every benchner who holds office under subsection 12 (1) of the Act, every benchner who holds office under subsection 12 (2) of the Act, every benchner who holds office under section 14 of the Act and every person who is elected as a member of the Paralegal Standing Committee is entitled to receive from the Society remuneration,

- (a) for each half day of work performed for the Society in a benchner year, after the first 26 half or full days of work performed for the Society in that benchner year, in an amount determined by Convocation from time to time; and
- (b) for each full day of work performed for the Society in a benchner year, after the first 26 half or full days of work performed for the Society in that benchner year, in an amount determined by Convocation from time to time.

Limits on remuneration: preparing reasons

(2) A payee is not entitled to receive from the Society remuneration for more than one full day of preparing written reasons for any decision or order of the Hearing Panel or Appeal Panel.

Limits on remuneration: performing activities as director of another organization

(3) A payee is not entitled to receive from the Society remuneration for performing activities as a director of an organization if the payee is remunerated, directly or indirectly, by the organization for performing the activities.

Claiming remuneration

51. (1) Subject to subsection (2), a payee may claim remuneration by submitting to the Society a claim for remuneration in a form provided by the Society.

Same

- (2) A payee shall,
 - (a) claim remuneration for work performed for the Society within a reasonable period of time after the payee has performed the work; and
 - (b) shall claim all remuneration in respect of a benchner year by not later than six months after the end of the benchner year.

Payment of remuneration to payee

- (3) Remuneration to which a payee is entitled shall be paid by the Society,

- (a) within a reasonable period of time after the payee submits a claim for remuneration; and
- (b) within the calendar year in which the payee submits a claim for remuneration.

Same

(4) Remuneration shall be paid to the individual payee claiming the remuneration or, at the direction of the individual payee, to the firm of which the payee is a partner or employee or to the professional corporation of which the payee is a shareholder or employee.

DISBURSEMENTS

Disbursements

52. A bencher is entitled to be reimbursed by the Society for reasonable expenses incurred by him or her in the performance of his or her duties as a bencher.

Section 52 repeats section 2 of current by-law 7 verbatim.

INDEMNIFICATION

Section 53 repeats section 6 of current by-law 2 verbatim.

Indemnification of benchers, *etc.*

53. (1) Subject to subsection (4), the Society shall indemnify every bencher, officer of the Society, former bencher, former officer of the Society and other individual who, not being a bencher or officer of the Society, acts or acted as a bencher or officer of the Society at the request of the Society against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in respect of any civil, criminal, administrative, investigative or other proceeding in which the person is involved because of the person's association with the Society.

Advance of costs

(2) The Society may advance moneys to a person referred to in subsection (1) for the costs, charges and expenses of a proceeding referred to in subsection (1).

Repayment of moneys

(3) If a person referred to in subsection (1) does not fulfil the conditions of subsection (4), the person shall repay moneys advanced to him or her under subsection (2).

Limitation

(4) The Society shall not indemnify a person referred to in subsection (1) unless the person,

- (a) acted honestly and in good faith with a view to the best interests of the Society; and
- (b) in the case of a criminal or administrative proceeding resulting in a monetary penalty, the person had reasonable grounds for believing that his or her conduct was lawful.

Insurance

(5) The Society may purchase and maintain insurance for the benefit of every person referred to in subsection (1) against any liability incurred by the person in the person's capacity as a benchner or officer.

PART IV

TREASURER

ELECTION OF TREASURER

Part IV repeats the provisions of current by-law 6 except as otherwise noted. Changes have been made to give effect to Convocation's decisions made on December 8, 2006.

Time of election

54. (1) Subject to subsection (2), there shall be an election of Treasurer every year on the day on which the regular meeting of Convocation is held in June.

Same

(2) If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection (1), all of the candidates, but one, cease, for any reason, to be candidates, there shall be an election of Treasurer on the later of the day on which the regular meeting of Convocation is held in June and the day that is ten business days after the day of the close of nominations of candidates under subsection 55 (5).

First matter of business

(3) If there is an election of Treasurer on the day on which the regular meeting of Convocation is held in June, the election of Treasurer shall be the first matter of business at the regular meeting of Convocation in June.

Nomination of candidates

55. (1) A candidate for election as Treasurer shall be nominated by not more than two benchers who are entitled to vote in Convocation.

The words "not more than" have been added to this section to give effect to Convocation's decision on December 8, 2006 to limit the number of benchers who could nominate a Treasurer candidate to two.

Nomination in writing

(2) The nomination of a candidate shall be in writing, signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate and submitted to the secretary prior to the close of nominations of candidates.

Time for close of nominations

(3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.

Exception

(4) In a year in which there is an election of benchers licensed to practise law in Ontario as barristers and solicitors, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

Nominations reopened

(5) If after the close of nominations of candidates under subsection (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates,

- (a) the period for nominations of candidates shall be reopened; and
- (b) the new close of nominations of candidates shall be 5 p.m. on the day that is ten business days after the day on which the secretary sends the notice under section 57.

Invalid nomination

(6) A nomination that is made by more than two benchers who are entitled to vote in Convocation, that is not made in writing, that is not signed by the candidate, that is not signed by the two benchers nominating the candidate or that is not submitted to the secretary prior to the close of nominations of candidates is invalid and the candidate who is the subject of the nomination shall not be a candidate in the election of Treasurer.

This section is new to give effect to Convocation's decision on December 8, 2006 that a nomination that does not comply with the rule of no more than two nominators is invalid.

Withdrawal of candidates

56. A candidate may withdraw from an election of Treasurer at any time before the day of the election of Treasurer by giving the secretary written notice of his or her withdrawal.

Reduction in number of candidates: notice

57. If, after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, not later than five business days after the day on which one candidate remains, the secretary shall send to each bencher entitled to vote in an election of Treasurer a notice stating,

- (a) the day on which the notice is sent;
- (b) that the period for nominations of candidates has re-opened;
- (c) the new time for close of nominations;
- (d) that any ballots received at the advance poll shall be discarded;
- (e) the time for the beginning of the new advance poll; and
- (f) the day on which there shall be an election of Treasurer.

Notice of candidates to benchers

58. (1) After the close of nominations of candidates, the secretary shall, as soon as practicable, notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

Election by acclamation

59. (1) If after the close of nominations of candidates, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

Same

(2) Despite any provision to the contrary in this Part, if, after the close of nominations of candidates under subsection 55 (5), there are two or more candidates, but on the day on which there shall be an election of Treasurer, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

Poll

60. (1) If after the close of nominations of candidates, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

Secret ballot

(2) A poll to elect a Treasurer shall be conducted by secret ballot.

Treasurer is candidate in election

61. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this Part.

Right to vote

62. (1) Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

List of voters

(2) If a poll is required to elect a Treasurer, after the close of nominations of candidates, the secretary shall prepare a list of benchers entitled to vote in an election of Treasurer.

List to show who has voted at advance poll

(3) Beginning at the opening of an advance poll and ending at the close of an advance poll, the secretary shall mark on the list prepared under subsection (2) whenever a bencher casts a ballot at the advance poll so that, at any time, the list will show the benchers who have cast ballots at the advance poll and the benchers who have not yet cast ballots in the election of Treasurer.

List to show who has voted on election day

(4) On election day, for every ballot required in order to elect a Treasurer, the secretary shall mark on the list prepared under subsection (2), marked as required under subsection (3), whenever a bencher casts a ballot on election day so that, at any time, the list will show the benchers who have cast ballots and the benchers who have not yet cast ballots in the election of Treasurer.

Availability of lists

(5) The secretary shall make the list described in subsection (3) and the list described in subsection (4) available for inspection to candidates in an election of Treasurer and benchers entitled to vote in the election of Treasurer.

Section 62(2) – (5) implements Convocation's decision on December 8, 2006 that the voter's list, showing who has voted, is available for review by candidates and benchers.

Advance poll

63. (1) An advance poll shall be conducted,
- (a) beginning at 9 a.m. on the second Wednesday in June and ending at 5 p.m. on the day preceding election day; or
 - (b) if after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, beginning at 9 a.m. on the day that is three business days after the day of the close of nominations of candidates under subsection 55 (5) and ending at 5 p.m. on the day preceding election day under subsection 34 (2).

Methods of voting at advance poll

- (2) A bencher may vote at the advance poll by,
- (a) attending at the office of the secretary on any day that is not a Saturday or Sunday between the hours of 9 a.m. and 5 p.m. to receive a ballot and to mark the ballot in accordance with subsection (3); or
 - (b) requesting a voting package from the secretary and returning the voting package to the secretary by regular lettermail or otherwise.

Marking a ballot

(3) A bencher voting at the advance poll shall mark the ballot in accordance with subsection (4) or (5).

Two candidates

(4) If there are not more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

More than two candidates

(5) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballot box

(6) If a bencher is voting at the advance poll under clause (2) (a), after the bencher has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.

Same

(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 64 (3) and (4), the secretary shall remove the ballot envelope from the return envelope, remove the ballot from the ballot envelope and put the ballot into the ballot box.

Ballots not to be opened

(8) Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.

Ballots to be discarded

(9) If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, the secretary shall cause to be discarded the ballots received at the advance poll conducted after the close of nominations under subsection 55 (3) or (4).

Special procedures: voting by mail

64. (1) If a bencher requests a voting package from the secretary under clause 63 (2) (b), the secretary shall send to the bencher a voting package that includes a ballot, a ballot envelope and a return envelope and shall specify the address to which the voting package must be returned.

Same

(2) If a bencher is voting at the advance poll under clause 63 (2) (b), the bencher shall,

- (a) in accordance with subsection 63 (3), mark the ballot received from the secretary;
- (b) after complying with clause (a), place the marked ballot inside the ballot envelope and seal the ballot envelope;
- (c) after complying with clause (b), place the sealed ballot envelope inside the return envelope and seal the return envelope;
- (d) after complying with clause (c), sign the return envelope; and
- (e) after complying with clause (d), send to the secretary, by regular lettermail or otherwise, the voting package, that includes the ballot, the ballot envelope and the return envelope, so that it is received by the secretary not later than 5 p.m. on the day preceding election day.

Receipt of return envelopes

(3) When the secretary receives a voting package at the specified address, the secretary shall check to see if the return envelope bears the signature of a bencher to whom a voting package was sent.

Discarding ballots

- (4) The secretary shall discard a voting package that the secretary receives,
 - (a) at an address other than the specified address;

- (b) that does not bear the signature of a bencher to whom a voting package was sent; and
- (c) after 5 p.m. on the day preceding election day.

Procedure for voting on election day: first ballot

65. (1) On election day, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a first ballot listing the names of all candidates for election as Treasurer.

Second ballot

(2) On election day, if a Treasurer is not elected as a result of the votes cast at the advance poll and on the first ballot, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a second ballot listing the names of the candidates remaining in the election of Treasurer at the time of that ballot.

Application of subs. (2) to second and further ballots

(3) Subsection (2) applies to the second ballot and, with necessary modifications, any further ballots in an election of Treasurer.

Marking ballot

(4) Each bencher shall vote for one candidate only on each ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

Ballot box

(5) After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.

Counting votes

66. (1) On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined to vote on a ballot, the secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.

Counting votes cast at advance poll

(2) If at the advance poll votes were cast for candidates by rank of preference, in counting the votes cast for each candidate at the advance poll, the secretary shall assume that a bencher's candidate of choice was the candidate on the ballot given the highest rank by the bencher.

Application

(3) This section applies to the count of votes on the first ballot in an election of Treasurer and, with necessary modifications, to the count of votes on the second ballot and any further ballots in an election of Treasurer.

Report of results: two candidates

67. (1) If on any ballot there are not more than two candidates, immediately after counting the votes cast for each candidate, the secretary shall report the results to Convocation

and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the largest number of votes.

Same

(3) If on any ballot there are three or more candidates and, after counting the votes, the secretary determines that no candidate received more than 50 percent of all votes cast for all candidates, the secretary shall report to Convocation that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect a Treasurer.

Further ballot required

(4) If a further ballot is required under subsection (3), the secretary shall report to Convocation the candidate on the previous ballot who received the least number of votes and that candidate shall be removed as a candidate in the election.

Casting tie-breaking vote

68. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall randomly select one of the candidates and cast an additional vote for that candidate.

This section implements Convocation's decision of December 8, 2006 that a tie ought to be broken by the Treasurer's random selection of one of the candidate's names.

Equal number of votes

69. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election of Treasurer, a poll shall be conducted to select the candidates to remain in the election.

Secret ballot

(2) A poll conducted under subsection (1) shall be conducted by secret ballot.

Right to vote

(3) Each bencher entitled to vote in an election of Treasurer is entitled to vote in a poll conducted under subsection (1).

Ballot

(4) Each bencher entitled to vote in a poll conducted under subsection (1) shall receive a ballot listing the names of the candidates who received the equal number of votes.

Marking ballot

(5) A bencher shall vote for the candidate or candidates, but not for all the candidates, whom he or she wishes to remain in the election of Treasurer and shall indicate his or her choice or choices by placing a mark beside the name of each candidate chosen.

Ballot box

(6) After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.

Counting votes

(7) After all benchers entitled to vote in a poll conducted under subsection (1) have voted or declined to vote on a ballot, the secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all ballots from the ballot box, open the ballots and count the votes cast for each candidate.

Report of results

(8) Immediately after counting the votes cast for each candidate, the secretary shall report the results to Convocation.

Same

(9) The candidate who receives the least number of votes in the poll conducted under subsection (1) shall be removed as a candidate in the election of Treasurer.

Further polls

(10) If two or more candidates in a poll conducted under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted under subsection (1), for the candidates with the same number of votes, until only one candidate from all the candidates included in the initial poll conducted under subsection (1) is removed as a candidate in the election of Treasurer.

TERM OF OFFICE

Taking office

70. (1) In an election of Treasurer under section 54,

- (a) a bencher elected as Treasurer by acclamation shall take office at the regular meeting of Convocation in June following his or her election; and
- (b) a bencher elected as Treasurer by poll shall take office immediately after his or her election.

Term of office

(2) Subject to any provision in any by-law providing for the removal of a Treasurer from office, the Treasurer shall remain in office until his or her successor takes office.

HONORARIUM

Treasurer's entitlement to honorarium

71. The Treasurer is entitled to receive from the Society an honorarium in an amount determined by Convocation from time to time.

VACANCY IN OFFICE

Vacancy

72. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected benchner to fill the office of Treasurer until the next election of Treasurer under section 54.

ACTING TREASURER

Acting Treasurer

73. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 72, the chair of the Finance and Audit Committee, or if he or she for any reason is unable to act, the chair of the Professional Development and Competence Committee, shall perform the duties and exercise the powers of the Treasurer until,

- (a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or
- (b) a Treasurer is elected under section 72 or 54.

PART V

CONVOCATION

INTERPRETATION

Part V repeats the provision of current by-law 8 verbatim.

Definitions

74. (1) In this Part,

“main motion” means a motion which is the subject of an amendment contained in a motion to amend;

“question of privilege” means a question about any right enjoyed at Convocation by the benchers present at Convocation collectively or by any bencher present at Convocation individually conferred by this Part or by practice, precedent, usage and custom;

“question of procedure” means a question about the procedure being followed at any time at Convocation;

“substantive motion” means a motion that is a self-contained proposal capable of expressing a decision of the benchers present at Convocation concerning a matter of import to the Society.

Interpretation: tabling a motion

(2) In this Part, “to table a motion” means to defer indefinitely debating the motion or putting the motion to a vote and “a motion which was tabled” has a corresponding meaning.

MEETINGS

Convocation conducted in accordance with Part

75. (1) Subject to subsection (2), Convocation shall be conducted in accordance with this Part.

Waiving compliance, *etc.*

(2) The Treasurer may waive compliance with any requirement, alter any requirement and abridge or extend any time period mentioned in this Part in respect of Convocation.

Matters of procedure not provided for

(3) Any matter of procedure not provided for in this Part shall be determined by the Treasurer.

Place of Convocation

76. (1) Subject to subsections (2) and (3), Convocation shall be held in Osgoode Hall.

Same

(2) The Treasurer may convene Convocation at any place.

Convocation by telephone conference call, *etc.*

(3) Convocation may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in Convocation to communicate with each other simultaneously and instantaneously.

Convocation: when held

77. Convocation shall be held on the fourth Thursday of each month, except the months of July, August and December, unless otherwise directed by the Treasurer.

Convocation: special meetings

78. (1) The Treasurer may convene Convocation at any time by giving at least twenty-four hours notice, or by directing the secretary to give such notice, to each bencher.

Same

(2) Upon the written request of ten benchers who are entitled to vote in Convocation, the secretary shall convene Convocation by giving at least twenty-four hours notice to each bencher.

Convocation open to public

79. (1) Subject to subsection (2), Convocation shall be open to the public.

Public excluded

(2) Convocation shall be held in the absence of the public to deal with any of the following matters:

1. Matters relating to the Society's personnel.
2. Litigation in which the Society is involved.
3. Negotiations with a government.

4. Intimate financial or personal matters or other matters in respect of which, in the opinion of the benchers present at Convocation, the need for privacy outweighs the public interest in disclosure.

5. Any matter at the instance of the Treasurer.

Order of business

80. Unless otherwise provided, the business and the order of business at Convocation shall be determined by the Treasurer.

Order of business: special meeting

81. At Convocation convened under subsection 78 (2), the business of Convocation shall include the matters for which Convocation was convened.

Minutes

82. (1) Except when Convocation is resolved into a meeting of the benchers as a committee of the whole, minutes shall be kept for Convocation.

Confirmation of minutes

(2) At each Convocation, the minutes of the last Convocation shall be confirmed by the benchers present at Convocation and shall be signed by the Treasurer or the bencher who presided at the meeting of the Convocation to which the minutes relate.

Publication of minutes

(3) Except in the case of the minutes of Convocation held in the absence of the public, the minutes of Convocation shall be made available for public inspection.

Transcript

83. (1) Convocation shall be recorded by a qualified verbatim reporter to permit the production of a transcript of Convocation.

Publication

(2) The transcript of Convocation open to the public shall be made available for public inspection.

Adjournment for lack of quorum

84. (1) If at any time after Convocation has commenced, the Treasurer's attention is directed to the apparent lack of a quorum, the Treasurer shall determine whether a quorum is present and, upon determining that a quorum is not present, the Treasurer shall adjourn Convocation without motion.

Same

(2) The matter before Convocation immediately prior to an adjournment under subsection (1), and all matters listed on the agenda for Convocation that are not reached prior to the adjournment, shall be deemed to be deferred to the next Convocation to be held under section 77.

Removal of bencher from office for non-attendance

85. (1) The benchers present at Convocation may remove from office an elected bencher who fails to attend Convocation held under section 77 six consecutive times.

Failure to attend three meetings

(2) When an elected bencher fails to attend Convocation held under section 77 three consecutive times, the secretary shall immediately send to the elected bencher a notice of the failure and of the benchers' authority under subsection (1) to remove him or her from office.

Failure to attend six meetings: report

(3) When an elected bencher fails to attend Convocation held under section 77 six consecutive times, the secretary shall report the failure at the first Convocation held thereafter under section 77.

TREASURER

Treasurer to preside

86. The Treasurer shall preside over Convocation.

Appeal of Treasurer's rulings and decisions

87. (1) Two or more benchers who are entitled to vote in Convocation may together appeal to the benchers present at Convocation from a ruling or decision of the Treasurer made in Convocation.

(2) Despite subsection (1), the following rulings and decisions of the Treasurer made in Convocation are not subject to an appeal:

1. A decision on a question of privilege or procedure.
2. A ruling that a bencher's remarks are out of order for the reason set out in clause 99 (3) (e).
3. A ruling that a motion is out of order because it is a motion mentioned in subsection 91 (2).
4. A decision under subsection 100 (1) to put a motion to a vote.
5. A decision about a recorded vote.

Time for making appeal

(3) An appeal from a ruling or decision of the Treasurer shall be made immediately after the ruling or decision.

Debate

(4) Except in the case of an appeal of a ruling or decision of the Treasurer in respect of a bencher's language or behaviour, an appeal of a ruling or decision of the Treasurer may be debated and sections 97 to 99 apply, with necessary modifications, to the debate.

Same

(5) The debate on an appeal of the Treasurer's decision under paragraph 5 of subsection 79 (2) shall be conducted in the absence of the public.

Disposition

(6) An appeal of a ruling or decision of the Treasurer shall be disposed of by a vote on the question: "Should the ruling or decision of the Treasurer be upheld?"

Same

(7) Sections 100 to 104 apply, with necessary modifications, to a vote on an appeal of a ruling or decision of the Treasurer.

Same

(8) The vote on an appeal of the Treasurer's decision under paragraph 5 of subsection 79 (2) shall be conducted in the absence of the public.

Resolution: appeal of Treasurer's ruling

(9) A ruling or decision of the Treasurer shall be upheld if the majority of votes cast are in favour of upholding the ruling or decision of the Treasurer or if there is a tie vote on the appeal.

ORDER AND DECORUM

Treasurer to preserve order, decorum, *etc.*

88. At Convocation, the Treasurer shall preserve order, decorum, civility and courtesy and shall decide questions of privilege and procedure.

Benchers not to interrupt Treasurer

89. (1) Benchers shall refrain from interrupting the Treasurer when he or she is speaking, making a ruling or decision or putting a motion or question to Convocation for a vote.

Bencher not to interrupt other bencher

(2) Unless otherwise provided in this Part, when a bencher is speaking, no bencher other than the Treasurer shall interrupt the bencher speaking.

Questions of privilege and procedure

90. (1) A bencher may raise a question of privilege or procedure at any time during Convocation and may interrupt another bencher who is speaking to do so.

Discussion

(2) Apart from the bencher raising the question, there shall be no discussion or debate of a question of privilege or procedure.

Decision

(3) The Treasurer shall decide a question of privilege or procedure immediately after it is raised.

Taken up immediately

(4) If the Treasurer decides that a *prima facie* case of privilege exists, it shall be taken into consideration immediately.

MOTIONS

Motions to be made in accordance with Part

91. (1) Motions made in Convocation shall be made in accordance with this Part.

Prohibited motions

- (2) No motion shall be made concerning a matter,
 - (a) in respect of which a hearing may be conducted under the Act or by-laws; or
 - (b) that is pending before an adjudicative body for determination.

Who may make motion

92. (1) A motion may be made in Convocation by a bencher who is entitled to vote in Convocation.

Certain benchers to move certain motions

(2) A substantive motion of which notice has been given shall be made by the bencher who gave notice of the motion.

Notice required

93. (1) Notice is required for the following motions:

- 1. A substantive motion, other than a substantive motion contained in the report of a standing or other committee.
- 2. A motion to resume debating and to put to a vote a substantive motion which was tabled.

Method of giving notice

(2) Notice of a motion shall be given in writing by the bencher intending to make the motion by delivering a copy of the text of the motion, signed by the bencher intending to make the motion and the bencher intending to second the motion, to the secretary at least twenty days before the day fixed for Convocation at which the bencher intends to make the motion.

Sending notice to all benchers

(3) The secretary shall as soon as possible after receiving notice of a motion under subsection (2) send a copy of the text of the motion to all benchers.

Substantive motion without notice

(4) Despite subsection (1), a bencher may make a substantive motion, other than a substantive motion contained in a report of a standing or other committee, without notice at Convocation if the motion relates to a matter then being debated at Convocation.

Secunder required

94. (1) A motion must be seconded before it may be debated, if debate is permitted, and voted on.

Seconders

- (2) Only benchers who are entitled to vote in Convocation may second a motion.

Same

(3) A substantive motion of which notice has been given shall be seconded by the bencher who signed the text of the motion as the bencher intending to second the motion.

Introduction of substantive motion

95. (1) Subject to section 80, a substantive motion may be moved at any time at Convocation provided that no other substantive motion is before Convocation at the time.

Same

(2) A motion to refer the subject matter of a substantive motion, other than a substantive motion contained in the report of a standing or other committee, to a standing or other committee, a motion to table a substantive motion or a motion to put a substantive motion to a vote may be moved at any time after the substantive motion has been moved and seconded, but before it has been voted on, at Convocation.

Same

(3) A motion to amend may be made at any time after a main motion is moved and seconded, but before it has been voted on, at Convocation, provided that no other motion to amend is before Convocation at the time.

Same

(4) A motion to adjourn Convocation may be made at any time.

Withdrawal

96. (1) A bencher who has given notice of a motion may withdraw the same at any time.

Same

(2) A bencher who has moved a motion may withdraw the same at any time with the consent of the bencher who seconded the motion.

DEBATE

Debate on motions

97. A motion before Convocation may be debated except in the following cases:

1. A motion to table a motion.
2. A motion to adjourn Convocation.

Who may participate in debate

98. Every bencher, the Chief Executive Officer and any other person with the prior permission of the Treasurer may take part in any debate at Convocation.

Order of speaking

99. (1) Subject to subsection (2), in a debate, benchers are entitled to speak to a motion in the following order:

1. The bencher who moved the motion.
2. The bencher who seconded the motion.

3. Any other benchner or person, in accordance with section 98, when recognized by the Treasurer.

Reserving right to speak

(2) The benchner who seconded the motion may reserve the right to speak to the motion until a later time in the debate.

Matters out of order in debate

- (3) In a debate, a benchner shall be called to order by the Treasurer if he or she,
 - (a) subject to subsections (4), (5), (6) and (7) speaks to a motion more than once;
 - (b) directs his or her speech to matters other than the motion being debated;
 - (c) persists in needless repetition or raises matters that have already been decided at Convocation;
 - (d) anticipates a matter already on the agenda of Convocation for consideration;
 - (e) refers to a matter,
 - (i) in respect of which a hearing may be conducted under the Act or by-laws; or
 - (ii) that is pending before an adjudicative body for determination;
 - (f) makes allegations against another benchner;
 - (g) imputes false, improper or ulterior motives to another benchner;
 - (h) charges another benchner with uttering a deliberate falsehood; or
 - (i) uses abusive or insulting language of a nature likely to create disorder.

Speaking twice

(4) A benchner may speak to a motion a second time only to explain a material part of his or her first speech which he or she believes may have been misunderstood, and in so doing, the benchner shall not introduce any new points.

Same

(5) A benchner who moves a motion may speak to the motion a second time immediately before the end of the debate to reply to any comments or questions raised during the debate.

Questions on speeches and replies

(6) At any time during the debate on a motion, a benchner may ask a brief question about another benchner's speech and that benchner may, with the Treasurer's permission, reply briefly.

Treasurer's permission to speak second time

(7) A bencher may speak to a motion a second time, in circumstances not mentioned in subsections (4), (5) and (6), with the Treasurer's permission.

Special rules of debate: motions to amend

(8) Immediately a motion to amend is made during the debate on a main motion, the Treasurer shall interrupt that debate and call for a debate on the motion to amend.

Resumption of interrupted debate

(9) A debate that has been interrupted under subsection (8) shall be resumed immediately the motion to amend which caused the debate to be interrupted has been voted on.

VOTING

Putting debatable motion to vote

100. (1) Subject to subsection (2), the Treasurer shall put a motion which may be debated to a vote when he or she is of the opinion that debate on the motion has been reasonably completed.

Motion to amend accepted

(2) A motion to amend shall not be put to a vote if the benchers who moved and seconded a main motion consent to that motion being amended as proposed in the motion to amend.

Putting non-debatable motion to vote

(3) The Treasurer shall put a motion which may not be debated to a vote immediately after the motion has received a seconder.

Treasurer may not vote

101. The Treasurer shall not vote on a motion except in the case of a tie when the Treasurer may cast a tie-breaking vote.

Proxy voting prohibited

102. Votes may not be cast by proxy.

Manner of voting

103. Voting shall be by a show of hands, or if Convocation is conducted by means of telephone, electronic or other communication facilities under subsection 76 (3), by oral response, unless a recorded vote is required by the Treasurer, or requested by a bencher entitled to vote in Convocation and permitted by the Treasurer, in accordance with section 104.

Recorded vote

104. (1) A recorded vote may be required by the Treasurer or requested by a bencher entitled to vote in Convocation before a motion is put to a vote.

Recorded vote requested by bencher

(2) When a recorded vote has been requested by a bencher, the Treasurer may, but is not required to, conduct a recorded vote.

Manner of conducting recorded vote

(3) When a recorded vote is being conducted, the Treasurer shall put the subject motion to the benchers present in Convocation and the secretary shall then call out the names of all benchers entitled to vote in Convocation and upon hearing his or her name, a bencher shall state his or her vote or if wishing not to vote shall state his or her abstention from the vote.

Resolution

105. A motion shall carry if a majority of the votes cast are in favour of the motion.

COMMITTEE OF THE WHOLE

Committee of the Whole

106. (1) At any time, the Treasurer may require Convocation to resolve itself into a meeting of the benchers as a committee of the whole to consider any matter before Convocation at the time.

Appointment of chair

(2) Immediately after announcing his or her decision to require Convocation to resolve itself into a meeting of the benchers as a committee of the whole, the Treasurer may appoint a bencher as chair of the committee of the whole and, if the Treasurer does so appoint a bencher, the Treasurer shall then leave the chair.

Appointed bencher takes chair

(3) When the Treasurer leaves the chair in accordance with subsection (2), the bencher appointed as chair of the committee of the whole shall take the chair whereupon Convocation resolves itself into a meeting of the benchers as a committee of the whole.

Rules of procedure

(4) Section 24 of the Act and subsection 84 (1) and sections 86 to 105 of this By-Law apply with necessary modifications to proceedings of a committee of the whole.

Treasurer resumes chair

- (5) When a committee of the whole has completed its proceedings,
 - (a) if the Treasurer had appointed a bencher as chair of the committee, the chair of the committee shall leave the chair and the Treasurer shall then resume the chair; and
 - (b) Convocation shall resume as such.

Report to meeting

(6) When Convocation resumes after the benchers present at Convocation have met as a committee of the whole, the Treasurer or the chair of the committee may report to Convocation on the proceedings of the committee.

PART VI

COMMITTEES

GENERAL

Except where noted, Part VI repeats the provisions of current by-law 9 verbatim.

Powers of committees

107. (1) Unless expressly authorized to exercise a power, the exercise of a power by a standing committee is subject to the approval of Convocation.

Section 1 of current by-law 9 provides, “**unless a by-law expressly authorizes a standing committee to exercise a power**, the exercise of a power by a standing committee is subject to the approval of Convocation. The words “a by-law” are unnecessary because powers can only be exercised by Convocation unless Convocation specifically delegates them.

Powers of Convocation

(2) Convocation may exercise a power it has delegated to a standing committee notwithstanding the delegation.

Same

(3) Convocation may delegate to any other committee the exercise of a power notwithstanding that it has delegated the exercise of the power to a standing committee under this Part.

STANDING COMMITTEES

Establishment of standing committees

108. The following standing committees are hereby established:

1. Finance and Audit Committee.
2. Government and Public Affairs Committee.
3. Access to Justice Committee.
4. Litigation Committee.
5. Professional Development and Competence Committee.

The name of the Professional Development, Competence and Admissions Committee has been changed to reflect the elimination of the concept of “admission” from the *Law Society Act*. The name of the committee now corresponds to the name of the operational department. The Committee agrees with this change.

6. Professional Regulation Committee.
7. Equity and Aboriginal Issues Committee.
8. Emerging Issues Committee.
9. Inter-Jurisdictional Mobility Committee.

10. Tribunals Committee.

Lawyers Fund for Client Compensation Committee and its mandate will be moved to a by-law that will deal solely with the Compensation Fund.

Composition

109. (1) Each standing committee shall consist of at least six persons appointed by Convocation.

Benchers

(2) Each standing committee shall include at least five benchers.

Appointment of persons to standing committees

(3) Convocation may appoint persons to a standing committee at any time.

Treasurer's recommendations for appointment

(4) The Treasurer shall recommend to Convocation all persons for appointment to standing committees.

Treasurer

110. The Treasurer is a member of every standing committee.

Term of office

111. Subject to section 112, a person appointed to a standing committee under section 109 shall hold office until his or her successor is appointed.

Removal from office

112. Convocation may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

Chairs and vice-chairs

113. (1) For each standing committee, Convocation shall appoint,

- (a) one bencher, who is a member of the standing committee, as chair of the standing committee; and
- (b) one or more benchers, who are members of the standing committee, as vice-chairs of the standing committee.

Term of office

(2) Subject to subsection (3), the chair and vice-chairs of a standing committee hold office until their successors are appointed.

Appointment at pleasure

(3) The chair and vice-chairs of a standing committee hold office at the pleasure of Convocation.

Vacancy

(4) If the chair or a vice-chair of a standing committee for any reason is unable to act, the Treasurer may appoint another member of the standing committee as the chair or a vice-chair and, subject to subsection (3), that member shall hold office as chair or vice-chair until his or her successor is appointed.

Appointment under subs. (4) subject to ratification

(5) The appointment of a member of a standing committee as the chair or a vice-chair of the committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

Quorum

114. (1) Four members of a standing committee who are benchers constitute a quorum for the purposes of the transaction of business.

Meetings by telephone conference call, etc.

(2) Any meeting of a standing committee may be conducted by means of such telephone, electronic or other communication facilities as permit all person participating in the meeting to communicate with each other instantaneously and simultaneously.

The word “instantaneously” has been added.

Right to attend meeting

115. (1) Subject to subsection (2), no person other than a member of a standing committee may attend a meeting of the committee.

Same

(2) The following persons who are not members of a standing committee may attend a meeting of the committee:

1. A bencher.
2. An officer or employee of the Society.
3. Any person not mentioned in paragraph 1 or 2 with the permission of the chair of the committee.

Voting rights

116. Only members of a standing committee may vote at meetings of the committee.

FINANCE AND AUDIT COMMITTEE

Mandate

117. The mandate of the Finance and Audit Committee is,

- (a) to receive and review interim and annual financial statements for the Society and the Lawyers' Professional Indemnity Company;
- (b) to review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Society;

- (c) to recommend the appointment of the public accountant and to review the proposed audit scope, audit fees and the public accountant's management letter;
- (d) to review the plans and projections of the annual budget of the Society, including the Compensation Fund, or any special or extraordinary budget required for the purpose of the Society, including the Compensation Fund, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item; and
- (e) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

Administrator of pension plan

118. (1) The Finance and Audit Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society.

Powers

(2) The performance of any duty, or the exercise of any power, by the Finance and Audit Committee under any Act relevant to its role described in subsection (1) is not subject to the approval of Convocation.

Section 118 has been added to implement Convocation's decision of June 22, 2005 that the administrative oversight duties related to the Law Society's employee pension plan be delegated to the Finance and Audit Committee.

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Mandate

119. The mandate of the Professional Development and Competence Committee is to develop for Convocation's approval,

- (a) policy options on the following matters:
 - (i) the classes of licence for the practise of law in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence,
 - (ii) the licensing of persons to practise law in Ontario as barristers and solicitors, including qualifications and other requirements for licensing and the application for licensing,
 - (iii) the professional competence of persons licensed to practise law in Ontario as barristers and solicitors including,
 - (A) the requirements to be met by such persons with respect to continuing legal education, and

- (B) the review of the professional business of such persons; and
- (b) guidelines for professional competence applicable to persons licensed to practise law in Ontario as barristers and solicitors.

PROFESSIONAL REGULATION COMMITTEE

Mandate

120. The mandate of the Professional Regulation Committee is to develop for Convocation's approval policy options on all matters relating to,

- (a) the regulation of licensees in respect of their conduct and capacity;
- (b) policies and guidelines relating to sections 26.1 to 26.3 of the Act; and
- (c) rules of professional conduct applicable to persons licensed to practise law in Ontario as barristers and solicitors.

GOVERNMENT AND PUBLIC AFFAIRS COMMITTEE

Mandate

121. The mandate of the Government and Public Affairs Committee is,

- (a) to develop and maintain an effective working relationship with the Government of Ontario, the Attorney General for Ontario, the Ontario Public Service and all elected officials of the Ontario Legislature for the purpose of ensuring that the Society's policies and positions on matters affecting the interests of the public and having to do with the practice of law in Ontario or the provision of legal services in Ontario are understood before decisions affecting those matters are made;
- (b) to ensure that the Society's legislative agenda is effectively presented to the Government of Ontario for its consideration and approval;
- (c) to develop and maintain an effective working relationship with the Government of Canada and the Attorney General for Canada with respect to federal initiatives affecting matters within the Society's jurisdiction;
- (d) to develop, for Convocation's approval, a public affairs mandate for the Society, which identifies the constituencies that the Society should address and sets out the outcomes that should be achieved with each constituency; and
- (e) to develop a long range and comprehensive public affairs strategy consistent with the Society's public affairs mandate approved by Convocation.

EQUITY AND ABORIGINAL ISSUES COMMITTEE

Mandate

122. The mandate of the Equity and Aboriginal Issues Committee is,

- (a) to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Aboriginal peoples and French-speaking peoples; and
- (b) to consult with the Treasurer's Equity Advisory Group, Roti io' ta'-kier, AJEFO, women and equity-seeking groups in the development of such policy options.

EMERGING ISSUES COMMITTEE

123. The mandate of the Emerging Issues Committee is to monitor emerging policy issues affecting the Society, the practice of law in Ontario and the provision of legal services in Ontario, to undertake and direct research into such policy issues and to develop for Convocation's approval strategic plans and other proposals relating to such policy issues.

INTER-JURISDICTIONAL MOBILITY COMMITTEE

124. The mandate of the Inter-Jurisdictional Mobility Committee is to develop for Convocation's approval policy options on all matters relating to the inter-jurisdictional mobility of licensees.

ACCESS TO JUSTICE COMMITTEE

Mandate

125. The mandate of the Access to Justice Committee is to develop, for Convocation's approval, policy options for promoting access to justice throughout Ontario.

LITIGATION COMMITTEE

Mandate

126. The mandate of the Litigation Committee is,

- (a) to receive from the Chief Executive Officer notification of any new legal proceeding and progress reports on the conduct of all legal proceedings in which the Society is involved, for the purpose of communicating the reports to Convocation;
- (b) to provide assistance and guidance to the Chief Executive Officer in the conduct of legal proceedings that are outside the usual course of the Society's business; and
- (c) to consider requests made for the Society or the Federation of Law Societies of Canada to intervene in legal proceedings and to recommend to Convocation, or in urgent circumstances to decide, whether the Society should intervene in a legal proceeding or support the Federation intervening in a legal proceeding.

TRIBUNALS COMMITTEE

Mandate

127. (1) The mandate of the Tribunals Committee is to develop for Convocation's approval policy options on all matters relating to the operation and administration of the Hearing Panel and the Appeal Panel, including the development or preparation of practice directions, an adjudicator code of conduct, publication protocols for tribunal decisions and adjudicator professional development.

Rules of practice and procedure

(2) Subject to the approval of Convocation, the Tribunals Committee may prepare rules of practice and procedure.

PART VII

PARALEGAL STANDING COMMITTEE

INTERPRETATION

Part VII repeats the provisions of current by-law 9.1 verbatim approved by Convocation on November 23, 2006.

Interpretation: "Committee"

128. In this Part, "Committee" means the Paralegal Standing Committee.

ESTABLISHMENT OF COMMITTEE

Establishment of Committee

129. There is hereby established a standing committee to be known as the Paralegal Standing Committee in English and Comité permanent des parajuristes in French.

JURISDICTION OF COMMITTEE

Jurisdiction of Committee

130. The Committee is responsible for developing, for Convocation's approval, policy options on the following matters:

1. The classes of licence for the provision of legal services in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence.
2. The licensing of persons to provide legal services in Ontario, including the qualifications and other requirements for licensing and the application for licensing.
3. The regulation of persons licensed to provide legal services in Ontario in respect of,
 - i. the handling of money and other property, and
 - ii. the keeping of financial records.

4. The rules of professional conduct applicable to persons licensed to provide legal services in Ontario.
5. The requirements to be met by persons licensed to provide legal services in Ontario with respect to indemnity for professional liability.
6. The professional competence of persons licensed to provide legal services in Ontario, including,
 - i. the requirements to be met by such persons with respect to continuing legal education, and
 - ii. the review of the professional business of such persons.
7. Guidelines for professional competence applicable to persons licensed to provide legal services in Ontario.
8. The provision of legal services through professional corporations.
9. The provision of information to the Society, and the filing of certificates, reports and other documents, relating to the Society's functions under the Act, by persons licensed to provide legal services in Ontario.
10. The election of five persons who are licensed to provide legal services in Ontario as members of the Committee.
11. The election of two persons who are licensed to provide legal services in Ontario as benchers.
12. The appointment of the chair of the Committee.

OPERATION OF COMMITTEE

Term of office of Committee members appointed by Convocation

131. (1) Subject to subsection (2), a person who is appointed as a member of the Committee by Convocation shall continue to be a member of the Committee until his or her successor is appointed.

Removal from Committee

(2) Convocation may remove from the Committee any person that it has appointed as a member of the Committee if the person fails to attend three consecutive meetings of the Committee.

Quorum

132. Four members of the Committee constitute a quorum for the transaction of business.

Meetings by telephone conference call, *etc.*

133. The Committee may meet to transact business by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Right to attend meeting

134. (1) Subject to subsection (2), no person other than a member of the Committee may attend a meeting of the Committee.

Same

(2) The following persons who are not members of the Committee may attend a meeting of the Committee:

1. A bencher.
2. An officer or employee of the Society.
3. A person not mentioned in paragraph 1 or 2 with the permission of the Committee.

Voting rights

135. Only members of the Committee may vote at meetings of the Committee.

GENERAL

Non-application of Part VI

136. The provisions of Part VI do not apply with respect to the Committee.

PART VIII

COMMENCEMENT

Commencement

137. Part VI comes into force on May 25, 2007.

This section avoids the necessity of have transitional provisions for all the standing committees pending the bencher election scheduled to take place on April 30, 2007.

BY-LAW 4

LICENSING

Convocation approved Parts I and II (sections 1 – 24), and Part IV (section 30) of this by-law, in principle, in March 2007.

Part III incorporates the provisions of current by-law 14 [Resignation].

Part V is new policy that will be presented to Convocation by the Paralegal Standing Committee in April.

Part VI is not new policy, but has not previously been articulated in a by-law.

Part VII [Inter-Provincial Practice of Law] incorporates the provisions of current by-law 33 [Inter-Provincial Practice of Law].

PART I

CLASSES OF LICENCE

LICENCE TO PRACTISE LAW

Classes of licence

1. (1) There shall be the following classes of licence to practise law in Ontario as a barrister and solicitor:

1. Class L1.
2. Class L2.

Transition

Interpretation

(2) In subsections (3) and (4),

“member” means a member as defined in section 1 of the Act as it read immediately before May 1, 2007;

“temporary member” means a person admitted as a temporary member of the Society under section 28.1 of the Act as it read immediately before May 1, 2007.

Member other than temporary member

(3) Every person who is a member, other than a temporary member, immediately before May 1, 2007 is deemed, on May 1, 2007, to hold a Class L1 licence.

Temporary member

(4) Every person who is a temporary member immediately before May 1, 2007 is deemed, on May 1, 2007, to hold a Class L2 licence.

Scope of activities

Class L1

2. (1) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L1 licence is entitled to practise law in Ontario as a barrister and solicitor.

Class L2

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L2 licence is entitled to practise law in Ontario as a barrister and solicitor in the employ of the Attorney General for Ontario or, if appointed under the *Crown Attorneys Act*, as a Crown Attorney or as an assistant Crown Attorney.

Terms, *etc.*

Application of section

3. (1) This section applies to licensees who hold a Class L1 licence.

Over 65 years

(2) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 5(1) of By-Law 5 is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is restricted to practising law in Ontario as a barrister and solicitor on a *pro bono* basis through,
 - i. a program registered with Pro Bono Law Ontario, or
 - ii. a clinic, within the meaning of the *Legal Aid Services Act, 1998*, funded by Legal Aid Ontario, that is approved by Pro Bono Law Ontario.

Incapacity

(3) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 5(1) of By-Law 5 is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor.

Exempt from payment of insurance premium levies

(4) A licensee who is required to pay the annual fee, or who would be required to pay the annual fee but for being granted an exemption from payment of the annual fee on the grounds that he or she has been entitled to practise law in Ontario as a barrister and solicitor for a period of fifty years, and who is exempt from the payment of insurance premium levies is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a *pro bono* basis for or on behalf of non-profit organizations.

Authorized to practise law outside Ontario

(5) A licensee who is authorized to practise law in a province or territory of Canada outside Ontario is subject to any term, condition, limitation or restriction imposed on the licensee's authority to practise law in that province or territory.

Duration of terms, *etc.*

(6) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 3.1.

Cancellation of terms, *etc.*

4. (1) A licensee who is subject to terms, conditions, limitations and restrictions under section 3 may apply to the Society to have the terms, conditions, limitations and restrictions cancelled and the Society may,

- (a) cancel the terms, conditions, limitations and restrictions;
- (b) require the licensee to complete education and obtain experience that the Society determines is necessary to ensure that the licensee has the skills necessary to practise law in Ontario as a barrister and solicitor without any terms, conditions, limitations and restrictions, and, if the licensee completes the education and obtains the experience, cancel the terms, conditions, limitations and restrictions; or
- (c) cancel the terms, conditions, limitations and restrictions subject to the following terms, conditions, limitations and restrictions:
 - (i) the licensee must practise law only,
 - (A) as an employee of a person approved by the Society,
 - (B) as an employee or partner, and under the supervision, of a licensee who holds a Class L1 licence who is approved by the Society, or
 - (C) under the supervision of a licensee who holds a Class L1 licence who is approved by the Society,
 - (ii) the licensee must, within a time specified by the Society, complete education and obtain experience that the Society determines is necessary to ensure that the licensee has the skills necessary to practise law in Ontario as a barrister and solicitor without any terms, conditions, limitations and restrictions.

Breach of terms, *etc.* imposed under subs. (1)

(2) If a licensee fails to comply with a term, condition, limitation or restriction imposed on the licensee under clause (1) (c), the cancellation of terms, conditions, limitations and restrictions under clause (1) (c) is deemed thereafter to be void.

Information to be provided by licensee

(3) A licensee shall provide to the Society all documents and information, as may be required by the Society, relating to this section.

LICENCE TO PROVIDE LEGAL SERVICES

Classes of licence

5. There shall be the following classes of licence to provide legal services in Ontario:
 1. Class P1.

Scope of activities

Class P1

Interpretation

6. (1) In this section, unless the context requires otherwise,

“claim” means a claim for statutory accident benefits within the meaning of the *Insurance Act*, excluding a claim of an individual who has or appears to have a catastrophic impairment within the meaning of the Statutory Accident Benefits Schedule;

“party” means a party to a proceeding;

“proceeding” means a proceeding or intended proceeding,

- (a) in the Small Claims Court,
- (b) in the Ontario Court of Justice under the *Provincial Offences Act*,
- (c) in a summary conviction court under the *Criminal Code* (Canada),
- (d) before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, or
- (e) before a person dealing with a claim or a matter related to a claim, including a mediator, a person performing an evaluation, an arbitrator or the Director acting under section 280, 280.1, 282 or 283 or 284, respectively, of the *Insurance Act*,

“Statutory Accident Benefits Schedule” means the Statutory Accident Benefits Schedule within the meaning of the *Insurance Act*.

Activities authorized

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class P1 licence is authorized to do any of the following:

1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
2. Represent a party before,
 - i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,
 - ii. in the case of a proceeding under the *Provincial Offences Act*, before the Ontario Court of Justice,
 - iii. in the case of a proceeding under the *Criminal Code*, before a summary conviction court,
 - iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and
 - v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.
3. Anything mentioned in subsection 1 (7) of the Act, provided the activity is required by the rules of procedure governing a proceeding.
4. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding.
5. Negotiate a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
6. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document that affects a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

PART II

ISSUANCE OF LICENCE

INTERPRETATION

Interpretation

7. In this Part,

“accredited law school” means a law school in Canada that is accredited by the Society;

“accredited program” means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

“licensing cycle” means,

- (a) for a person registering with the Society to be eligible to take a licensing examination or to enter into articles of clerkship that is a requirement for a Class L1 licence, a period running from May 1 in a year to April 30 in the following year; and
- (b) for a person registering with the Society to be eligible to take a licensing examination that is a requirement for a Class P1 licence, a period running from June 1 in a year to May 31 in the following year.

GENERAL REQUIREMENTS

Requirements for issuance of any licence

- 8. (1) The following are the requirements for the issuance of any licence under the Act:
 - 1. The applicant must submit to the Society a completed application, for the class of licence for which application is made, in a form provided by the Society.
 - 2. The applicant must pay the applicable fees, including the applicable application fee and annual fee.
 - 3. The applicant must be of good character.
 - 4. The applicant must take the applicable oath.
 - 5. The applicant must provide to the Society all documents and information, as may be required by the Society, relating to any licensing requirement.

Misrepresentations

- (2) An applicant who makes any false or misleading representation or declaration on or in connection with an application for a licence, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

LICENCE TO PRACTISE LAW

Requirements for issuance of Class L1 licence

- 9. (1) The following are the requirements for the issuance of a Class L1 licence:
 - 1. The applicant must have one of the following:
 - i. A bachelor of laws degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school.

- ii. A certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Law Deans.
- 2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.
- 3. The applicant must have successfully completed a skills and professional responsibility program conducted by the Society not more than three years prior to the application for licensing.
- 4. The applicant must have,
 - i. successfully completed service under articles of clerkship for a period of time, not to exceed ten months, as determined by the Society, and
 - ii. if service under articles of clerkship was completed more than three years prior to the application for licensing, successfully completed the additional education and obtained the additional experience that the Society determines is necessary to ensure that the applicant is familiar with current law and practice.

Exemption from examination requirement

- (2) An applicant is exempt from the requirement mentioned in paragraph 2 of subsection (1) if,
 - (a) the applicant,
 - (i) is authorized to practise law in a province or territory of Canada outside Ontario where the governing body of the legal profession would authorize a licensee holding a Class L1 licence to practise law in that province or territory without requiring the licensee to successfully complete an examination,
 - (ii) reviews the materials that the Society, acting reasonably, determines are necessary to ensure that the applicant is familiar with current law and practice in Ontario, and
 - (iii) certifies that he or she has reviewed and understands the materials mentioned in sub-clause (ii), in a form provided by the Society;
 - (b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position; or
 - (c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position.

Exemption from articling and skills and professional responsibility program requirement

(3) An applicant is exempt from the requirements mentioned in paragraphs 3 and 4 of subsection (1) if,

- (a) the applicant is authorized to practise law in a province or territory of Canada outside Ontario;
- (b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position; or
- (c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position.

Requirements for issuance of Class L2

10. The following are the requirements for the issuance of a Class L2:

- 1. The applicant must be authorized to practise law outside Ontario
- 2. The Attorney General for Ontario must request the Society to issue the licence to the applicant.

Call to the bar and admission and enrolment as solicitor

11. A person who meets the requirements for the issuance of a Class L1 licence mentioned in section 9 qualifies for,

- (a) call to the bar; and
- (b) admission and enrolment as a solicitor of the Court of Appeal for Ontario and of the Superior Court of Justice.

LICENCE TO PROVIDE LEGAL SERVICES

Requirements for issuance of Class P1 licence: application received prior to November 1, 2007

12. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence prior to November 1, 2007:

- 1. The applicant must have done any of the following:
 - i. Provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years prior to May 1, 2007.
 - ii. Obtained education, in a legal services program in Ontario, that the Society determines is equivalent to at least nine courses in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities and provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, in the five years prior to May 1, 2007, that include ten instances of representing a party before the Small Claims Court, before the Ontario Court of Justice, before

a summary conviction court, before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament or before a person dealing with a claim, within the meaning of section 6, or a matter related to a claim when the Small Claims Court, the Ontario Court of Justice, the summary conviction court the tribunal or the person was hearing the merits of a proceeding.

- iii. Graduated, within the three years prior to the application for licensing, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
 - A. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
 - B. a field placement of a least 120 hours.
- 2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.
- 3. The applicant must provide written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant has met the experience requirement mentioned in paragraph 1.

Interpretation: "full-time basis"

(2) For the purposes of this section, an applicant provides legal services on a full-time basis if the applicant provides legal services, on the average, 30 hours per week.

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

13. The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:

- 1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
 - i. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 (Providing Legal Services) licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
 - ii. a field placement of a least 120 hours.
- 2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

14. The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

LICENSING EXAMINATIONS

General requirements

15. (1) A person who meets the following requirements is entitled to take a licensing examination set by the Society:

1. The person must register with the Society, prior to the day of the examination, by the time specified by the Society.
2. The person must submit to the Society a completed examination application, for the examination that the person wishes to take, in a form provided by the Society, prior to the day of the examination, by the time specified by the Society.
3. The person must pay the applicable examination fee, prior to the day of the examination, by the time specified by the Society.
4. The person must provide to the Society all documents and information, as may be required by the Society, relating to any requirement for taking an examination.
5. The person must not be ineligible to take the examination under this By-Law.

Misrepresentations

(2) A person who makes any false or misleading representation or declaration on or in connection with an examination application, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for taking a licensing examination and, subject to subsection (3), the successful completion of any licensing examination taken by the person is deemed thereafter to be void.

Deferred voiding of examination result

(3) Where the false or misleading representation mentioned in subsection (2) relates to meeting the requirement of paragraph 1 of subsection 9 (1) or paragraph 1 of section 14 and was made by the person in good faith, the person is deemed not to meet, and not to have met, the requirements for taking a licensing examination, and the successful completion of any

licensing examination taken by the person is deemed to be void, if the person does not meet the requirement of paragraph 1 of subsection 9 (1) or paragraph 1 of section 14, as the case may be, by the end of the licensing cycle in which the person registered with the Society to be eligible to take the applicable licensing examination.

Licensing examination for Class L1 licence

16. (1) A person who meets the requirement of paragraph 1 of subsection 9 (1) is entitled to take a licensing examination that is a requirement for the issuance of a Class L1 licence.

Licensing examination for Class P1 licence

(2) A person is entitled to take a licensing examination that is a requirement for a Class P1 licence if,

- (a) in the case of an applicant who applies for a Class P1 licence prior to November 1, 2007, the person meets the requirements of paragraphs 1 and 3 of subsection 12 (1);
- (b) in the case of an applicant who applies for a Class P1 after October 31, 2007 and prior to July 1, 2010, the person meets the requirement of paragraph 1 of section 13; and
- (c) in the case of an applicant who applies for a Class P1 licence after June 30, 2010, the person meets the requirement of paragraph 1 of section 14.

Failing licensing examination

(3) A person who qualified to take a licensing examination that is a requirement for a Class P1 licence by meeting the requirement of subclause i or ii of paragraph 1 of subsection 12 (1) and failed the examination on three occasions may no longer qualify to take the examination by meeting the requirement of subclause i or ii of paragraph 1 of subsection 12 (1).

ARTICLES OF CLERKSHIP

Requirements

17. (1) A person who meets the following requirements is entitled to enter into service under articles of clerkship that is a requirement for the issuance of a Class L1 licence:

- 1. The person must register with the Society.
- 2. The person must meet the requirement of paragraph 1 of subsection 9 (1).
- 3. The person must successfully complete a skills and professional responsibility program conducted by the Society not more than three years prior to entering into service under articles or clerkship.

4. The person must provide to the Society all documents and information, as may be required by the Society, relating to any requirement for entering into service under articles of clerkship.

Exemption from skills and professional responsibility program requirement

(2) The Society may, on such terms as it considers appropriate, exempt a person from meeting the requirement mentioned in paragraph 3 of subsection (1), and, if a person is so exempted by the Society, the person is exempt from the requirement for the purposes of this section.

Exemption and service void

(3) If a person who is exempt, under subsection (2), from the requirement mentioned in paragraph 3 of subsection (1) fails to comply with a term of his or her exemption, the person is deemed thereafter not to be, and not to have been, exempt from the requirement and any service under articles of clerkship is deemed thereafter to be void.

Student

18. (1) A person who has entered into service under articles of clerkship is a student.

Application of Act, *etc.* to students

- (2) The following apply, with necessary modifications, to a student:
 1. The following sections of the Act:
 - i. Sections 33 to 40.
 - ii. Section 45.
 - iii. Section 49.3.
 - iv. Sections 49.8 to 49.13.
 - v. Sections 49.20 to 49.43.
 2. Ontario Regulation 30/99, made under the Act.
 3. Sections 2 and 3 of By-Law 8 [Reporting and Filing Requirements].
 4. Parts I, II, III and VI of By-Law 11 [Regulation of Conduct, Capacity and Professional Competence].
 4. The rules of practice and procedure.

REGISTRATION

General requirements

19. (1) A person who meets the following requirements is entitled to be registered with the Society:

1. The person must submit to the Society a completed registration form, as provided by the Society.
2. The person must pay the applicable registration fee.
3. The person must provide to the Society all documents and information, as may be required by the Society, relating to any registration requirement.

Misrepresentations

(2) A person who makes any false or misleading representation or declaration on or in connection with registration, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for registration, the person's registration is deemed thereafter to be void, the successful completion of any licensing examination taken by the person is deemed thereafter to be void, the successful completion of any skills and responsibility program conducted by the Society taken by the person is deemed thereafter to be void and any service under articles of clerkship is deemed thereafter to be void.

Registration into licensing cycle

20. (1) A person who registers with the Society shall be registered into a specific licensing cycle.

Transition

Student-at-law in Bar Admission Course

(2) Every person who is, immediately before May 1, 2007, a student-at-law in the Bar Admission Course under By-Law 12 as it read immediately before May 1, 2007, is deemed, on May 1, 2007, to be registered with the Society and to have been registered into the licensing cycle that corresponds to the academic year in which the person was admitted to the Course.

Availability of name of registrant to public

21. The Society may make available for public inspection the names of its registrants at a given point in time.

OATH

Applicant for Class L1 or Class L2 licence

22. An applicant for a Class L1 or Class L2 licence shall take the applicable oath as part of the applicant's call to the bar and admission and enrolment as a solicitor of the Court of Appeal for Ontario and of the Superior Court of Justice.

Required oath: Class L1 licence

23. (1) The required oath for an applicant for the issuance of a Class LI licence under the Act is as follows:

I swear or affirm that I will conduct all matters and proceedings diligently and faithfully and to the best of my knowledge and ability. I will not seek to destroy any person's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice any person. In all things, I will conduct myself truly, honestly and with integrity. I will abide by the standards and rules governing the practice of law in the Province of Ontario. I will seek to improve the administration of justice. I will uphold the rule of law and I will uphold the interests, rights and freedoms of all persons according to the constitution and the laws of Canada and of the Province of Ontario.

Required oath: Class P1 licence

- (2) The required oath for an applicant for the issuance of a Class PI licence under the Act is as follows:

I swear or affirm that I will conduct all matters and proceedings diligently and faithfully and to the best of my knowledge and ability. I will not seek to destroy any person's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice any person. In all things, I will conduct myself truly, honestly and with integrity. I will abide by the standards and rules governing the provision of legal services in the Province of Ontario. I will seek to improve the administration of justice. I will uphold the rule of law and I will uphold the interests, rights and freedoms of all persons according to the constitution and the laws of Canada and of the Province of Ontario.

Optional oath: oath of allegiance

24. An applicant for the issuance of a licence under the Act may take the following oath:

I swear or affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), Her heirs and successors according to law.

PART III

SURRENDER OF LICENCE

SURRENDER OF LICENCE TO PRACTISE LAW

Procedure for surrendering licence

1. (1) Subject to section 27, a licensee who wishes to surrender his or her licence to practise law in Ontario as a barrister and solicitor shall apply in writing to the Society to do so.

Statutory declaration or affidavit

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

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

Same

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

Publication of notice of intention to surrender licence

26. (1) Subject to subsection (2), a licensee who wishes to surrender his or her licence to practise law in Ontario as a barrister and solicitor shall, at least thirty days before the day on which he or she applies to the Society under subsection 25 (1), publish in the Ontario Reports a notice of intention to surrender a licence.

Exemption from requirement to publish notice

(2) Upon the written application of the licensee, the Society may exempt the licensee from the requirement to publish a notice of intention to surrender a licence.

Notice of Intention to Surrender Licence

(3) The notice of intention to surrender a licence which the licensee is required to publish under subsection (1) shall be in Form 4A [Notice of Intention to Surrender Licence].

Proof of publication of notice of intention to surrender licence

(4) Unless the licensee is exempted from the requirement to publish a notice of intention to surrender a licence, an application under subsection 25 (1) shall be accompanied by proof of publication, in accordance with subsection (1), of a notice of intention to surrender a licence.

Application by licensee's representative

27. (1) The Society may permit any person on behalf of the licensee to make an application under subsection 25 (1) if the Society is satisfied that the licensee for any reason is unable to make the application himself or herself.

Application of subss. 25 (2) and (3) and ss. 26, 28 and 29

(2) Subsections 25 (2) and (3) and sections 26, 28 and 29 apply, with necessary modifications, to an application made under subsection 25 (1) by a person on behalf of the licensee.

Society to consider application

28. (1) Subject to subsection (2), the Society shall consider every application made under subsection 25 (1) in respect of which the requirements set out in subsections 25 (2), 25 (3) and 26 (3) have been complied with, and the Society may consider an application made under subsection 25 (1) in respect of which the requirements set out in subsection 25 (2), 25 (3) and 26 (3) have not been complied with, and,

- (a) the Society shall accept an application if it is satisfied,
 - (i) that all money or property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the applicant has not been responsible for any money or property held in trust,
 - (ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other licensee licensed to practise law in Ontario as a barrister and solicitor, or, alternatively, that the applicant has not practised law in Ontario,
 - (iii) that there are no claims against the applicant in his or her professional capacity or in respect of his or her practice of law in Ontario,
 - (iv) that the applicant has paid all insurance premium levies which he or she is required to pay and has filed all certificates, reports and other documents which he or she is required to file under any policy for indemnity for professional liability;
 - (v) that the applicant is no longer the subject of or has fully complied with all terms and conditions of any order made under Part II of the Act, any order made under Part II of the Act as it was before May 1, 2007, any order, other than an order cancelling membership, made under section 34 of the Act as that section read before February 1, 1999 and any order made

under section 35 or 36 of the Act as those sections read before February 1, 1999; and

- (vi) that the applicant if not exempted from the requirement to publish a notice of intention to surrender a licence has complied with subsection 2 (1); or
- (b) subject to subsection (2), the Society shall reject an application if it is not satisfied of a matter mentioned in clause (a).

Acceptance of application

(2) The Society may accept an application if it is not satisfied of the matter mentioned in subclause (1) (a) (iv) or (v) but is satisfied of the matters mentioned in subclauses (1) (a) (i), (ii), (iii) and (vi).

Society not to consider application

(3) The Society shall not consider an application made under subsection 25 (1) of this By-Law if the applicant is,

- (a) the subject of an audit, investigation, search or seizure by the Society; or
- (b) a party to a proceeding under Part II of the Act.

Documents, explanations, releases, *etc.*

(4) For the purposes of assisting the Society to consider the application, the applicant shall,

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

Rejection of application

29. If the Society rejects an application under clause 28 (1) (b), the Society may specify terms and conditions to be complied with by the applicant as a condition of his or her application being accepted, and if the applicant complies with the terms and conditions to the satisfaction of the Society, the Society shall accept the application.

PART IV NOT PRACTISING LAW OR PROVIDING LEGAL SERVICES

Aboriginal Courtwork Program

30. For the purposes of the Act, a person who delivers courtworker services to Aboriginal people through an Aboriginal delivery agency that has contracted with the Government of Ontario or the Government of Canada to deliver courtworker services as part of the Aboriginal Courtwork Program is not practising law or providing legal services.

PART V
PROVIDING LEGAL SERVICES WITHOUT A LICENCE

PART VI
PRACTISING LAW WITHOUT A LICENCE

Practising law without a licence

33. The following may, without a licence, practise law in Ontario:

1. An individual who,
 - i. is authorized under Part VII of this By-Law to practise law in Ontario, and
 - ii. practises law in Ontario in accordance and in compliance with Part VII of this By-Law.

PART VII
INTER-PROVINCIAL PRACTICE OF LAW

GENERAL

Insurance and defalcation coverage

34. (1) No person shall practise law in Ontario under this Part unless the person,
- (a) has professional liability insurance for the person's practice of law in Ontario which is reasonably comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence; and
 - (b) has coverage for defalcations, other than the National Excess Plan, which specifically extends to the person's practice of law in Ontario and is at least equivalent to the coverage available to a licensee who holds a Class L1 licence.

Insurance: exemption

(2) A person who is entitled or permitted to practise law in Ontario under section 41 is exempt from the requirement contained in clause (1) (a) if the person meets any of the requirements for exemption from payment of insurance premium levies specified for licensees who hold a Class L1 licence in By-Law 6.

Interpretation: “National Excess Plan”

(3) In clause (1) (b), “National Excess Plan” means the plan established under the Inter-Jurisdictional Practice Protocol for the purpose of compensating any person who sustains a financial loss arising from the misappropriation of money or other property by a person authorized to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law.

Interpretation: “Inter-Jurisdictional Practice Protocol”

(4) In subsection (3), “Inter-Jurisdictional Practice Protocol” means the agreement, as amended from time to time, entered into in and between 1994 and 1996 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, the Barreau du Québec, the Chambre des Notaires du Québec, The Law Society of New Brunswick, the Law Society of Prince Edward Island, the Nova Scotia Barristers Society and the Law Society of Newfoundland in respect of the inter-provincial practice of law.

Application of Act, *etc.*

35. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the rules of professional conduct for licensees who hold a Class L1 licence apply, with necessary modifications, to a person who practises law in Ontario under this Part, other than a person who practises law in Ontario under subsection 41 (3) or (5).

Conflict

(2) In the event of a conflict between the provisions of this Part and the provisions of any other by-law, the provisions of this Part prevail.

Proof of Compliance

36. (1) A person who is not a licensee and who purports to practise law in Ontario under this Part shall, upon the request of the Society and by not later than the day specified by the Society, provide proof to the satisfaction of the Society that he or she is in compliance with this Part.

Deemed failure to comply

(2) If the person fails to provide proof to the Society by the day specified by the Society, the person shall be deemed not to be in compliance with this Part.

Disclosure of information

37. (1) If a licensee is the subject of an investigation or a proceeding at the instance of the governing body of the legal profession in a province or territory of Canada outside Ontario arising from the licensee's inter-provincial practice of law in the province or territory, the Society may, at the request of the governing body, provide to it such information in respect of the licensee as is reasonable for the Society to provide in the circumstances.

Same

(2) The Society may provide to the governing body of the legal profession in a province or territory of Canada outside Ontario information in respect of a licensee necessary to permit the governing body to determine if the licensee qualifies to practise law on an occasional basis, or on more than an occasional but less than a regular basis, in the province or territory.

PRIOR PERMISSION TO PRACTISE LAW ON AN OCCASIONAL BASIS

Application of section

38. (1) This section applies to a person if the prior permission of the Society is required for the person to practise law in Ontario on an occasional basis.

Application for permission

(2) A person who wishes permission to practise law in Ontario on an occasional basis shall apply to the Society.

Application form

(3) An application under subsection (2) shall be contained in a form provided by the Society.

Documents, explanations, releases, *etc.*

(4) For the purposes of assisting the Society to consider an application under subsection (2), an applicant shall provide,

- (a) to the Society, such documents and explanations as may be required; and
- (b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Application to be considered by Society

(5) Every application under subsection (2) shall be considered by the Society and,

(a) the Society shall notify the applicant in writing that he or she may practise law in Ontario on an occasional basis if the Society is satisfied that the person has met the requirements, if any, for permission to practise law in Ontario on an occasional basis or that it would not be contrary to the public interest to permit the applicant to practise law in Ontario on an occasional basis; or

(b) the Society shall notify the applicant in writing that he or she may not practise law in Ontario on an occasional basis if the Society is not satisfied that the applicant has met the requirements, if any, for permission to practise law in Ontario on an occasional basis and that it would not be contrary to the public interest to permit the applicant to practise law in Ontario on an occasional basis.

Terms and conditions

(6) Permission to practise law in Ontario on an occasional basis granted to a person by the Society may include such terms and conditions as the Society considers appropriate.

Application to committee of benchers

(7) If the Society refuses to permit a person to practise law in Ontario on an occasional basis or includes terms and conditions in the permission, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the person may practise law in Ontario on an occasional basis or of whether the terms and conditions are appropriate.

Time for application

(8) An application under subsection (7) shall be commenced by the applicant notifying the Society in writing of the application within thirty days after the day the applicant receives notice of the Society's refusal to permit the applicant to practise law in Ontario on an occasional basis.

Parties

(9) The parties to an application under subsection (7) are the applicant and the Society.

Quorum

(10) An application under subsection (7) shall be considered and determined by at least three members of the committee of benchers.

Procedure

(11) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (7) as if the consideration of the application were the hearing of an application for a licence under section 27 of the Act.

Same

(12) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee of benchers of an application under subsection (7).

Decision on application

(13) After considering an application under subsection (7), the committee of benchers shall determine that the applicant may practise law in Ontario on an occasional basis or may not practise law in Ontario on an occasional basis.

Terms and conditions

(14) Permission to practise law in Ontario on an occasional basis granted to a person by the committee of benchers may include such terms and conditions as the committee of benchers considers appropriate.

Decision final

(15) The decision of the committee of benchers on an application under subsection (7) is final.

Duration of permission

(16) Permission to practise law in Ontario on an occasional basis granted to a person remains in effect for one year after the day on which it comes into effect.

Permission withdrawn

(17) Permission to practise law in Ontario on an occasional basis granted to a person is automatically withdrawn immediately the person,

- (a) does not meet the requirements, if any, for permission to practise law in Ontario on an occasional basis;
- (b) ceases to have authority to practise law in a province or territory of Canada outside Ontario on the basis of which authority the person was granted permission to practise law in Ontario on an occasional basis;
- (c) does not comply with clause 34 (1) (a);
- (d) is the subject of an order made against the person by any tribunal of the governing body of the legal profession in any province and territory of Canada in which the person is authorized to practise law,
 - (i) revoking the person's authorization to practise law, or
 - (ii) suspending the person's authorization to practise law; or
- (e) practises law in Ontario on more than an occasional basis, unless permitted to do so under this Part.

Permit fee

(18) A person permitted to practise law in Ontario on an occasional basis shall pay a permit fee.

OCCASIONAL PRACTICE OF LAW: 100 DAYS

Application of ss 40 to 43

39. Sections 40 to 43 apply to a person if,

- (a) the person is authorized to practise law in a province or territory of Canada outside Ontario; and
- (b) the governing body of the legal profession in the province or territory of Canada outside Ontario in which the person is authorized to practise law has provisions respecting the practice of law on an occasional basis, or on more than an occasional but less than a regular basis, in that province or territory by a licensee that correspond to the provisions contained in sections 34, 35, 38, 40, 41, 42 and 43.

Definition: “day”

40. (1) In this section and in sections 41 to 42, “day” means a calendar day or part of a calendar day.

Interpretation: practice of law

- (2) In this section and in sections 41 to 43, a person practises law in Ontario if the person,
 - (a) performs professional services for others in the capacity of a barrister or solicitor relying on, or with respect to, the laws of Ontario or the laws of Canada applicable in Ontario, or
 - (b) gives legal advice to others with respect to the laws of Ontario or the laws of Canada applicable in Ontario.

Occasional practice of law: excluded activities

(3) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada shall not be included in calculating the maximum number of days a person is entitled or permitted to practise law in Ontario under section 41 or 42.

Interpretation: economic nexus

- (4) In section 41, subject to subsection (5), a person establishes an economic nexus with Ontario if the person,
 - (a) practises law in Ontario for more than the maximum number of days the person is entitled or permitted to practise law in Ontario under section 41;
 - (b) opens an office in Ontario from which to practise law;
 - (c) opens or operates a trust account at a financial institution located in Ontario;
 - (d) receives money in trust for a client other than as permitted under section 43;

- (e) holds himself or herself out as willing to accept new clients in Ontario;
- (f) becomes a resident in Ontario; or
- (g) acts in any other manner inconsistent with practising law in Ontario only on an occasional basis.

Same

(5) A person does not establish an economic nexus with Ontario only if the person practises law in Ontario from an office in Ontario that is affiliated with a law office in a province or territory of Canada outside Ontario in which the person is authorized to practise law.

Interpretation: occasional practice of law

41. (1) In this section, a person practises law on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

Prior permission not required

(2) A person who is not a licensee may, without the prior permission of the Society, practise law in Ontario on an occasional basis if, and so long as, the person,

- (a) is authorized to practise law in a province or territory of Canada outside Ontario;
- (b) is not the subject of a criminal proceeding in any jurisdiction;
- (c) is not the subject of a conduct, capacity or competence proceeding in any jurisdiction;
- (d) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each jurisdiction in which the person is or was authorized to practise law,
 - (i) revoking the person's authorization to practise law, or
 - (ii) permitting the person to surrender his or her authorization to practise law;
- (e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each jurisdiction in which the person is authorized to practise law suspending or limiting the person's authorization to practise law, other than for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;
- (f) has no terms, conditions, limitations or restrictions on the person's authorization to practise law in each jurisdiction in which the person is authorized to practise law; and
- (g) does not establish an economic nexus with Ontario.

Same

(3) A person who is not a licensee, if and so long as the person is authorized to practise law in a province or territory of Canada outside Ontario and does not establish an economic nexus with Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

- (a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or
- (b) as counsel to a court or tribunal mentioned in clause (a).

Practising on more than an occasional basis

(4) A person who is entitled under subsection (2) to practise law in Ontario on an occasional basis may practise law in Ontario on more than an occasional basis, as permitted by the Society, if, and so long as, the person meets the requirements mentioned in subsection (2).

Same

(5) A person who is entitled under subsection (3) to practise law in Ontario on an occasional basis may practise law in Ontario on more than an occasional basis, as permitted by the Society, if, and so long as, the person is authorized to practise law in a province or territory of Canada outside Ontario and does not establish an economic nexus with Ontario.

Interpretation: occasional practice of law

42. (1) In this section, a person practises law on an occasional basis if, during the year during which the person is permitted to practise law in Ontario on an occasional basis, the person practises law in Ontario for not more than 100 days.

Permission to practise law on an occasional basis

(2) A person who is not a licensee and is not entitled to practise law in Ontario under section 41 may, with the prior permission of the Society, practise law in Ontario on an occasional basis.

Handling of money

43. A person who is entitled or permitted under section 41 or 42 to practise law in Ontario may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

- (a) the person pays the money into a trust account at a financial institution located in a province or territory of Canada outside Ontario in which the person is authorized to practise law; or
- (b) the person pays the money into a trust account that is kept in the name of and operated by a licensee in accordance with By-Law 9 and the money is handled only by the licensee in accordance with By-Law 9.

OCCASIONAL PRACTICE OF LAW: 12 – 10 – 20

Application of ss 45 to 50

44. Sections 45 to 50 apply to a person if sections 40 to 43 do not apply to the person.

Interpretation: practice of law

45. (1) In this section and in sections 46 to 50, a person practises law if the person performs professional services for others in the capacity of a barrister or solicitor or if the person gives legal advice to others with respect to the laws of Ontario or Canada.

Interpretation: occasional practice of law

(2) In sections 46 to 48, a person practises law on an occasional basis if, during any period of twelve consecutive months, the person,

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

Occasional practice of law: excluded activities

(3) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada or a tribunal established under an Act of Parliament or the Legislature in Ontario shall not be included in calculating the ten matters or twenty days mentioned in subsection (2).

Interpretation: “law specific to Ontario”

(4) In sections 47 and 48, “law specific to Ontario” means any substantive or procedural law that applies specifically to Ontario.

Prior permission not required

46. (1) A person who is not a licensee may, without the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

- (a) is authorized to practise law in a province or territory of Canada outside Ontario;
- (b) is not the subject of a criminal proceeding in a province or territory of Canada;
- (c) has no criminal record;
- (d) is not the subject of a conduct, capacity or competence proceeding in a province or territory of Canada;

- (e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada in which the person is or was authorized to practise law; and
- (f) has and has had no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is or was authorized to practise law.

Same

(2) A person who is not a licensee, if and so long as the person is authorized to practise law in a province or territory of Canada outside Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

- (a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada or a tribunal established under an Act of Parliament or the Legislature in Ontario; or
- (b) as counsel to a court or tribunal mentioned in clause (a).

Permission to practise on an occasional basis

(3) A person who is not a licensee and is not entitled to practise law in Ontario on an occasional basis under subsection (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

- (a) is authorized to practise law in a province or territory of Canada outside Ontario;
- (b) is not the subject of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada outside Ontario in which the person is authorized to practise law; and
- (c) has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is authorized to practise law.

Law specific to Ontario: competence

47. A person who is entitled under subsection 46 (1) or (2) or permitted under subsection 46 (3) to practise law in Ontario on an occasional basis shall not practise law specific to Ontario unless the person is competent to practise law specific to Ontario.

Practising on more than an occasional basis

48. (1) On written application by a person who is entitled under subsection 46 (1) or (2) or permitted under subsection 46 (3) to practise law in Ontario on an occasional basis, the Society may permit the person to practise law in Ontario on more than an occasional basis if, in the opinion of a Society official, such permission is not contrary to the public interest.

Practising on regular basis not permitted

(2) Permission to practise law in Ontario on more than an occasional basis granted to a person shall not include permission to practise law in Ontario on a regular basis.

Law specific to Ontario

(3) Permission to practise law in Ontario on more than an occasional basis granted to a person shall not include permission to practise law specific to Ontario on more than an occasional basis.

Handling of money

49. A person who is entitled or permitted under section 46 or 48 to practise law in Ontario may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

- (a) any money received is only on account of fees for services not yet rendered for the client and the person immediately pays the money into a trust account at a financial institution located in a province or territory of Canada outside Ontario in which the person is authorized to practise law; or
- (b) the person pays the money into a trust account that is kept in the name of and operated by a licensee in accordance with By-Law 9 and the money is handled only by the licensee in accordance with By-Law 9.

Holding out

50. A person who is entitled or permitted under section 46 or 48 to practise law in Ontario shall not hold himself or herself out as or represent himself or herself to be willing or qualified to practise law in Ontario other than as entitled under subsection 46 (1) or (2) or permitted under subsection 46 (3), as the case may be.

Form 4A

Notice of Intention to Surrender Licence

(Name of licensee applying to surrender his or her licence, in capital letters)

Pursuant to section 30 of the *Law Society Act* and By-Law 4 made under subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of *(his/her)* intention to surrender *(his/her)* licence to practise law in Ontario as a barrister and solicitor.

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

Dated at *(place)*.

(Date)

(Full name of licensee applying to surrender his or her licence)

BY-LAW 5
ANNUAL FEE
PART I

This by-law is an amalgamation of by-law 13 and 15. No substantive changes have been made to the contents of the by-laws, other than those necessary to ensure that the language conforms to the language of the amended *Law Society Act*.

LICENCE TO PRACTISE LAW

Application of Part

1. This Part applies to every licensee who is licensed to practise law in Ontario as a barrister and solicitor.

REQUIREMENT TO PAY ANNUAL FEE

Sections 2 to 5(5) incorporate the provisions of current by-law 15.

Requirement to pay annual fee

2. (1) Every year, a licensee shall pay an annual fee, in accordance with sections 3 and 4, unless the licensee is exempt from payment of the annual fee.

Levy for Compensation Fund

- (2) An annual fee shall include a Compensation Fund levy.

AMOUNT PAYABLE AND DUE DATE

Payment due

3. (1) Subject to subsection (7), payment of an annual fee is due on January 1 every year.

Amount payable

- (2) Subject to subsections (3), (4) and (6), a licensee shall pay the full amount of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee.

Same: fifty percent

(3) A licensee who does not practise law, including a licensee employed in education, in government or in a corporation in a position where he or she is not required to practise law, shall pay fifty percent of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee.

Same: twenty-five percent

(4) The following licensees shall pay twenty-five percent of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee:

1. A licensee who does not engage in any remunerative work and does not practise law.
2. A licensee who is in full-time attendance at a university, college or designated educational institution within the meaning of the *Income Tax Act* (Canada) and does not practise law.
3. A licensee who is on a maternity, paternity or adoption leave and does not practise law.

Interpretation: practising law

(5) For the purposes of subsections (3) and (4), a licensee practises law if the licensee gives any legal advice respecting the laws of Ontario or Canada or delivers the professional services of a barrister or solicitor.

Licence restored after January 1

(6) A person whose licence is restored under section 31 of the Act after January 1, shall pay, in respect of the year in which his or her licence is restored, an amount of an annual fee determined by the formula,

$$(A \div 12) \times B$$

where,

A is the amount of the annual fee the person would have been required to pay under subsection (2), (3) or (4) if his or her licence was not in abeyance on January 1, and

B is the number of whole calendar months remaining in the year beginning with the second month following the month in which the person's licence is restored.

Same: payment due

(7) Payment of an annual fee by a person to whom subsection (6) applies is due on the first day of the second month following the month in which the person's licence is restored.

CHANGE IN STATUS

Change in status

4. (1) If a licensee who is required to pay the full amount, or fifty percent, of an annual fee becomes entitled to pay fifty percent, or twenty-five percent, of an annual fee, the licensee shall pay,

- (a) an amount determined by the formula

$$(A \div 12) \times B$$

where

A is the full amount, or fifty percent, of an annual fee, and

B is the number of whole or part calendar months during which the licensee is required to pay the full amount, or fifty percent, of the annual fee; and

- (b) an amount determined by the formula

$$(C \div 12) \times D$$

where

C is fifty percent, or twenty-five percent, of the annual fee, and

D is the number of whole calendar months during which the licensee is required to pay fifty percent, or twenty-five percent, of an annual fee.

Same

(2) If a licensee who is required to pay fifty percent, or twenty-five percent, of an annual fee becomes required to pay the full amount, or fifty percent, of an annual fee, the licensee shall pay, in respect of the period of time during which he or she is required to pay the lesser amount of an annual fee and the period of time during which he or she is required to pay the higher amount of an annual fee,

- (a) an amount determined by the formula

$$(E \div 12) \times F$$

where

E is fifty percent, or twenty-five percent, of the annual fee, and

F is the number of whole calendar months during which the licensee is required to pay fifty percent, or twenty-five percent, of an annual fee; and

- (b) an amount determined by the formula

$$(G \div 12) \times H$$

where

G is the full amount, or fifty percent, of the annual fee, and

H is the number of part or whole calendar months during which the licensee is required to pay the full amount, or fifty percent, of an annual fee.

Same

(3) If a licensee who is required to pay the full amount, fifty percent or twenty-five percent of an annual fee becomes exempt from payment of an annual fee, the licensee shall pay an amount determined by the formula

$$(I \div 12) \times J$$

where

I is the full amount, fifty percent or twenty-five percent of the annual fee, and

J is the number of whole or part calendar months during which the licensee is required to pay the full amount, fifty percent or twenty-five percent of an annual fee

When payment due

(4) If under this section, a licensee is required to pay, in respect of a year, an amount that is greater than the amount required to be paid under section 3, the difference between the amount that the licensee is required to pay under this section and the amount that the licensee is required to be pay under section 3 shall be due on a date to be specified by the Society.

Application for refund

(5) If under this section, a licensee is required to pay, in respect of a year, an amount that is less than the amount required to be paid under section 3, subject to subsections (6) and (7), the licensee is entitled to a refund of the difference between the amount that the licensee is required to pay under section 3 and the amount that the licensee is required to be pay under this section.

Application for refund

(6) A licensee shall apply to the Society to claim an entitlement to a refund under subsection (5).

Time for making application

(7) An application to the Society under subsection (6) shall be made before the end of the year in respect of which the licensee claims an entitlement to a refund under subsection (5).

No entitlement to refund

(8) A licensee who does not comply with subsection (7) is not entitled to receive a refund.

EXEMPTION FROM REQUIREMENT TO PAY ANNUAL FEE

Application for exemption from payment of annual fee: over sixty-five years of age

5. (1) A licensee who is over sixty-five years of age and practises law only as described in subsection 3 (2) of By-Law 4 [Licensing] may apply to the Society for an exemption from payment of an annual fee.

Same: incapacity

(2) A licensee who is incapacitated by reason of physical or mental illness and, as a result, is unable to practise law may apply to the Society for an exemption from payment of an annual fee.

Application form

(3) An application under subsection (1) shall be in a form provided by the Society.

Consideration of application

(4) The Society shall consider every application made under subsections (1) and (2) and if satisfied that the requirements described subsection (1) or (2) have been met, the Society shall approve the application.

Effective date of exemption

(5) A licensee whose application is approved is exempt from payment of the annual fee beginning on the first day of the first month after the month in which the licensee submits an application form completed to the satisfaction of the Society.

Sections 5(6) – (10) incorporate the provisions of current by-law 13.

Exemption from payment of annual fee: practising law for fifty years

(6) A licensee who has practised law in Ontario as a barrister, as a solicitor or as a barrister and solicitor for a period of fifty years is exempt from payment of the annual fee.

Period of fifty years

(7) The following periods of time may be counted towards the period of fifty years required by subsection (6):

1. A period of time during which the licensee's licence is in abeyance under section 31 of the Act.
2. A period of time during which the licensee's practice of law is interrupted by war service.
3. Subject to subsection (8), a period of time during which the licensee's licence is suspended for failure to pay a fee or levy.
4. In the absolute discretion of the Professional Development and Competence Committee, a period of time during which the licensee's licence is suspended for a reason other than for failure to pay a fee or levy.

Period of suspension for non-payment: limit on time that may be counted

(8) Subject to subsection (9), the total amount of time that may be counted under paragraph 3 of subsection (7) towards the period of fifty years required by subsection (6) is one year.

Period of suspension for non-payment: exception to limit

(9) In appropriate circumstances, the Professional Development and Competence Committee may permit a period of time in excess of one year to be counted under paragraph 3 of subsection (7) towards the fifty years required under subsection (6).

Exercise of powers by Committee

(10) The performance of any duty, or the exercise of any power, given to the Professional Development and Competence Committee under this section is not subject to the approval of Convocation.

Section 6 incorporates the provisions of section 5 of current by-law 15.

Period of default

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

Payment plan: deemed date of failure to pay

(2) Where the Society arranges or permits a schedule for the payment of an annual fee by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay an annual fee will be deemed to have occurred on January 1.

Reinstatement of licence

(3) If a licensee's licence has been suspended under subsection 46 (1) of the Act for failure to pay an annual fee in a given year, for the purpose of subsection 46 (2) of the Act, the

licensee shall pay an amount equal to the amount of the annual fee which the licensee is required to pay in respect of that year and a reinstatement fee.

BY-LAW 6

PROFESSIONAL LIABILITY INSURANCE

This by-law is an amalgamation of by-laws 16 and 27. Section 11 of this by-law is the only substantive change to the contents of the current by-laws, other than those necessary to ensure that the language conforms to the language of the amended *Law Society Act*.

PART I

LICENSEES HOLDING A CLASS L1 LICENCE

GENERAL

Sections 1 – 9 incorporate the provisions of current by-law 16.

Interpretation

1. (1) In this By-Law,

“licensee” means a licensee who holds a Class L1 licence;

“Society’s insurance plan” means the Society’s professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for licensees.

Interpretation: engaging in practice of law

(2) In this By-Law, a person engages in the practice of law if he or she gives legal advice respecting the laws of Canada or of Ontario or delivers for others the professional services of a barrister or solicitor.

INSURANCE PREMIUM LEVIES

Requirement to pay insurance premium levies

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

Same

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

Insurance premium levies

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

Time for payment of insurance premium levies

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

Same

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

Period of default

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

Payment plan: deemed date of failure to pay

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

Reinstatement of licence

(3) If a licensee's licence has been suspended under subsection 46 (1) of the Act for failure to pay an insurance premium levy in a given year, for the purpose of subsection 46 (2) of the Act, the licensee shall pay an amount equal to the amount of the insurance premium levy which the licensee is required to pay in respect of that year and a reinstatement fee.

Refund of unearned portion of insurance premium levy

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

Society's insurance fund

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

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

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

Eligibility for coverage

8. (1) Every licensee is eligible for coverage under the Society's insurance plan provided that his or her licence is not suspended.

Application for coverage

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

Exemption from payment of insurance premium levies

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

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

- ii. will engage in the practice of law only for and on behalf of the employer as,
 - A. counsel or solicitor to the Government of Canada or the Government of Ontario,
 - B. a Crown Attorney,
 - C. counsel to a corporation other than a law corporation, or
 - D. a city solicitor, and
 - iii. will not engage in the practice of law in Ontario other than for and on behalf of the employer.
5. Any licensee employed as a law teacher who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario other than teaching.
 6. Any licensee who, during the course of the year for which a levy is payable,
 - i. will be employed or volunteer in a clinic within the meaning of the *Legal Aid Services Act, 1998*, a student legal aid services society or an Aboriginal legal services corporation, that is funded by Legal Aid Ontario, but will not be directly employed by Legal Aid Ontario,
 - ii. will engage in the practice of law only through the clinic, student legal aid services society or Aboriginal legal services corporation to individuals in communities served by the clinic, student legal aid services society or Aboriginal legal services corporation and will not otherwise engage in the practice of law in Ontario, and
 - iii. demonstrates proof of coverage for such practice of law under a professional liability insurance policy issued by a licensed insurer in Canada, such coverage to be at least equivalent to that required under the Society's insurance plan.
 7. Any licensee who, during the course of the year for which a levy is payable, will act in the capacity of an estate trustee, a trustee for an *inter vivos* trust or an attorney for property in respect of an estate, a trust or a property of a person other than a related person of which the licensee was named as estate trustee, trustee or attorney while the licensee was engaged in the practice of law in Ontario and,
 - i. will not otherwise engage in the practice of law in Ontario, or
 - ii. who otherwise is exempt for payment of insurance premium levies under paragraph 4, 5 or 6 and will not engage in the practice of law in Ontario other than as provided for under this paragraph or paragraph 4, 5 or 6.

Same

(2) A licensee who is exempt from payment of insurance premium levies under paragraph 1, 2, 3, 4, 5, 6 or 7 of subsection (1) continues to be exempt from payment of insurance premium levies even though he or she engages in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies if the following conditions are met:

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

Interpretation: occasional practice of law

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

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

Interpretation: "reciprocating jurisdiction"

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

- (a) which is a signatory to,
 - (i) the National Mobility Agreement originally entered into in December 2002 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Nova Scotia Barristers' Society and the Law Society of Newfoundland; or
 - (ii) until December 31, 2011, the Territorial Mobility Agreement originally entered into in November 2006 by the Society, the Law Society of Yukon, the Law Society of Northwest Territories, the Law Society of Nunavut, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Law Society of New Brunswick, the Nova Scotia Barristers' Society, the Law Society of Prince Edward Island and the Law Society of Newfoundland;
- (b) in which a licensee is authorized to engage in the practice of law; and

- (c) which would exempt the licensee from its mandatory professional liability insurance program if the licensee were resident in Ontario and demonstrated proof of coverage for the licensee's practice of law in the jurisdiction under the Society's insurance plan which was reasonably comparable in coverage and limits to the professional liability insurance that would otherwise be required of the licensee by the jurisdiction.

Interpretation: "employer"

(5) In paragraph 4 of subsection (1), "employer" includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the licensee.

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

(6) In subsection (5), "affiliated", "controlled" and "subsidiary" have the same meanings given them in the *Securities Act*.

Interpretation: "resident"

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

FILING INSURANCE DOCUMENTS

Section 10 incorporates the provisions of current by-law 27.

Interpretation: "insurance policy"

10. (1) In this section, "insurance policy" means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society's insurance plan.

Period of default

(2) For the purpose of clause 47 (1) (b) of the Act, the period of default for failure to complete or file with the Society, or with the insurer of the Society's insurance plan, any certificate, report or other document that a licensee is required to file under an insurance policy is 120 days after the day that the certificate, report or other document is required to be filed under the insurance policy.

DEDUCTIBLES

Section 11 implements policy approved by Convocation on March 29, 2007.

Interpretation: "insurance policy"

11. (1) In this section, "insurance policy" means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society's insurance plan.

Requirement to pay deductible

(2) A licensee shall pay to the insurer of the Society's insurance plan any deductible that the licensee is required to pay under an insurance policy within 120 days of the date of settlement of a claim against the licensee or the date of a judgment or an award arising out of a claim against the licensee.

Same

(3) For the purposes of subsection (2), a licensee is required to pay a deductible under an insurance policy if,

- (a) the licensee and the insurer of the Society's insurance plan agree that a deductible is required to be paid and agree on the amount of the deductible; or
- (b) an arbitrator determines that a deductible is required to be paid and determines the amount of the deductible.

BY-LAW 7

BUSINESS ENTITIES

This by-law is an amalgamation of the provisions of current by-law 25 [Multi-Discipline Practices], by-law 26 [Limited Liability Partnerships], by-law 32 [Affiliations with Non-Members] and by-law 34 [Professional Corporations].

PART I

LIMITED LIABILITY PARTNERSHIPS

Sections 1 and 2 repeat the provisions of current by-law 26 verbatim.

PROFESSIONAL LIABILITY INSURANCE

Insurance requirements

1. A limited liability partnership shall maintain professional liability insurance coverage for each partner in accordance with By-Law 6 [Professional Liability Insurance].

DISCLOSURE

Partnership continued as limited liability partnership

2. (1) When a partnership is continued as a limited liability partnership, as soon as is reasonably practical after the continuance of the partnership as a limited liability partnership, the limited liability partnership shall disclose to each person who was a client immediately before the continuance and who remains a client after the continuance the liability of the partners of the limited liability partnership under the *Partnerships Act*.

Disclosure notice in local newspaper

(2) A limited liability partnership satisfies the disclosure requirement under subsection (1) if it publishes in a local newspaper notice of the matters set out in subsection (1).

Interpretation: "local newspaper"

(3) In subsection (2), "local newspaper" means any newspaper distributed in the area in which the limited liability partnership carries on business.

PART II

PROFESSIONAL CORPORATIONS

Part II incorporates the provisions of current by-law 34. Its provisions will apply to both lawyers and paralegals.

CORPORATE NAME

Prohibition: general

3. (1) The name of a professional corporation shall not include any language that is not expressly permitted or required under this Part or under the provisions of the *Business Corporations Act*, or any regulations made thereunder, that apply to professional corporations.

Prohibition: identical or similar name

- (2) A professional corporation shall not use a name,
- (a) that is used by another professional corporation; or
 - (b) that so nearly resembles the name used by another professional corporation that it is likely to confuse or mislead the public.

Names of shareholders or licensees

(3) Subject to subsection (4), the name of a professional corporation may include any of the following:

1. The name of any shareholder of the professional corporation.
2. If the professional corporation is one that is described in clause 61.0.1 (1) (a) or (c) of the Act, the name of any licensee who practises law in Ontario through the corporation.
3. If the professional corporation is one that is described in clause 61.0.1 (1) (b) or (c) of the Act, the name of any licensee who provides legal services in Ontario through the corporation.

Section 3(3)3. is new and reflects the amendment to the *Law Society Act* (s. 61.0.1(b) and (c)) that will permit paralegals to form professional corporations and lawyers and paralegals to form professional corporations.

Prohibition: shareholder or licensee holding office as member of tribunal

- (4) The name of a professional corporation shall not include the name of any of the following persons who hold office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law in Ontario or the provision of legal services in Ontario:

The words in bold are new.

1. Any licensee who, prior to taking office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law in Ontario or the provision of legal services in Ontario, practised law in Ontario or provided legal services in Ontario through the professional corporation.
2. Any shareholder of the professional corporation.

Deceased shareholder or person

(5) A professional corporation may retain in its name the name of a deceased licensee who practised law in Ontario or provided legal services in Ontario through the corporation or a deceased shareholder of the professional corporation.

Use of honorific “Q.C.”

(6) If a professional corporation that is described in clause 61.0.1 (1) (a) of the Act has one shareholder, the one shareholder practises law in Ontario through the professional corporation and the name of the professional corporation is the name of the one shareholder, the professional corporation may include in its name the honorific “Q.C.” properly attributable to the one shareholder of the professional corporation.

Use of phrases “and associates”, *etc.*

(7) A professional corporation may include in its name phrases such as “and associates” and “and company” if,

- (a) in the case of a professional corporation that is described in clause 61.0.1 (1) (a) of the Act, three or more licensees practise law in Ontario through the professional corporation;
- (b) in the case of a professional corporation that is described in clause 61.0.1 (1) (b) of the Act, three or more licensees provide legal services in Ontario through the professional corporation; and
- (c) in the case of a professional corporation that is described in clause 61.0.1 (1) (c) of the Act, three or more licensees practise law in Ontario or provide legal services in Ontario through the professional corporation.

Use of trade name, *etc.*

(8) The name of a professional corporation may include a descriptive or trade name that is in keeping with the dignity, integrity, independence and role of the legal professions in a free and democratic society and in the administration of justice.

Use of past firm name

(9) Despite any other provision in this section, a professional corporation described in clause 61.0.1 (1) (a) of the Act that is established by two or more licensees licensed to practise law in Ontario as barristers and solicitors who, before the day the professional corporation is established, practised law in Ontario as a partnership, may use as its name the name of the partnership.

Interpretation: name of person

(10) For the purposes of this section, the name of a person means the person's surname and, at the person's option, his or her given names or initials.

Corporate name certificate

4. (1) A licensee may apply in writing to the Society for a certificate that the Society does not object to the establishment of a professional corporation under a proposed name.

Decision of Society

(2) The Society shall consider every application made under subsection (1) and shall,

- (a) if the Society is satisfied that the proposed name complies with section 3, issue a certificate to the licensee; or
- (b) if the Society is not satisfied that the proposed name complies with section 3, reject the application.

Notice to licensee and application for review

(3) If the Society rejects an application made under subsection (1), the Society shall so notify the licensee and the licensee may apply to the committee of benchers appointed under section 37 for a review.

Time for making application for review

(4) An application for a review under subsection 4 (3) shall be commenced by the licensee notifying the Society in writing of the application within thirty days after the day the Society notifies the licensee that his or her application for a certificate has been rejected.

Powers on review

(5) After considering an application for a review under subsection (3), the committee of benchers appointed under section 37 shall,

- (a) if it is satisfied that the proposed name complies with section 3, direct the Society to issue a certificate to the licensee; or
- (b) if it is not satisfied that the proposed name complies with section 3, reject the application.

CERTIFICATE OF AUTHORIZATION

Application for certificate

5. (1) A corporation that wishes to practise law in Ontario, provide legal services in Ontario or both practise law and provide legal services in Ontario shall apply to the Society for a certificate of authorization.

Same

- (2) An application under subsection (1) shall include,
 - (a) a completed application, in a form provided by the Society;
 - (b) a copy of,
 - (i) the corporation's articles of incorporation and the certificate of incorporation, the corporation's articles of amalgamation and the certificate of amalgamation or the corporation's articles of continuance and the certificate of continuance, as the case may be, and
 - (ii) the corporation's articles of amendment, if any, and the certificate of amendment; and
 - (c) an application fee.

Consideration by Society

6. (1) The Society shall consider every application under subsection 5 (1) made in accordance with subsection 5 (2).

Issuance of certificate

- (2) The Society shall issue a certificate of authorization to a corporation if it is satisfied that,
 - (a) the corporation is a subsisting corporation under the *Business Corporations Act* and meets the conditions for professional corporations specified in that Act and in any regulations made under that Act;
 - (b) the name of the corporation complies with section 3;
 - (c) the directors of the corporation are licensees, none of whose licence is suspended;

- (d) if the corporation is intended to be a professional corporation described in clause 61.0.1 (1) (a) or (c) of the Act, the individuals who will practise law through the corporation are licensees licensed to practise law in Ontario; and
- (e) if the corporation is intended to be a professional corporation described in clause 61.0.1 (1) (b) of the Act, the individuals who will provide legal services through the corporation are licensees licensed to provide legal services in Ontario.

Refusal to issue certificate

(3) If the Society is not satisfied that a requirement set out in subsection (2) has been met, the Society shall notify the corporation and the corporation may meet the requirement or appeal to the committee of benchers appointed under section 37 if it believes that the requirement has been met.

Same

(4) Despite subsection (2), the Society may refuse to issue a certificate of authorization to a corporation where,

- (a) the corporation has had a certificate of authorization revoked; or
- (b) a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(5) If the Society refuses to issue a certificate of authorization to a corporation under clause (4) (a), the Society shall so notify the corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 37.

Same

(6) If the Society refuses to issue a certificate of authorization to a corporation under clause (4) (b), the Society shall so notify the corporation and the corporation may appropriately re-appoint its directors and officers and alter its shareholders or appeal the refusal to the committee of benchers appointed under section 37.

Time for appeal: appeals under subss (3), (5) and (6)

(7) Subject to section 38, an appeal under subsection (3), (5) or (6) shall be commenced by the corporation notifying the Society in writing of the appeal within thirty days after,

- (a) the day the Society notifies the corporation under subsection (3) that a requirement has not been met; or
- (b) the day the Society notifies the corporation under subsection (5) or (6) that it is refusing to issue to the corporation a certificate of authorization.

Powers on appeal: appeal under subs. (3)

(8) After considering an appeal made under subsection (3), the committee of benchers appointed under section 37 shall,

- (a) if it determines that the requirement has been met, direct the Society to issue a certificate of authorization to the corporation; or
- (b) if it determines that the requirement has not been met, notify the corporation that the requirement has not been met and that the Society shall not issue a certificate of authorization to the corporation.

Powers on appeal: appeal under subss (5), (6)

(9) After considering an appeal made under subsection (5) or (6), the committee of benchers appointed under section 37 shall make such decision as it considers proper in the circumstances.

Duration of certificate

(10) Subject to its being revoked, a certificate of authorization issued under this section is valid from the date of issue, as indicated on the certificate, until December 31 of the year in which it is issued.

Renewal

7. (1) A professional corporation may apply to the Society for a renewal of its certificate of authorization.

Application

- (2) An application under subsection (1) shall include,
 - (a) a completed application, in a form provided by the Society; and
 - (b) a renewal fee.

Consideration by Society

(3) The Society shall consider every application under subsection (1) made in accordance with subsection (2) and shall,

- (a) if the Society is satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 6 (2), renew the professional corporation's certificate of authorization; or
- (b) if the Society is not satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in

subsection 6 (2), refuse to renew the professional corporation's certificate of authorization.

Refusal to renew

(4) Despite clause (3) (a), the Society may refuse to renew the certificate of authorization of a professional corporation where a director, officer or shareholder of the professional corporation is or has been a director, officer or shareholder of a professional corporation whose certificate of authorization has been revoked.

Notice and appeal

(5) If the Society refuses to renew a certificate of authorization, the Society shall so notify the professional corporation and the professional corporation may appeal the refusal to the committee of benchers appointed under section 37.

Time for appeal: appeal under subs. (5)

(6) Subject to subsection 38, an appeal under subsection (5) shall be commenced by the professional corporation notifying the Society in writing of the appeal within thirty days after the day the Society notifies the professional corporation that the Society is refusing to renew the professional corporation's certificate of authorization.

Powers on appeal: appeal under subs. (5)

(7) After considering an appeal made under subsection (5), the committee of benchers appointed under section 37 shall,

- (a) direct the Society to renew the professional corporation's certificate of authorization if it is satisfied that,
 - (i) the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 6 (2), and
 - (ii) despite the fact that the situation mentioned in subsection 7 (4) is present, it is appropriate to renew the professional corporation's certificate of authorization; or
- (d) refuse to renew the professional corporation's certificate of authorization if,
 - (i) it is not satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 6 (2); or
 - (ii) it determines that it is inappropriate to renew the professional corporation's certificate of authorization because the situation mentioned in subsection 7 (4) is present.

Duration of renewal

(8) Subject to its being revoked, a certificate of authorization that has been renewed under this section is valid until December 31 of the year for which it is renewed.

Time for applying for renewal

(9) A professional corporation that wishes to renew its certificate of authorization without any disruption in its entitlement to practise law in Ontario or provide legal services in Ontario pending the renewal shall apply for the renewal not later than 90 days before the day on which its certificate expires.

Revocation of certificate

(10) If for any reason the certificate of authorization of a professional corporation is not renewed within 12 months after its expiry, the certificate of authorization is automatically revoked.

Renewal of revoked certificate

(11) A corporation may not apply for a renewal of a certificate of authorization that has been revoked, but the corporation may apply for a new certificate of authorization.

Erroneous or incomplete certificate of authorization

8. (1) If the Society receives information that a certificate of authorization held by a professional corporation contains an error or is incomplete, the Society may, by so notifying the professional corporation in writing, require the professional corporation by the date specified in the notice to return its certificate of authorization to the Society for correction, completion or replacement.

Replacement certificate

(2) If the Society replaces an erroneous or incomplete certificate of authorization with a new certificate of authorization, the new certificate of authorization shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

No interruption in holding of certificate

(3) The return of a certificate of authorization under this section shall not constitute an interruption in the holding of the certificate by the professional corporation.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Correction, etc. following report of change

(5) If the replacement of a certificate of authorization under this section is necessitated as a result of a change reported by the professional corporation under section 11, the professional corporation shall pay to the Society a fee for the replacement certificate.

Loss or destruction of certificate

9. (1) If the certificate of authorization of a professional corporation is lost or destroyed, the professional corporation may apply to the Society in writing for a replacement certificate.

Society may issue replacement certificate

(2) Upon payment of a fee, the Society may issue a replacement certificate of authorization to the professional corporation.

Replacement certificate

(3) A replacement certificate of authorization issued under this section shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Surrender of certificate

10. (1) A professional corporation shall apply to the Society for permission to surrender its certificate of authorization,

- (a) when the corporation does not wish to renew the certificate,
- (b) when the corporation no longer wishes to practise law in Ontario, provide legal services in Ontario or both practise law in Ontario and provide legal services in Ontario; and
- (c) prior to a voluntary winding up or voluntary dissolution of the corporation.

Same

(2) An application under subsection (1) shall be in writing and shall be accompanied by a statutory declaration signed by the directors of the professional corporation setting forth,

- (a) the name of the professional corporation, the professional corporation's Ontario Corporation Number, the address of the professional corporation's registered office, the address of the professional corporation's business office, the number of the professional corporation's certificate of authorization and the date of issue of the professional corporation's certificate of authorization;
- (b) the reasons for the application;

- (c) a declaration that all money or property held in trust for which the professional corporation was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the professional corporation has not been responsible for any money or property held in trust;
- (d) a declaration that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to, as required, a licensee licensed to practise law in Ontario or a licensee licensed to provide legal services in Ontario, or, alternatively, that the professional corporation has neither practised law in Ontario or provided legal services in Ontario;
- (e) a declaration that the directors of the professional corporation are not aware of any claim against the professional corporation in its professional capacity or in respect of its practice of law in Ontario or provision of legal services in Ontario; and
- (f) such additional information or explanation as may be relevant by way of amplification of the foregoing.

Same

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

Publication of notice of intention to surrender certificate

(4) Subject to subsection (5), a professional corporation that wishes to surrender its certificate of authorization shall, at least thirty days before the day on which it applies to the Society under subsection (1), publish in the Ontario Reports a notice of intention to surrender a certificate of authorization.

Exemption from requirement to publish notice

(5) Upon the written application of the professional corporation, the Society may exempt the professional corporation from the requirement to publish a notice of intention to surrender a certificate of authorization.

Notice of intention to surrender certificate

(6) The notice of intention to surrender a certificate of authorization which a professional corporation is required to publish under subsection (4) shall be in Form 7A.

Proof of publication of notice of intention to surrender certificate

(7) Unless a professional corporation is exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, an application under subsection (1) shall be accompanied by proof of publication in accordance with subsection (4) of a notice of intention to surrender a certificate of authorization.

Society to consider application

(8) Subject to subsection (9), the Society shall consider every application made under subsection (1) in respect of which the requirements set out in subsections (2), (3) and (7) have been complied with, and the Society may consider an application made under subsection (1) in respect of which the requirements set out in subsection (2), (3) and (7) have not been complied with, and,

- (a) the Society shall accept an application if it is satisfied,
 - (i) that all money or property held in trust for which the professional corporation was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the professional corporation has not been responsible for any money or property held in trust,
 - (ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to, as required, a licensee licensed to practise law in Ontario or a licensee licensed to provide legal services in Ontario, or, alternatively, that the professional corporation has neither practised law in Ontario or provided legal services in Ontario,
 - (iii) that there are no claims against the professional corporation in its professional capacity or in respect of its practice of law in Ontario or provision of legal services in Ontario,
 - (iv) that the professional corporation is no longer the subject of or has fully complied with all terms and conditions of any order made under Part II of the Act, and
 - (v) that the professional corporation, if not exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, has complied with subsection (4); or
- (b) subject to subsection (9), the Society shall reject an application if he or she is not satisfied of a matter mentioned in clause (a).

Acceptance of application

(9) The Society may accept an application if the Society is not satisfied of the matter mentioned in subclause (8) (a) (iv) but is satisfied of the matters mentioned in subclauses (8) (a) (i), (ii), (iii) and (v).

Society not to consider application

(10) The Society shall not consider an application made under subsection (1) if the professional corporation, any licensee practising law in Ontario through the professional corporation or any licensee providing legal services in Ontario through the professional corporation is,

- (a) the subject of an audit, investigation, search or seizure by the Society; or
- (b) a party to a proceeding under Part II of the Act.

Documents, explanations

(11) For the purposes of assisting the Society to consider its application, the professional corporation shall provide to the Society such documents and explanations as the Society may require.

Rejection of application

(12) If the Society rejects its application, the Society may specify terms and conditions to be complied with by the professional corporation as a condition of its application being accepted, and if the professional corporation complies with the terms and conditions to the satisfaction of the Society, the Society shall accept the application.

CHANGE OF INFORMATION

Change of information

11. (1) A professional corporation shall notify the Society in writing immediately after,
- (a) any change in the information provided as part of the professional corporation's application for a certificate of authorization or for a renewal of a certificate of authorization; and
 - (b) any change in the professional corporation's articles of incorporation.

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in the professional corporation's articles of incorporation, shall include the professional corporation's articles of amendment and the certificate of amendment.

GENERAL

Register

12. The following information shall be contained in the register of professional corporations required under section 61.0.2 of the Act:

- 1. The name of the professional corporation.
- 2. The address of the professional corporation's registered office.
- 3. The business address of the professional corporation, if different from the address of its registered office.

4. The number of the certificate of authorization issued to the professional corporation.
5. The date on which the certificate of authorization was issued to the professional corporation.
6. The terms, conditions, limitations or restrictions that apply to the professional corporation's certificate of authorization.
7. The date on which the professional corporation's certificate of authorization was suspended, made subject to a term, condition, limitation or restriction, revoked or surrendered.

Application of by-laws, *etc.*

13. The following apply, with necessary modifications, to a professional corporation:
 1. Part III.
 2. By-Law 8 [Reporting and Filing Requirements].
 3. By-Law 9 [Financial Transactions and Records].
 4. Part IV of By-Law 11 [Regulation of Conduct, Capacity and Professional Competence].

No voluntary winding up or dissolution

14. The shareholders of a professional corporation shall not require the professional corporation to be wound up voluntarily and shall not authorize the voluntary dissolution of the professional corporation until the professional corporation has received permission under section 10 to surrender its certificate of authorization.

PART III

MULTI-DISCIPLINE PRACTICES

This Part of the by-law incorporates the provisions of current by-law 25. This Part of the by-law applies only to lawyers.

Interpretation: "licensee"

15. (1) In this Part, "licensee" means a licensee who holds a Class L1 licence and includes a partnership of licensees who each hold a Class L1 licence.

Interpretation: practice of law

(2) For the purposes of this Part, the practice of law means the giving of any legal advice respecting the laws of Canada or of any province or territory of Canada or the delivery of the professional services of a barrister or solicitor.

Application of certain sections

(3) Subsection 18 (2) and sections 19, 20, 25, 26, 29 and 30 do not apply in respect of a partnership or an association that is not a corporation entered into by a licensee with an individual who is authorized to practise law in any province or territory of Canada outside Ontario.

Prohibition against providing services of non-licensee

16. A licensee shall not, in connection with the licensee's practice of law, provide to a client the services of a person who is not a licensee except in accordance with this Part.

Permitted provision of services of non-licensee

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

Partnership, etc. with non-licensee

18. (1) Subject to subsection (2) and subsection 20 (1), a licensee may enter into a partnership or association that is not a corporation with an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law for the purpose of permitting the licensee to provide to clients the services of the individual.

Same

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

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

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

Interpretation: "effective control"

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

Interpretation: "good character"

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

Responsibility for actions of non-licensee

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

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

Application by licensee forming partnership with non-licensee

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

Application fee

(2) An application under subsection (1) shall be in a form provided by the Society and shall be accompanied by an application fee.

Partnership agreement

21. At the time that a licensee makes an application under section 20, the licensee shall file with the Society a copy of so much of the agreement or agreements that will govern the licensee's partnership with the individual as may be required by the Society.

Consideration of application by Society

22. (1) A Society official shall consider every application made under section 20, and it shall approve the licensee's entering into a partnership with the individual if it is satisfied that,

- (a) the conditions set out in subsection 18 (2) have been satisfied; and
- (b) the licensee has made arrangements that will enable the licensee to comply with sections 19, 25, 26, 27 and 30.

Requirements not met

(2) If the Society is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Society shall notify the licensee who may meet the requirement or appeal to the committee of benchers appointed under section 37 if the licensee believes that the requirement has been met.

Time for appeal

23. An appeal under subsection 22 (2) shall be commenced by the licensee notifying the Society in writing of the appeal within thirty days after the day the Society notifies the licensee that a requirement has not been met.

Decision of committee of benchers

24. (1) After considering an appeal made under subsection 22 (2), the committee of benchers appointed under section 37 shall,

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

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

Filing requirements: partnerships

25. (1) A licensee who, under subsection 18 (1), has entered into a partnership with an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form

- (2) The report required under subsection (1) shall be in contained in a form provided by the Society.

Due dates

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

Period of default

(4) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 25 (1) is 120 days after the day on which the report is required to be submitted.

Reinstatement of rights and privileges

(5) If a licensee's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 25 (1), for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report mentioned in subsection (1) in force at the time the licensee is filing the report.

Changes in partnership

26. (1) A licensee who, under subsection 18 (1), has entered into a partnership with an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law shall immediately notify the Society when,

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

- (e) any agreement that governs the partnership has been amended.

Dissolution of partnership

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

Amendment of partnership agreement

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

Dissolution of partnership: breach of certain provisions

- 27. If a licensee who, under subsection 18 (1), has entered into a partnership with an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law breaches section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, the Society may require the licensee to dissolve the partnership.

Notice to licensee of requirement to dissolve partnership

- 28. (1) If the Society requires a licensee to dissolve a partnership under subsection 26 (2) or section 27, the Society shall so notify the licensee and, subject to subsection (2), the licensee shall dissolve the partnership.

Appeal

- (2) If the Society requires a licensee to dissolve a partnership under section 27, the licensee may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 37 if the licensee believes that there has been no breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30.

Time for appeal

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

Decision of committee of benchers

- (4) After considering an appeal made under subsection (2), the committee appointed under section 37 shall,
 - (a) if it determines that there has been no breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, cancel the requirement to dissolve the partnership; or
 - (b) if it determines that there has been a breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, take any of the following actions:

- (i) Confirm the requirement to dissolve the partnership.
- (ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.
- (iii) Any other action that the committee considers appropriate.

Stay

- (5) The receipt by the Society of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

Association with non-licensee: multi-discipline practice

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

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

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

Interpretation: "Society's insurance plan"

30. (1) In this section, "Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its licensees.

Insurance requirements: licensees

(2) A licensee who, under subsection 18 (1), has entered into a partnership with an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law shall maintain professional liability insurance coverage for the individual,

- (a) through the insurer of the Society's insurance plan, in an amount equivalent to that required of the licensee under the Society's insurance plan; and
- (b) through any insurer, in an amount equivalent to the amount of coverage the licensee maintains in excess of that required of the licensee under the Society's insurance plan.

PART IV

AFFILIATIONS WITH NON-LICENSEES

Part IV incorporates the provisions of current by-law 32, with some changes as noted.

Interpretation: “affiliated entity”

31. (1) In this Part, “affiliated entity” means any person or group of persons other than a person or group of persons licensed to practise law in or outside Ontario.

Interpretation: “affiliation”

(2) For the purposes of this Part, a licensee or group of licensees affiliates with an affiliated entity when the licensee or group on a regular basis joins with the affiliated entity in the delivery or promotion and delivery of the professional services of a barrister or solicitor by the licensee or group and the non-legal services of the affiliated entity.

Ownership of practice, *etc.*

32. A licensee who or a group of licensees that affiliates with an affiliated entity shall alone or together with other persons licensed to practise law in or outside Ontario,

- (a) own the professional business through which the licensee or group practises law or comply with Part III;
- (b) maintain control over the professional business through which the licensee or group practises law; and
- (c) carry on the professional business through which the licensee or group practises law, other than the practice of law that involves the delivery of the professional services of a barrister or solicitor by the licensee or group jointly with the non-legal services of the affiliated entity, from premises that are not used by the affiliated entity for the delivery of its non-legal services, other than those that are delivered by the affiliated entity jointly with the delivery of the professional services of a barrister or solicitor by the licensee or group.

the words “professional business” in section 32 have been substituted for the word “practice.” “Professional business” is broader than “practice,” and includes the practice of law and the business operations related to it.

Report to Society

33. (1) A licensee who or a group of licensees that agrees to affiliate or affiliates with an affiliated entity shall immediately notify the Society of the affiliation.

Contents of notice

- (2) Notice under subsection (1) shall be contained in a form provided by the Society and shall include the following information:

1. The financial arrangements that exist between the licensee or group of licensees and the affiliated entity.
2. The arrangements that exist between the licensee or group of licensees and the affiliated entity with respect to,
 - i. the ownership, control and management of the professional business through which the licensee or group practises law,
 - ii. the licensee's or group's compliance with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the licensee or group who are also clients of the affiliated entity, and
 - iii. the licensee's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the licensee or any licensee of the group by clients who are also clients of the affiliated entity.

Agreements

(3) At the time that a licensee or group of licensees gives notice under subsection (1), the licensee or group shall file with the Society a copy of so much of any agreement between the licensee or group and the affiliated entity, or of any other document, that addresses the matters mentioned in subsection (2) as may be required by the Society.

Filing requirements

34. (1) A licensee who or a group of licensees that affiliates with an affiliated entity shall submit to the Society for every full or part year that the affiliation continues a report in respect of the affiliation.

Report

(2) The report required under subsection (1) shall be contained in a form provided by the Society.

Due date

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

Joint and several responsibility

(4) Every licensee in a group of licensees is responsible jointly with the other licensees of the group and severally for submitting the report required under subsection (1).

Period of default

(5) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 34 (1) is 120 days after the day on which the report is required to be submitted.

Reinstatement of licence

(6) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 34 (1), for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report required under subsection (1) in force at the time the licensee is filing the report.

Change of Information

35. (1) A licensee who or a group of licensees that affiliates with an affiliated entity shall notify the Society in writing immediately after,

- (a) any change in the information provided by the licensee or group under section 40 or section 34; and
- (b) any change in any agreement between the licensee or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 33 (2).

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in any agreement between the licensee or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 33 (2), shall include copies of the parts of the agreement or document that have changed.

PART V

COMMITTEE OF BENCHERS

Part V is an amalgamation of the procedures currently set out in by-laws 25 and 34.

Interpretation

36. For the purposes of determining when to commence an application for review or an appeal under Part II and III, the Society will be deemed to have notified a person of the decision that is subject to the review or appeal,

- (a) in the case of oral notification, on the day that the Society notified the person; and
- (b) in the case of written notification,
 - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and

- (ii) if it was faxed, on the first day after it was faxed.

Committee of benchers

37. (1) Convocation shall appoint a committee of at least three benchers to consider applications for review and appeals made under this By-Law.

Term of office

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

Consideration of review or appeal: quorum

(3) Three benchers who are members of the committee appointed under subsection (1) constitute a quorum for the purposes of considering an application for a review or an appeal made under this Part.

Extension of time for commencing appeal

38. Upon the written request of the applicant or appellant, made not later than the last day for commencing an application for review or an appeal in Part II and III, the Society may extend the time for commencing the application for review or the appeal.

Procedure: review and appeal

39. (1) Subject to subsection (2), the procedure applicable to the consideration by the committee of benchers appointed under section 37 of an application for a review under subsection 4 (3) or of an appeal under subsection 6 (3), 6 (5), 6 (6) or 7 (5) shall be determined by the committee and, without limiting the generality of the foregoing, the committee may decide who may make submissions to it, when and in what manner.

Same

(2) Unless the committee of benchers appointed under section 37 permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Procedure: application of rules of practice and procedure

(3) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee appointed under section 37 of an appeal made under subsection 22 (2) as if the consideration of the appeal were the hearing of an application for a licence under section 27 of the Act.

Procedure: *SPPA*

(4) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee appointed under section 37 of an appeal made under subsection 22 (2).

Procedure

(5) The rules of practice and procedure apply, with necessary modifications to the consideration by the committee appointed under section 37 of an appeal made under subsection (4) as if the consideration of the appeal were the hearing of an application under subsection 34 (1) of the Act.

Decisions final

40. The decisions of the committee of benchers appointed under section 37 are final.

Form 7A

Notice of Intention to Surrender a Certificate of Authorization

NOTICE OF INTENTION TO SURRENDER A CERTIFICATE OF AUTHORIZATION

*(Name of professional corporation applying
for permission to surrender a certificate of authorization, in capital letters)*

Pursuant to section 10 of By-Law 7 made under paragraph 28.1 of subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of its intention to surrender its certificate of authorization.

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

Dated at *(place)*

(Date)

(Name of professional corporation)

(Signatures of all directors)

v2

BY-LAW 8

REPORTING AND FILING REQUIREMENTS

This by-law is an amalgamation of by-laws 17, 20 and 35. No substantive changes have been made to the contents of the by-laws, other than those necessary to ensure that the language conforms to the language of the amended Law Society Act.

PART I

REPORTING REQUIREMENTS

FISCAL YEAR

Section 1 incorporates the provisions of section 1 of current by-law 17.

Notice of fiscal year

1. Every licensee who holds a Class L1 licence and engages in the private practice of law in Ontario shall inform the Society in writing of the termination date of his or her fiscal year, and shall file with the Society written notice of any change in the fiscal year within one month after the change is made.

BANKRUPTCY OR INSOLVENCY OF LICENSEE

Section 2 incorporates the provisions of section 2 of current by-law 35.

Notice of bankruptcy or insolvency

2. A licensee shall immediately notify the Society whenever any of the following events occurs:

1. The licensee receives notice of or is served with a petition for a receiving order against him or her filed in court under subsection 43 (1) of the *Bankruptcy and Insolvency Act* (Canada).
2. The licensee makes an assignment of all his or her property for the general benefit of his or her creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada).

OFFENCES

Section 3 incorporates the provisions of current by-law 20.

Requirement to report offences: licensees

3. (1) Every licensee shall inform the Society in writing of,
 - (a) a charge that the licensee 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, where the charge alleges, explicitly or implicitly, dishonesty on the part of the licensee or relates in any way to the professional business of the licensee,
 - (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, where the charge alleges, explicitly or implicitly, dishonesty on the part of the licensee or relates in any way to the professional business of the licensee, 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 licensee or relates in any way to the professional business of the licensee; and
- (b) the disposition of a charge mentioned in clause (a).

Requirement to report: private prosecution

(2) Despite subsection (1), a licensee 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

(3) A licensee 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

(4) In the circumstances mentioned in subsection (2), a licensee 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"

(5) 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.

PART II

FILING REQUIREMENTS

ANNUAL REPORT

Sections 4 – 8 incorporate the provisions of section 2 – 6 of current by-law 17.

Requirement to submit annual report

4. (1) Every licensee who holds a Class L1 licence shall submit a report to the Society, by March 31 of each year, in respect of the licensee's practice of law in Ontario, activities related to his or her practice of law in Ontario and business operations relating to his or her practice of law in Ontario.

Annual Report

(2) The report required under subsection (1) shall be in a form provided by the Society.

Exemption from requirement to submit annual report

(3) The following licensees may apply to the Society for an exemption from the requirement to submit a report under subsection (1):

1. A licensee who is over sixty-five years of age and who,
 - i. does not practise law in Ontario,
 - ii. is not an estate trustee,
 - iii. is not a trustee of an *inter vivos* trust; and
 - iv. does not act as an attorney under a power of attorney for property given by a client or former client.
2. A licensee who is incapacitated within the meaning of the Act.

Application by licensee's representative

(4) The Society may permit any person on behalf of a licensee to make an application under subsection (3).

Application form

(5) An application under subsection (3) shall be in a form provided by the Society.

Documents and explanations

(6) For the purposes of assisting the Society to consider an application under subsection (3), the licensee or the person applying on behalf of the licensee shall provide to the Society such documents and explanations as the may be required.

Consideration of application

(7) The Society shall consider every application made under subsection (3) and if satisfied that the licensee is eligible for an exemption under paragraph 1 or 2 of subsection (3), the Society shall approve the application.

Duration of exemption

(8) A licensee whose application is approved is exempt from the requirement to submit a report under subsection (1) in respect of the year in which the application is approved and in respect of every year thereafter if the licensee remains eligible for the exemption throughout the entire year.

Period of default

5. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file a report required under section 4 is 120 days after the day the report is required to be submitted.

Reinstatement of licence

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 4, for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report in a form provided by the Society.

Requirement to submit public accountant' report

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

Contents of report and time for filing

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

Licensee's obligation to provide access to files, *etc.*

(3) For the purpose of permitting the public accountant to complete the report, the licensee shall,

- (a) grant to the public accountant full access, without restriction, to all files maintained by the licensee;
- (b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and
- (c) provide to the public accountant such explanations as the public accountant may require.

Authority to confirm independently particulars of transactions

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

Cost

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

Public accountant's duty of confidentiality

- (6) When retaining a public accountant to complete a report required under this section, a licensee shall ensure that the public accountant is bound not to disclose any

information that comes to his or her knowledge as a result of activities undertaken to complete the report, but the public accountant shall not be prohibited from disclosing information to the Society as required under this Part.

Period of default

7. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 6 is 60 days after the day the report is required to be submitted.

Reinstatement of licensee

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to file a report of a public accountant in accordance with section 6, for the purpose of subsection 47 (2) of the Act, the licensee shall file the report.

Failure to submit public accountant' report: investigation

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

Investigation: application of subss. 6 (3) and (4)

(2) Subsections 6 (3) and (4) apply with necessary modifications to the investigation under this section.

Confidentiality

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

Cost

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

BY-LAW 9

FINANCIAL TRANSACTIONS AND RECORDS

This by-law is an amalgamation of the provisions of current by-laws 18 [Record Keeping Requirements], 19 [Handling of Money and other Property] and 35 [Bankruptcy of Member]. This by-law applies only to lawyers. Only those changes necessary to make the language of the by-law consistent with the amended *Law Society Act* have been made, e.g. member is now licensee.

PART I
INTERPRETATION

Interpretation

1. (1) In this By-Law,

“arm’s length” has the same meaning given it in the *Income Tax Act* (Canada);

“cash” means current coin within the meaning of the *Currency Act* (Canada), notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act* and current coin or banks notes of countries other than Canada;

“charge” has the same meaning given it in the *Land Registration Reform Act*;

“client” means a person or group of persons from whom or on whose behalf a licensee receives money or other property;

“firm of licensees” means a partnership of licensees and all licensees employed by the partnership;

“holiday” means,

- (a) any Saturday or Sunday;
- (b) New Year’s Day, and where New Year’s Day falls on a Saturday or Sunday, the following Monday;
- (c) Good Friday;
- (d) Easter Monday;
- (e) Victoria Day;
- (f) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;
- (g) Civic Holiday;
- (h) Labour Day;
- (i) Thanksgiving Day;
- (j) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;
- (k) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;

- (l) Boxing Day; and
- (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

“lender” means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation;

“licensee” means a licensee who holds a Class L1 licence and includes a firm of licensees;

“money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders;

“related” has the same meaning given it in the *Income Tax Act* (Canada);

“Teranet” means Teranet Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Business Services.

Time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

When deemed in trust

(3) For the purposes of subsections 9 (1), (2) and (3) and section 14, cash, cheques negotiable by the licensee, cheques drawn by the licensee on the licensee’s trust account and credit card sales slips in the possession and control of the licensee shall be deemed from the time the licensee receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

PART II

HANDLING OF MONEY BY BANKRUPT LICENSEE

Handling of money by bankrupt licensee

2. (1) Subject to subsections (2) and (3), a licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) shall not receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the licensee for the person or group; or

- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Same

(3) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may apply in writing to the Society for permission to receive from or on behalf of a person or group of persons any money or other property, other than as permitted under subsection (2), or for permission to handle money or other property that is held in trust for a person or group of persons, and the Society may permit the licensee to do so, subject to such terms and conditions as the Society may impose.

PART III

CASH TRANSACTIONS

Definition

3. In this Part,

“funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;

“public body” means,

- (a) a department or agent of Her Majesty in right of Canada or of a province;
- (b) an incorporated city, metropolitan authority, town, township, village, county, district, rural municipality or other incorporated municipal body or an agent of any of them; and
- (c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or agent of the organization.

Cash received

4. (1) A licensee shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of 7,500 or more Canadian dollars.

Foreign currency

(2) For the purposes of this section, when a licensee receives or accepts from a person cash in a foreign currency the licensee shall be deemed to have received or accepted the cash converted into Canadian dollars at,

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the licensee receives or accepts the cash; or
- (b) if the day on which the licensee receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the licensee receives or accepts the cash.

Application

5. Section 4 applies when, in respect of a client file, a licensee engages in or gives instructions in respect of the following activities:

- 1. The licensee receives or pays funds.
- 2. The licensee purchases or sells securities, real properties or business assets or entities.
- 3. The licensee transfers funds by any means.

Exceptions

6. Despite section 5, section 4 does not apply when the licensee,
- (a) receives cash from a public body, an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* (Canada) applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act* (Canada), a company to which the *Trust and Loan Companies Act* (Canada) applies, a trust company or loan company regulated by a provincial Act or a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;
 - (b) receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
 - (c) receives cash pursuant to an order of a tribunal;
 - (d) receives cash to pay a fine or penalty; or
 - (e) receives cash for fees, disbursements, expenses or bail provided that any refund out of such receipts is also made in cash.

PART IV

TRUST ACCOUNT

TRUST ACCOUNT TRANSACTIONS

Money received in trust for client

7. (1) Subject to section 8, every licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the licensee, or in the name of the firm of licensees of which the licensee is a partner or by which the licensee is employed, and designated as a trust account.

Interpretation

(2) For the purposes of subsection (1), a licensee receives money in trust for a client if the licensee receives from a person,

- (a) money that belongs in whole or in part to a client;
- (b) money that is to be held on behalf of a client;
- (c) money that is to be held on a client's direction or order;
- (d) money that is advanced to the licensee on account of fees for services not yet rendered; or
- (e) money that is advanced to the licensee on account of disbursements not yet made.

Money to be paid into trust account

(3) In addition to the money required under subsection (1) to be paid into a trust account, a licensee shall pay the following money into a trust account:

- 1. Money that may by inadvertence have been drawn from a trust account in contravention of section 9.
- 2. Money paid to a licensee that belongs in part to a client and in part to the licensee where it is not practical to split the payment of the money.

Withdrawal of money from trust account

(4) A licensee who pays into a trust account money described in paragraph 2 of subsection (3) shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her.

One or more trust accounts

- (5) A licensee may keep one or more trust accounts.

Money not to be paid into trust account

8. (1) A licensee is not required to pay into a trust account money which he or she receives in trust for a client if,

- (a) the client requests the licensee in writing not to pay the money into a trust account;
- (b) the licensee pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or
- (c) the licensee pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

Same

- (2) A licensee shall not pay into a trust account the following money:
 - 1. Money that belongs entirely to the licensee or to another licensee of the firm of licensees of which the licensee is a partner or by which the licensee is employed, including an amount received as a general retainer for which the licensee is not required either to account or to provide services.
 - 2. Money that is received by the licensee as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the licensee on behalf of a client.

Record keeping requirements

(3) A licensee who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required to be maintained under Part V.

Withdrawal of money from trust account

- 9. (1) A licensee may withdraw from a trust account only the following money:
 - 1. Money properly required for payment to a client or to a person on behalf of a client.
 - 2. Money required to reimburse the licensee for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client.
 - 3. Money properly required for or toward payment of fees for services performed by the licensee for which a billing has been delivered.
 - 4. Money that is directly transferred into another trust account and held on behalf of a client.
 - 5. Money that under this Part should not have been paid into a trust account but was through inadvertence paid into a trust account.

Permission to withdraw other money

(2) A licensee may withdraw from a trust account money other than the money mentioned in subsection (1) if he or she has been authorized to do so by the Society.

Limit on amount withdrawn from trust account

(3) A licensee shall not at any time with respect to a client withdraw from a trust account under this section more money than is held on behalf of that client in that trust account at that time.

Manner in which certain money may be withdrawn from trust account

10. A licensee shall withdraw money from a trust account under paragraph 2 or 3 of subsection 9 (1) only,

- (a) by a cheque drawn in favour of the licensee;
- (b) by a transfer to a bank account that is kept in the name of the licensee and is not a trust account; or
- (c) by electronic transfer.

Withdrawal by cheque

11. A cheque drawn on a trust account shall not be,

- (a) made payable either to cash or to bearer; or
- (b) signed by a person who is not a licensee except in exceptional circumstances and except when the person has signing authority on the trust account on which a cheque will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all the trust accounts on which signing authority has been delegated to the person.

Withdrawal by electronic transfer

12. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

When money may be withdrawn

(2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

- 1. The electronic transfer system used by the licensee must be one that does not permit an electronic transfer of funds unless,
 - i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and

- ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.
2. The electronic transfer system used by the licensee must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.
3. The confirmation required by paragraph 2 must contain,
 - i. the number of the trust account from which money is drawn,
 - ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred,
 - v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and
 - vi. the time and date that the confirmation from the financial institution is sent to the licensee.
4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition must be signed by,
 - i. a licensee, or
 - ii. in exceptional circumstances, a person who is not a licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a licensee who practises law without another licensee as a partner and without another licensee or person as an employee, if the licensee himself or herself enters into the electronic trust transfer system both the data

describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Same

(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Additional requirements relating to confirmation

(5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a licensee, the licensee shall,

- (a) produce a printed copy of the confirmation;
- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 9A.

Definitions

13. (1) In this section,

“closing funds” means the money necessary to complete or close a transaction in real estate;

“transaction in real estate” means,

- (a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or
- (b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 12, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

- 1. The electronic transfer system used by the licensee must be one to which access is restricted by the use of at least one password or access code.
- 2. The electronic transfer system used by the licensee must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.
- 3. The confirmation required by paragraph 2 must contain,
 - i. the name of the person or entity in whose name the account from which money is drawn is kept,
 - ii. the number of the trust account from which money is drawn,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred, and
 - v. the date the transfer is carried out.
- 4. Before the electronic transfer system used by the licensee is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,
 - i. the licensee, or
 - ii. in exceptional circumstances, a person who is not the licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the

licensee in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

Additional requirements relating to confirmation

- (4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the licensee shall,
 - (a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);
 - (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
 - (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
 - (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

- (5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition: closing funds

- (6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 9C.

Requirement to maintain sufficient balance in trust account

14. Despite any other provision in this Part, a licensee shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

Authorizing Teranet to withdraw money from trust account

15. (1) Subject to subsection (2), a licensee may authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Conditions

(2) A licensee shall not authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction unless Teranet agrees to provide to the licensee in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

Time of receipt of confirmation

(3) The confirmation required under subsection (2) must be received by the licensee not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the licensee.

Contents of confirmation

- (4) The confirmation required under subsection (2) must contain,
 - (a) the amount of money withdrawn from the trust account;
 - (b) the time and date that the authorization to withdraw money is received by Teranet; and
 - (c) the time and date that the confirmation from Teranet is sent to the licensee.

Written record of authorization

(5) A licensee who authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction shall record the authorization in writing.

Same

(6) The written record of the authorization required under subsection (5) shall be in Form 9B and shall be completed by the licensee before he or she authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Additional requirements relating to confirmation

(7) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a licensee, the licensee shall,

- (a) produce a paper copy of the confirmation, if the confirmation is sent to the licensee by electronic means;
- (b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was withdrawn from the trust account by Teranet as authorized by the licensee;
- (c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and
- (d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

Special trust account

16 (1) The trust account from which Teranet may be authorized by a licensee to withdraw money shall be,

- (a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation kept in the name of the licensee or in the name of the firm of licensees of which the licensee is a partner or by which the licensee is employed, and designated as a trust account; and
- (b) an account into which a licensee shall pay only,
 - (i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction; and
 - (ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction.

One or more special trust accounts

(2) A licensee may keep one or more trust accounts of the kind described in subsection (1).

Payment of money into special trust account

(3) A licensee shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction, and if more money is, through inadvertence, paid into the trust account, the licensee shall transfer from the trust account described in subsection (1) into another trust account that is not a trust account described in subsection (1) the excess money.

Time limit on holding money in special trust account

(4) A licensee who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the licensee shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

Interpretation: counting days

(5) In subsection 16 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 16 (1) for more than five days.

Application of ss. 9, 11, 12 and 14

17. Sections 9, 11, 12 and 14 apply, with necessary modifications, to a trust account described in subsection 16 (1).

PART V

RECORD KEEPING REQUIREMENTS

REQUIREMENTS

Requirement to maintain financial records

18. Every licensee shall maintain financial records to record all money and other property received and disbursed in connection with the licensee's professional business, and, as a minimum requirement, every licensee shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the method by which money is received, the person from whom money is received, the amount of money received and the client for whom money is received in trust.
2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed and the client on whose behalf money is disbursed.
3. A clients' trust ledger showing separately for each client for whom money is received in trust all money received and disbursed and any unexpended balance.
4. A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.
5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the

method by which money is received, the amount of money which is received and the person from whom money is received.

6. A book of original entry showing all disbursements of money, other than money held in trust for a client, and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the amount of money which is disbursed and the person to whom money is disbursed.
7. A fees book or a chronological file of copies of billings, showing all fees charged and other billings made to clients and the dates on which fees are charged and other billings are made to clients and identifying the clients charged and billed.
8. A record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparisons:
 - i. A detailed listing made monthly showing the amount of money held in trust for each client and identifying each client for whom money is held in trust.
 - ii. A detailed reconciliation made monthly of each trust bank account.
9. A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the licensee took possession of each property, the person who had possession of each property immediately before the licensee took possession of the property, the value of each property, the client for whom each property is held in trust, the date on which possession of each property is given away and the person to whom possession of each property is given.
10. Bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
11. Signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds.
12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

Record keeping requirements if cash received

19 (1) Every licensee who receives cash shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received and any file number in respect of which cash is received and containing the signature of the licensee or the person authorized by the licensee to receive cash and of the person from whom cash is received.

No breach

(2) A licensee does not breach subsection (1) if a receipt does not contain the signature of the person from whom cash is received provided that the licensee has made reasonable efforts to obtain the signature of the person from whom cash is received.

Record keeping requirements if mortgages and other charges held in trust for clients

20. Every licensee who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A mortgage asset ledger showing separately for each mortgage or charge,
 - i. all funds received and disbursed on account of the mortgage or charge,
 - ii. the balance of the principal amount outstanding for each mortgage or charge,
 - iii. an abbreviated legal description or the municipal address of the real property, and
 - iv. the particulars of registration of the mortgage or charge.
2. A mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,
 - i. all funds received and disbursed on account of each mortgage or charge held in trust for the person,
 - ii. the balance of the principal amount invested in each mortgage or charge,
 - iii. an abbreviated legal description or the municipal address for each mortgaged or charged real property, and
 - iv. the particulars of registration of each mortgage or charge.
3. A record showing a comparison made monthly of the total of the principal balances outstanding on the mortgages or charges held in trust and the total of all principal balances held on behalf of the investors as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparison:
 - i. A detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding.
 - ii. A detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.

Financial records to be permanent

21. (1) The financial records required to be maintained under sections 18, 19 and 20 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

Paper copies of financial records

(2) If a financial record is entered and posted by mechanical or electronic means, a licensee shall ensure that a paper copy of the record may be produced promptly on the Society's request.

Financial records to be current

22. (1) Subject to subsection (2), the financial records required to be maintained under sections 18, 19 and 20 shall be entered and posted so as to be current at all times.

Exceptions

(2) The record required under paragraph 8 of section 18 and the record required under paragraph 3 of section 20 shall be created within twenty-five days after the last day of the month in respect of which the record is being created.

Preservation of financial records required under ss. 18 and 19

23. (1) Subject to subsection (2), a licensee shall keep the financial records required to be maintained under sections 18 and 19 for at least the six year period immediately preceding the licensee's most recent fiscal year end.

Same

(2) A licensee shall keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10 and 11 of section 18 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

Preservation of financial records required under s. 20

(3) A licensee shall keep the financial records required to be maintained under section 20 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

Record keeping requirements when acting for lender

24. (1) Every licensee who acts for or receives money from a lender shall, in addition to maintaining the financial records required under sections 18 and 20, maintain a file for each charge, containing,

- (a) a completed investment authority, signed by each lender before the first advance of money to or on behalf of the borrower;
- (b) a copy of a completed report on the investment;

- (c) if the charge is not held in the name of all the lenders, an original declaration of trust;
- (d) a copy of the registered charge; and
- (e) any supporting documents supplied by the lender.

Exceptions

- (2) Clauses (1) (a) and (b) do not apply with respect to a lender if,
 - (a) the lender,
 - (i) is a bank listed in Schedule I or II to the *Bank Act* (Canada), a licensed insurer, a registered loan or trust corporation, a subsidiary of any of them, a pension fund, or any other entity that lends money in the ordinary course of its business,
 - (ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge, and
 - (iii) has given the licensee a copy of the written commitment before the advance of money to or on behalf of the borrower;
 - (b) the lender and borrower are not at arm's length;
 - (c) the borrower is an employee of the lender or of a corporate entity related to the lender;
 - (d) the lender has executed Form 1 of Regulation 798 of the Revised Regulations of Ontario, 1990, made under the *Mortgage Brokers Act*, and has given the licensee written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement;
 - (e) the total amount advanced by the lender does not exceed \$6,000; or
 - (f) the lender is selling real property to the borrower and the charge represents part of the purchase price.

Requirement to provide documents to lender

- (3) Forthwith after the first advance of money to or on behalf of the borrower, the licensee shall deliver to each lender,
 - (a) if clause (1) (b) applies, an original of the report referred to therein; and
 - (b) if clause (1) (c) applies, a copy of the declaration of trust.

Requirement to add to file maintained under subs. (1)

(4) Each time the licensee or any licensee of the same firm of licensees does an act described in subsection (5), the licensee shall add to the file maintained for the charge the investment authority referred to in clause (1) (a), completed anew and signed by each lender before the act is done, and a copy of the report on the investment referred to in clause (1) (b), also completed anew.

Application of subs. (4)

(5) Subsection (4) applies in respect of the following acts:

1. Making a change in the priority of the charge that results in a reduction of the amount of security available to it.
2. Making a change to another charge of higher priority that results in a reduction of the amount of security available to the lender's charge.
3. Releasing collateral or other security held for the loan.
4. Releasing a person who is liable under a covenant with respect to an obligation in connection with the loan.

New requirement to provide documents to lender

(6) Forthwith after completing anew the report on the investment under subsection (4), the licensee shall deliver an original of it to each lender.

Requirement to add to file maintained under subs. (1): substitution

(7) Each time the licensee or any other licensee of the same firm of licensees substitutes for the charge another security or a financial instrument that is an acknowledgment of indebtedness, the licensee shall add to the file maintained for the charge the lender's written consent to the substitution, obtained before the substitution is made.

Exceptions

(8) The licensee need not comply with subsection (4) or (7) with respect to a lender if clause (2) (a), (b), (c), (e) or (f) applied to the lender in the original loan transaction.

Investment authority: Form 9D

(9) The investment authority required under clause (1) (a) shall be in Form 9D.

Report on investment: Form 9E

(10) Subject to subsection (11), the report on the investment required under clause (1) (b) shall be in Form 9E.

Report on investment: alternative to Form 9E

(11) The report on the investment required under clause (1) (b) may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 9E.

Form 9A

Electronic Trust Transfer Requisition

Requisition (*number*)

Amount of funds to be transferred: (*Specify amount.*)

Re:

(*Specify name of client.*)

(*Specify file reference number.*)

Reason for payment: (*Give reason for payment.*)

Trust account to be debited:

Name of financial institution: (*Specify name.*)

Account number: (*Specify number.*)

Name of recipient: (*Specify name.*)

Account to be credited:

Name of financial institution: (*Specify name.*)

Branch name and address: (*Specify name and address.*)

Account number: (*Specify number.*)

Person requisitioning electronic trust transfer: (*Print the person's name.*)

(*Date*) (*Signature of person requisitioning electronic trust transfer*)

Additional transaction particulars:

(*This section should be completed by the person entering the details of the transfer, after he or she has entered the details of the transfer, and by the person authorizing the transfer at the computer terminal, after he or she has authorized the transfer.*)

Person entering details of transfer:

Name: (*Print person's name.*)

(*Signature of person entering details of transfer.*)

Person authorizing transfer at computer terminal:

Name: (*Print person's name.*)

(Signature of person authorizing transfer at computer terminal.)

Form 9B

Authorization of Withdrawal by Teranet

Authorization *(number)*

Amount of funds to be withdrawn: *(Specify amount.)*

Re:
(Specify name of client.)

(Specify file reference number.)

Reason for withdrawal: *(Give reason for withdrawal, e.g., payment of land transfer tax, document registration fees.)*

Trust account to be debited:

Name of financial institution: *(Specify name.)*

Account number: *(Specify number.)*

Person authorizing withdrawal: *(Print the person's name.)*

(Date) (Signature of person authorizing withdrawal)

Form 9C

Electronic Trust Transfer Requisition: Closing Funds

Requisition *(number)*

Amount of funds to be transferred: *(Specify amount.)*

Re:
(Specify name of client.)

(Specify file reference number.)

Reason for payment: *(Give reason for payment.)*

Trust account to be debited:

Name of financial institution: *(Specify name.)*

Account number: *(Specify number.)*

Name of recipient: *(Specify name.)*

Account to be credited:

Name of financial institution: *(Specify name.)*

Branch name and address: *(Specify name and address.)*

Account number: *(Specify number.)*

Person requisitioning electronic trust transfer: *(Print the person's name.)*

(Date) (Signature of person requisitioning electronic trust transfer)

Person carrying out electronic trust transfer:

Name: *(Print person's name.)*

(Signature of person carrying out electronic trust transfer.)

Form 9D

Investment Authority

(Note to lawyer: This form is required in a private mortgage transaction whether or not the mortgage was arranged by you. Please have your client complete every point on this form, with "n/a" being noted if the point is not applicable. This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)

To: *(Specify name of lawyer or law firm.)*

I (or we) instruct you to act on my (or our) behalf, on my (or our) mortgage investment (or investments) of *(specify amount)*, the details, conditions and disclosures of which are set out below.

A. Details about the investment:

1. Name and address of borrower (or borrowers): *(specify)*
2. Name and address of guarantor (or guarantors) (if any): *(specify)*

3. Legal description and municipal address of real property: *(specify)*
4. Type of property: *(specify, e.g., residence, vacant land, etc.)*
5. (a) Principal amount of mortgage or charge: *(specify)*
5. (b) Amount of loan to be advanced by me *(or us)*: *(specify)*
6. Rank of mortgage or charge is first *(or specify other rank)*.
7. My *(or our)* investment of *(specify amount)* represents *(specify percentage)* of the total loan to the borrower *(or borrowers)*.
8. (a) I am *(or we are)* satisfied that the approximate value of the property is *(specify amount)*.
8. (b) I *(or we)* used the following means to determine the approximate value of the property: *(specify)*.
8. (c) Including my *(or our)* mortgage amount, the percentage of the value of the property that is mortgaged *(or /encumbered)* is *(specify percentage)*.
9. (a) The term of loan is *(specify term of loan in months, years, etc.)*.
9. (b) The due date of loan is *(specify date)*.
9. (c) The loan is amortized over *(specify number of years)*.
10. The interest rate is *(specify interest rate)* calculated semi annually, not in advance *(or specify how interest rate is calculated)*.
11. Particulars of amounts and due dates *(monthly, quarterly, etc.)* of payments of principal and interest: *(specify)*
12. Particulars and amounts of any bonus or holdback or any other special terms: *(specify)*
13. (a) The mortgage is to be registered in the name *(or names)* of *(specify name or names)*.
13. (b) After completion of the mortgage transaction, a collection or administration fee of *(specify amount)* per instalment is payable by the investor *(or investors)* *(or borrower)* *(or borrowers)* to *(specify recipient of fee)*.
13. (c) If the mortgage is held in trust, the dates on which payments are to be made by the trustee *(if applicable)* to me *(or us)* are: *(specify dates)*
14. Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid, are: *(specify)*

B. Conditions:

1. *(Instructions: Clauses (a) and (b) below refer to information which each investor may require from the lawyer. If you require the information referred to in a clause, initial the clause.)*

The information which I (or we) require from you as my (or our) lawyer before you complete the transaction and make the advance is as follows:

(a) If my (or our) investment will be in a position other than a first mortgage or charge, details, including amounts, of all existing encumbrances outstanding.

(b) If the mortgage or charge is a syndicated mortgage, and a prospectus is necessary, a copy of the prospectus. We acknowledge and accept that you as my (or our) lawyer express no opinion as to the necessity for or validity of a prospectus.

2. *(Instructions: Each investor to complete and initial clause (a) and, if clause (a) is answered in the affirmative, to complete (if necessary) and initial clause (b) and to initial clause (c).)*

(a) I (or we) instruct you to obtain a current and independent appraisal of the subject property and provide it to me (or us) before you complete this mortgage transaction. *(Specify yes or no.)*

(b) The appraisal is to be paid by me (or us) or *(specify name of person who is to pay for appraisal)*.

(c) I (or we) have been advised and accept that you as my (or our) lawyer do not express an opinion as to the validity of the appraisal.

C. Disclosure:

1. I (or we) acknowledge being advised by you as my (or our) lawyer that you do not have any direct or indirect interest in the borrower (or borrowers). *(Specify yes or no and indicate the date on which the lawyer advised you that he or she has no direct or indirect interest in the borrower or borrowers.)*

(If the lawyer has an interest in the borrower or borrowers, he or she is unable to act for you on this loan (Rule 2.06 of the Rules of Professional Conduct).

(Warning:

1. *You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor or investors at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's or investors' instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.*

2. *Any loss you may suffer on this mortgage investment will not be insured under the lawyer's professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it. *)*

I (or we) hereby acknowledge receipt of a copy of this form prior to the advance of funds to or on behalf of the borrower (or borrowers). I (or we) further acknowledge having read and understood the above warnings.

Investor (or Investors):

(Specify full name of the investor (or full names of the investors) and specify the investor's (or each investor's) address.)

(Signature of the investor (or of each investor))

(Date of signature)

**(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply "to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above".)*

Form 9E

Report On The Investment

(Note to lawyer: In all private mortgage transactions, whether or not the mortgage was arranged by you, you must complete this form, or, alternatively, you must complete a reporting letter which includes responses to all numbered items in this form. If you complete this form, you must complete every numbered item on this form, with "n/a" being entered if the numbered item is not applicable. If you complete a reporting letter, you must respond to all numbered items in this form in your reporting letter. If a numbered item is not applicable, you must include it in your reporting letter and indicate that it is not applicable. After completion, an original of this form, or the reporting letter, must be delivered forthwith to each lender. This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)

To: *(Specify name and address of investor.)*

A. Details about the investment:

1. Name and address of borrower (or borrowers): *(specify)*
2. Name and address of guarantor (or guarantors) *(if any): (specify)*
3. Legal description and municipal address of real property: *(specify)*
4. Type of property: *(specify, e.g., residence, vacant land, etc.)*
5. (a) Principal amount of mortgage or charge: *(specify)*

5. (b) Amount of loan advanced by you: *(specify)*
6. Rank of mortgage or charge is first *(or specify other rank)*.
7. Your investment of *(specify amount)* represents *(specify percentage)* of the total of this loan to the borrower *(or borrowers)*.
8. Date principal advanced: *(specify)*
9. (a) The term of loan is *(specify term of loan in months, years, etc.)*.
9. (b) The due date of the loan is *(specify date)*.
9. (c) The loan is amortized over *(specify number of years)*.
10. The interest rate is *(specify interest rate)* calculated semi annually, not in advance *(or specify how interest rate is calculated)*.
11. Particulars of amounts and due dates *(monthly, quarterly, etc.)* of payments of principal and interest: *(specify)*
12. Particulars and amounts of any bonus or holdback or any other special terms: *(specify)*
13. Details of any existing encumbrances, including rank on title, balances outstanding, mortgagee name and maturity dates: *(specify)*
14. In those instances in which the mortgage or charge is a collateral security, or if the mortgage or charge is collaterally secured, the details of other security are: *(specify)*
15. (a) Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid, are: *(specify)*
15. (b) Alternatively, I have advised I cannot confirm what independent commissions or fees are being charged to the borrower.
16. Registration number, date of registration and land registry office location: *(specify)*
17. Insurance particulars *(where relevant)*: *(specify)*

B. Conditions And Disclosure:

In accordance with your Form 9D [Investment Authority] request for information and disclosures prior to the advance of your money, I advise that I have previously provided you with the requested information and disclosures as follows:

1. Particulars of existing encumbrances outstanding: *(Specify yes or no, and if yes, specify date on which particulars were provided.)*
2. In the case of a syndicated mortgage where a prospectus was required, a copy of the prospectus: *(Specify yes or no, and if yes, specify date on which prospectus was provided.)*

I advised and you acknowledged that I gave no opinion as to the necessity or validity of a prospectus.

3. Independent appraisal: *(Specify yes or no, and if yes, specify date on which independent appraisal was provided.)*

I advised and you acknowledged that I gave no opinion as to the necessity or validity of an appraisal.

4. Any loss you may suffer on this mortgage investment will not be insured under the lawyers' professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it.*

I advised and you acknowledged having read and understood this warning.

(Warning: You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.)

(Name of lawyer or law firm)

(Address of lawyer or law firm)

(Signature of lawyer)

(Date of signature)

**(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply "to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above".)*

BY-LAW 10

UNCLAIMED TRUST FUNDS

APPLICATION TO PAY MONEY TO SOCIETY

This by-law incorporates the provisions of current by-law 31. No substantive changes have been made to the contents of the current by-law, other than those necessary to ensure that the language conforms to the language of the amended *Law Society Act*.

Application form

1. (1) A licensee who makes an application under subsection 59.6 (1) of the Act shall complete an application form provided by the Society.

Information: application based on clause 59.6 (1) (a)

(2) A licensee who makes an application under subsection 59.6 (1) of the Act based on circumstances described in clause 59.6 (1) (a) of the Act shall provide to the Society the following information:

1. The licensee's name, address, telephone number, fax number and, if any, e-mail address.
2. If the licensee holds the money in trust together with one or more other persons, the name, if applicable, and contact information of each of those persons.
3. The amount of the money.
4. The conditions, if any, subject to which the money is held in trust.
5. The name and last known address and telephone number, according to the licensee and each person who together with the licensee holds the money in trust, of each person who is entitled to the money or a part of the money.
6. The social insurance number, if known, of each individual who is, and the corporation number, if known, of each corporation that is, entitled to the money or a part of the money.
7. The date of birth, if known, of each individual who is entitled to the money or a part of the money.
8. If two or more persons are entitled to the money, the amount of the money to which each person is entitled, according to the financial records of the licensee and each person who together with the licensee holds the money in trust.
9. If a person who is entitled to the money is a corporation, information as to whether the corporation exists at the time of the application, according to the official records of the government of the jurisdiction in which the corporation was incorporated or continued.
10. If a person who is entitled to the money is a corporation that exists at the time of the application, the name and address of each director, officer and shareholder of the corporation, according to the official records of the government of the jurisdiction in which the corporation was incorporated or continued.
11. The name and last known address, according to the licensee and each person who together with the licensee holds the money in trust, of the person from whom the money was received.
12. The date on which the money was received.
13. The reasons for which the money was received.
14. The efforts made by the licensee and each person who together with the licensee holds the money in trust to locate each person entitled to the money.

15. Any other information that the Society may require.

Information: application based on clause 59.6 (1) (b)

(3) A licensee who makes an application under subsection 59.6 (1) of the Act based on circumstances described in clause 59.6 (1) (b) of the Act shall provide to the Society the information described in paragraphs 1 to 4 of subsection (2) and the following information:

1. The period of time for which the money has been held in trust.
2. The reasons why the licensee is unable to determine who is entitled to the money.
3. Any other information that the Society may require.

Supporting documents

(4) A licensee who makes an application under subsection 59.6 (1) of the Act shall provide to the Society copies of documents that are in the licensee's possession and control that may be required by the Society to support the information provided under subsection (2) or (3).

Certification

(5) A licensee who makes an application under subsection 59.6 (1) of the Act shall certify that all information provided under subsection (2) or (3) is correct to the best knowledge of the licensee.

Consideration of application

2. (1) The Society shall consider every application under subsection 59.6 (1) of the Act made in accordance with section 1 of this By-Law and, on the basis of the information provided under subsection 1 (2) or subsection 1 (3) of this By-Law and any documents provided under subsection 1 (4) of this By-Law, shall,

- (a) if the Society is satisfied that the condition for making the application set out in clause 59.6 (1) (a) or (b) of the Act is met, approve the application; or
- (b) if the Society is not satisfied that the condition for making the application set out in clause 59.6 (1) (a) or (b) of the Act is met, refuse to approve the application.

Application based on clause 59.6 (1) (a)

(2) If an application under subsection 59.6 (1) of the Act is based on circumstances described in clause 59.6 (1) (a) of the Act, in considering the application, the Society shall have regard to,

- (a) what efforts the licensee has made to locate the person entitled to the money; and

- (b) whether or not there is any reasonable prospect the person entitled to the money can be located.

Application based on clause 59.6 (1) (b)

(3) If an application under subsection 59.6 (1) of the Act is based on circumstances described in clause 59.6 (1) (b) of the Act, in considering the application, the Society shall have regard to the nature of trust in which the money was held and the circumstances in which the trust arose.

CLAIMS FOR PAYMENT OF MONEY

Interpretation: "claimant"

3. In section 4, "claimant" means a person who makes a claim under subsection 59.10 (1) of the Act.

Making claim

- 4. (1) A claimant shall complete a claim form provided by the Society.

Information

- (2) A claimant shall provide to the Society the following information:
 - 1. The claimant' name, address and telephone number.
 - 2. If the claimant is a corporation, the claimant' corporation number.
 - 3. The amount of the money that the claimant is claiming payment of.
 - 4. The name of the licensee to whom the money was paid in trust and, if the money was paid to the licensee and one or more other persons for them together to hold the money in trust, the name of each of those other persons.
 - 5. The last known address, according to the claimant, of the licensee to whom the money was paid in trust and, if the money was paid to the licensee and one or more other persons for them together to hold the money in trust, the last known address, according to the claimant, of each of those other persons.
 - 6. The date on which the money was paid in trust to the licensee, or to the licensee and one or more other persons, or, if the money was paid in trust to the licensee, or to the licensee and one or more other persons, in two or more separate payments, the date of each separate payment.
 - 7. The reason or reasons why the money was paid in trust to the licensee, or to the licensee and one or more other persons.

8. The reason or reasons why the claimant did not claim payment of the money from the licensee or the licensee and the person or persons who held the money in trust.
9. Any other information that the Society may require.

Supporting documents

(3) A claimant shall provide to the Society copies of documents that are in the claimant's possession and control that may be required by the Society to support the information provided under subsection (2).

Certification

(4) A claimant shall certify that all information provided under subsection (2) is correct to the best knowledge of the claimant.

Consideration of claim

5. (1) The Society shall consider every claim under subsection 59.10 (1) of the Act made in accordance with section 4 of this By-Law and, on the basis of the information provided under subsection 4 (2) of this By-Law and any documents provided under subsection 4 (3) of this By-Law, shall,

- (a) grant the claim; or
- (b) deny the claim.

Society denies claim

(2) If the Society denies the claim under clause (1) (b), the Society shall so notify the claimant and the claimant may apply to the committee of benchers appointed under section 6 for a reconsideration of the claim.

Time for making application

(3) An application for a reconsideration under subsection (2) shall be commenced by the claimant notifying the Society in writing of the application within thirty days after the day specified in the Society's notice to the claimant that his or her claim has been denied.

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider applications for reconsideration made under subsection 5 (2).

Term of office

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

Quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering an application for a reconsideration made under subsection 5 (2).

Procedure

(2) Subject to subsection (3), the procedure applicable to the consideration by the committee appointed under section 6 of an application for a reconsideration made under subsection 5 (2) shall be determined by the committee.

Written submission

(3) Unless the committee permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Powers

8. (1) The committee appointed under section 6 shall consider every application for a reconsideration made under subsection 5 (2) and shall,

- (a) grant the claim; or
- (b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee' disposition of a claim is final.

FORMER LICENSEES

Former licensees

9. This By-Law also applies, with necessary modifications, in respect of former licensees.

v2

BY-LAW 11

REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE

This by-law amalgamates the provisions of current by-laws 21 [Proceedings Authorization Committee], 24 [Professional Competence], 29 [Payment of Costs], 36 [Discrimination and Harassment Counsel], and 37 [Complaints Resolution Commissioner]. Changes to the provisions of the current by-laws have been necessary to correspond to the amendments in the *Law Society Act*.

PART I

COMPLAINTS RESOLUTION COMMISSIONER

Part I incorporates the provisions of current by-law 37. It applies to both lawyers and paralegals.

GENERAL

Definitions

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 6 (1).

Provision of funds by Society

2. (1) The money required for the administration of this Part and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

Restrictions on spending

(2) In any year, the Commissioner shall not spend more money in the administration of this Part and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

REVIEW OF COMPLAINTS

Reviewable complaints

4. (1) A complaint may be reviewed by the Commissioner if,

(a) the merits of the complaint have been considered by the Society;

- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
- (c) the complaint has not been previously reviewed by the Commissioner; and
- (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

Same

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:

- 1. Quantum of fees or disbursements charged by a licensee to a complainant.
- 2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
- 3. Negligence of a licensee.

Interpretation: "previously reviewed"

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

Right to request referral

5. (1) A complainant may request the Society to refer to the Commissioner for review a reviewable complaint.

Request in writing

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

Time for making request

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

When notice given

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,

- (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
- (ii) if it was faxed, on the first day after it was faxed.

Referral of complaints

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 7.

Notice

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 7 that the complaint has been referred to the Commissioner for review.

Fresh evidence

7. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

Disposition of complaint referred for review

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

Disposition of complaint referred for review: notice

(3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

Referral back to Society: notice

(4) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, the Society shall consider the recommendation and notify in writing the Commissioner, complainant and licensee who is the subject of the complaint of

whether the Society will be following the recommendation.

Same

(5) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and the Society determines not to follow the recommendation of the Commissioner, the Society shall provide the Commissioner, complainant and licensee who is the subject of the complaint with a written explanation for the determination.

Procedure

8. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Meeting

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Participation in review: Society

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

Participation in review: licensee

(4) The licensee who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

Description of consideration, *etc.*

(5) At the time that the Society refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

Requirement to answer questions

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

RESOLUTION

Discretionary referral of complaints

9. (1) The Society may refer a complaint to the Commissioner for resolution if,
- (a) the complaint is within the jurisdiction of the Society to investigate;
 - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
 - (c) the complaint has not been referred to the Proceedings Authorization Committee;
 - (d) no resolution of the complaint has been attempted by the Society; and
 - (e) the complainant and the licensee who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

Parties

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

Outcome of Resolution

11. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

No resolution

- (2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Society.

Enforcement of resolution

- (3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

Confidentiality: Commissioner

12. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

Exceptions

- (2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.

Without prejudice

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

Procedure

13. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

PART II

DISCRIMINATION AND HARASSMENT COUNSEL

Part II incorporates the provisions of current by-law 36. It applies to both lawyers and paralegals.

Interpretation

14. In this Part, "Committee" means the Equity and Aboriginal Issues Committee.

Appointment

15. (1) Convocation shall appoint a person as Discrimination and Harassment Counsel in accordance with section 16.

Same

(2) Convocation may appoint one or more persons as Alternate Discrimination and Harassment Counsel in accordance with section 17.

Term of office

(3) Subject to subsection (4), the Counsel and each Alternate Counsel hold office for a term not exceeding three years and are eligible for reappointment.

Appointment at pleasure

(4) The Counsel and each Alternate Counsel hold office at the pleasure of Convocation.

No appointment without recommendation

16. (1) Convocation shall not appoint a person as Counsel unless the appointment is recommended by the Committee.

Vacancy in office

(2) When a vacancy exists in the office of Counsel, the Committee shall conduct a search for candidates for appointment as Counsel in accordance with procedures and criteria established by the Committee.

List of candidates

(3) At the conclusion of the search, the Committee shall give Convocation a ranked list of at least two persons the Committee recommends for appointment as Counsel, with brief supporting reasons.

Additional candidates

(4) If the Committee gives Convocation a list of persons it recommends for appointment, Convocation may require the Committee to give Convocation a list of additional persons who are recommended by the Committee for appointment.

Recommendations considered in absence of public

(5) Convocation shall consider the Committee's recommendations in the absence of the public.

No appointment without recommendation

17. (1) Convocation shall not appoint a person as Alternate Counsel unless the appointment is recommended by the standing Committee.

Vacancy in office

(2) If the Committee wishes Convocation to appoint another person as Alternate Counsel, the Committee shall give Convocation, from the most recent list of persons the Committee recommended to Convocation for appointment as Counsel, a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, with brief supporting reasons.

Same

(3) If the Committee is not able to give Convocation, from the most recent list of persons the Committee recommended to Convocation for appointment as Counsel, a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, the Committee shall,

- (a) conduct a search for candidates for appointment as Alternate Counsel in accordance with procedures and criteria established by the Committee; and
- (b) at the conclusion of the search, the Committee shall give Convocation a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, with brief supporting reasons.

Additional candidates

- (4) If the Committee gives Convocation a list of persons it recommends for appointment, Convocation may require the Committee to give Convocation a list of additional persons who are recommended by the Committee for appointment.

Recommendations considered in absence of public

- (5) Convocation shall consider the Committee's recommendations in the absence of the public.

Application of ss. 16 and 17

18. If Convocation, on the recommendation of the Committee,
- (a) reappoints the Counsel, subsections 16 (2) to (4) do not apply; or
 - (b) reappoints an Alternate Counsel, subsections 17 (2) to (4) do not apply.

Function of Counsel

19. (1) It is the function of the Counsel,
- (a) to assist, in a manner that the Counsel deems appropriate, any person who believes that he or she has been discriminated against or harassed by a licensee;
 - (b) to assist the Society, as required, to develop and conduct for licensees information and educational programs relating to discrimination and harassment; and
 - (c) to perform such other functions as may be assigned to the Counsel by Convocation.

Information received not for investigation

- (2) Information received by the Counsel under clause (1) (a) is not information received by the Society for the purposes of section 49.3 of the Act.

The wording of this section has been changed from section 4(2) of current by-law 36 to reflect the fact that the Secretary is no longer required to authorize investigations. The Secretary is now required to authorize the exercise of investigative powers. (See s. 49.3 (1) and (2) of the *Law Society Act*.) The rewording of this section accomplishes the same thing – information the DHC receives cannot trigger an investigation by the Society. The section is necessary because the DHC is bound to keep information received confidential.

Access to information

(3) Except with the prior permission of the Society, the Counsel is not entitled to have any information in the records or within the knowledge of the Society respecting a licensee.

Annual and semi-annual report to Committee

20. (1) Unless the Committee directs otherwise, the Counsel shall make a report to the Committee,
- (a) not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year; and
 - (b) not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.

Report to Convocation

(2) The Committee shall submit each report received from the Counsel to Convocation on the first day following the deadline for the receipt of the report by the Committee on which Convocation has a regular meeting.

Confidentiality

21. (1) The Counsel shall not disclose,
- (a) any information that comes to his or her knowledge as a result of the performance of his or her duties under clause 19 (1) (a); or
 - (b) any information that comes to his or her knowledge under subsection 19 (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12.

Rules of professional conduct

(2) For greater certainty, clause (1) (a) prevails over the Society's rules of professional conduct to the extent that the rules require the Counsel to disclose to the Society the information mentioned in clause (1) (a).

Exceptions

- (3) Subsection (1) does not prohibit,
 - (a) disclosure required in connection with the administration of the Act, the regulations, the by-laws or the rules of practice and procedure;
 - (b) disclosure of information that is a matter of public record;
 - (c) disclosure of information where the Counsel has reasonable grounds to believe that there is an imminent risk to an identifiable individual or group of individuals of death, serious bodily harm or serious psychological harm that substantially

interferes with the individual's or group's health or well-being and that the disclosure is necessary to prevent the death or harm;

- (d) disclosure by the Counsel to his or her counsel; or
- (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

Alternate Counsel: Counsel unable to act

22. (1) If the Counsel for any reason is unable to perform the function of the Counsel during his or her term in office, an Alternate Counsel shall perform the function of the Counsel.

Selection of Alternate Counsel

(2) The Alternate Counsel mentioned in subsection (1) shall be chosen by the Counsel or, if the Counsel is unable to do so, by the Chief Executive Officer.

Alternate Counsel: Counsel office vacant

(3) Despite subsection (1), if there is a vacancy in the office of the Counsel, an Alternate Counsel chosen by the Committee shall perform the function of the Counsel until a Counsel is appointed under section 15.

Annual and semi-annual report to Committee

(4) If the Committee directs, an Alternate Counsel shall make any report mentioned in section 20.

Application of s. 21

(5) Section 21 applies to an Alternate Counsel while performing the function of the Counsel.

PART III

INVESTIGATIONS

EXERCISE OF POWERS

Exercise of powers, *etc.*

23. The holders of the following offices may exercise the powers and perform the duties under subsection 49.3 (2) and 49.3 (4) of the Act:

1. The office of Director, Professional Regulation.
2. The office of Senior Counsel, Professional Regulation.

Previously, the *Law Society Act* specified that the “Secretary” had these powers and duties, and section 3(1) of current by-law 4 permitted the Secretary to delegate the exercise of these powers and performance of these duties to Counsel, Professional Regulation.

PART IV

PROFESSIONAL COMPETENCE

Part IV incorporates the provisions of current by-law 24 with a few modifications to reflect amendments to the *Law Society Act*. This Part applies only to lawyers.

INTERPRETATION

Interpretation

24. In this Part,

“holiday” means,

- (a) any Saturday or Sunday;
- (b) New Year's Eve Day, and where New Year's Eve Day falls on a Saturday or Sunday, the preceding Friday;
- (c) New Year's Day, and where New Year's Day falls on a Saturday or Sunday, the following Monday;
- (d) Good Friday;
- (e) Easter Monday;
- (f) Victoria Day;
- (g) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;
- (h) Civic Holiday;
- (i) Labour Day;
- (j) Thanksgiving Day;
- (k) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;
- (l) Christmas Eve Day, and where Christmas Eve Day falls on a Saturday or Sunday, the preceding Friday;

- (m) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;
- (n) Boxing Day; and
- (o) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

“licensee” means a licensee who holds a Class L1 licence;

“panelist” means a member of the Hearing Panel appointed under subsection 42 (6) of the Act to review a proposal for an order made to a licensee.

Prior to Bill 14, the *Law Society Act* required that an elected benchler be appointed to review a proposal order. Section 42(6) of the *Law Society Act* has been amended to provide that a member of the Hearing Panel review the proposal order.

Exercise of powers by committee

25. The performance of any duty, or the exercise of any power, given to the Professional Development and Competence Committee under this Part is not subject to the approval of Convocation.

INFORMATION

Requirement to provide information

26. (1) The Society may require a licensee to provide to the Society specific information about the licensee’s quality of service to clients, including specific information about,

- (a) the licensee’s knowledge, skill or judgment;
- (b) the licensee’s attention to the interests of clients;
- (c) the records, systems or procedures of the licensee’s professional business; and
- (d) other aspects of the licensee’s professional business.

Notice of requirement to provide information

(2) The Society shall notify a licensee in writing of the requirement to provide information under subsection (1) and shall send to the licensee a detailed list of the information to be provided by him or her.

Time for providing information

(3) The licensee shall provide to the Society the specific information required of him or her not later than thirty days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

(4) Despite subsection (3), on the request of the licensee, the Society may extend the time within which the licensee is required to provide to the Society the specific information required of him or her.

Request for extension of time

(5) A request to the Society to extend time under subsection (4) shall be made by the licensee in writing and not later than the day on which the licensee is required under subsection (3) to provide to the Society the specific information required of him or her.

PRACTICE REVIEWS

Reviews

27. (1) A review of a licensee's professional business may be conducted if,
- (a) an employee of the Society holding the office of Director, Professional Development and Competence is satisfied that there are reasonable grounds for believing that the licensee may be failing or may have failed to meet standards of professional competence; or
 - (b) the licensee has held a Class L1 licence for not more than eight years.

Determination of reasonable grounds

(2) For the purposes of clause (1) (a), in determining that there are reasonable grounds for believing that the licensee may be failing or may have failed to meet standards of professional competence, the following may be considered:

1. The nature, number and type of complaints made to the Society in respect of the conduct and competence of the licensee.
2. Any order made against the licensee under section 35, 40, 44 or 47 or subsection 49.35 (2) of the Act.
3. Any undertaking given to the Society by the licensee.
4. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of considering a complaint which suggests that the licensee may be failing or may have failed to meet standards of professional competence.

5. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of an investigation which suggests that the licensee may be failing or may have failed to meet standards of professional competence.
6. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of a proceeding which suggests that the licensee may be failing or may have failed to meet standards of professional competence.
7. The result of an audit where the result suggests that,
 - (a) the licensee is in default of the requirements of By-Law 9 [Financial Transactions and Records;
 - (b) the licensee is in default of the requirements of the rules of professional conduct for licensees with respect to conflicts of interest;
 - (c) there are deficiencies in the records, systems or procedures of the licensee's professional business; or
 - (d) there are deficiencies in the administration of the licensee's professional business.

Review of licensee's professional business

28. (1) The Society shall assign one or more persons to conduct a review of a licensee's professional business.

Assignment of additional persons to review

- (2) At any time after a review has commenced, the Society may assign one or more persons to assist or replace the person or persons originally assigned to conduct the review.

Review of professional business is not public information

- (3) The fact that a review of a licensee's professional business is being or has been conducted shall not be made public, except as required in connection with a proceeding under the Act.

Final report

29. (1) On completion of a review of a licensee's professional business, the person or persons who conducted the review shall submit to the Society a final report on the review.

Contents of final report

- (2) The final report on a review of a licensee's professional business shall contain,
 - (a) the opinion of the person or persons who conducted the review as to whether the licensee who was the subject of the review is failing or has failed to meet standards of professional competence; and

- (b) if the person or persons who conducted the review are of the opinion that the licensee who was the subject of the review is failing or has failed to meet standards of professional competence, the recommendations of the person or persons.

Final report

- (3) The Society shall provide to the licensee who is the subject of the final report a copy thereof.

Recommendations

30. (1) If on completion of a review of a licensee's professional business and receipt of the final report on the review, the Society decides to make recommendations to the licensee under subsection 42 (3) of the Act, but not to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Society shall so notify the licensee in writing.

Same

- (2) The Society may make recommendations to the licensee at the same time as the Society notifies the licensee under subsection (1) or within a reasonable period of time after the Society notifies the licensee under subsection (1).

Proposal for order

31. (1) If on completion of a review of a licensee's professional business and receipt of the final report on the review, the Society decides to make recommendations to the licensee under subsection 42 (3) of the Act and to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Society shall so notify the licensee in writing.

Same

- (2) The notice under subsection (1) shall be accompanied by the proposal for an order.

Form of proposal for an order

- (3) A proposal for an order shall, as far as possible, be in the form of an order made under subsection 42 (7) of the Act.

Time for responding to proposal

- (4) A licensee who receives a proposal for an order shall, not later than thirty days after the date specified on the notice given to the licensee under subsection (1), notify the Society in writing as to whether the licensee accepts the proposal.

Extension of time for responding to proposal

- (5) Despite subsection (4), on the request of the licensee, or on its own initiative, the Society may extend the time within which the licensee is to respond to the proposal.

Request for extension of time

(6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and not later than the day on which the licensee is required under subsection (4) to respond to the proposal.

Modifying proposal for order

(7) Before the time for responding to a proposal for an order has expired, the Society may modify the proposal if the licensee consents to the modification, and the modified proposal shall be deemed to be the proposal to which the licensee is required to respond under subsection (4).

Failure to respond

(8) A licensee who fails to respond in writing to a proposal for an order within the thirty day period specified in subsection (4), or within the extended time period specified by the Society under subsection (5), the licensee shall be deemed to have refused to accept the proposal.

Review of proposal by panelist: materials

32. The Society shall provide to the panelist the following materials:

1. The final report on the review of the licensee's professional business.
2. The licensee's written response, if any, to the final report, including the licensee's written response, if any, to the recommendations of the person or persons who conducted the review.
3. The proposal for an order made to the licensee.
4. The licensee's written response, if any, to the proposal.

Review of proposal by panelist: refusal to make order

33. The panelist may refuse to make an order giving effect to the proposal only after a meeting with the licensee and the Society.

Review of proposal by panelist: modifications

34. The panelist may make an order that includes modifications to the proposal only after a meeting with the licensee and the Society.

Communications with licensee and Society prohibited

35. The panelist shall not communicate with the licensee or the Society with respect to the proposal except in accordance with section 36.

Meeting with licensee and Society

36. (1) The panelist may meet with the licensee and the Society by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Both parties to be present

(2) Subject to subsection (3), the panelist shall not meet with the licensee alone or with the Society alone to discuss the proposal, but nothing in this subsection is intended to deny to the licensee the right to counsel.

Exception

- (3) The panelist may meet with the Society alone to discuss the proposal if,
 - (a) the meeting is not held under section 34; and
 - (b) notice of the meeting has been given to the licensee in accordance with subsections (4) and (5) and the licensee fails to attend at the meeting.

Notice

(4) The Society shall give to a licensee reasonable notice of a meeting with the panelist.

Same

- (5) A notice of a meeting shall be in writing and shall include,
 - (a) a statement of the time, place and purpose of the meeting; and
 - (b) a statement that if the licensee does not attend at the meeting, the panelist may meet with the Society alone to discuss the proposal.

Order

37. (1) An order made under subsection 42 (7) of the Act shall be in Form 11A and shall contain,

- (a) the name of the panelist who made it;
- (b) the date on which it was made; and
- (c) a recital of the particulars necessary to understand the order, including the date of any meeting and the persons who attended at the meeting.

Same

(2) The operative parts of an order made under subsection 42 (7) of the Act shall be divided into paragraphs, numbered consecutively.

Notice of order

(3) The Society shall send to the licensee who is the subject of an order made under subsection 42 (7) of the Act a copy of the order by any of the following methods:

1. Personal delivery to the licensee.
2. Regular lettermail to the last known address of the licensee.
3. Fax to the last known fax number of the licensee.
4. E-mail to the last known e-mail address of the licensee.

Date of receipt: mail

(4) If the copy of the order is sent by regular lettermail, it shall be deemed to be received by the licensee on the fifth day after the day it is mailed, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

Date of receipt: fax or e-mail

(5) If the copy of the order is sent by fax or e-mail, it shall be deemed to be received by the licensee on the day after it was sent, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

Effective date of order

(6) Unless otherwise provided in the order, an order made under subsection 42 (7) of the Act is effective from the date on which it is made.

Order is not public information

(7) An order made under subsection 42 (7) of the Act shall not be made public.

Order making licence subject to terms, *etc.*, is public information

(8) Despite subsection (7), an order made under subsection 42 (7) of the Act that imposes terms, conditions, limitations or restrictions on the licensee or the licensee's licence is a matter of public record.

PART V

PAYMENT OF COSTS

Part V incorporates the provisions of current by-law 29. It applies to both lawyers and paralegals.

AUDIT

Payment of costs

38. On application by the Society, a bencher appointed for the purpose by Convocation may make an order requiring a licensee who was the subject of an audit under section 49.2 of the Act to pay the cost or a portion of the cost of the audit if the bencher is satisfied that,

- (a) the audit was required because the licensee had failed to submit to the Society the report required under section 4 of By-Law 8 [Reporting and Filing Requirements];
- (b) at the time arranged between the Society and the licensee, the person conducting the audit could not gain entry to the business premises of the licensee;
- (c) at any time during the audit, the licensee failed to produce to the person conducting the audit the financial records and other documents that the licensee prior to a specified time had been requested to make available to the person at that time;
- (d) at any time during the audit, the licensee failed to produce to the person conducting the audit financial records that were up to date and the failure to produce financial records that were up to date increased significantly the amount of time required to complete the audit; or
- (e) at any time during the audit, the licensee produced financial records that were not in compliance with the requirements of By-Law 9 [Financial Transactions and Records] and the production of financial records that were not in compliance with the requirements of By-Law 9 [Financial Transactions and Records] increased the amount of time required to complete the audit.

Notice of application

39. (1) An application for payment of the cost or a portion of the cost of an audit shall be commenced by the Society notifying the licensee in writing of the application.

Method of giving notice

- (2) Notice under subsection (1) is sufficiently given if,
 - (a) it is delivered personally;
 - (b) it is sent by regular lettermail addressed to the licensee at the latest address for the licensee appearing on the records of the Society; or
 - (c) it is faxed to the licensee at the latest fax number for the licensee appearing on the records of the Society.

Receipt of notice

- (3) Notice under subsection (1) shall be deemed to have been received by the licensee,
- (a) if it was sent by regular lettermail, on the fifth day after it was mailed; and
 - (b) if it was faxed, on the first day after it was faxed.

Bill of costs

40. (1) Where the Society is applying for payment of the cost or a portion of the cost of an audit, the Society shall send to the licensee at least ten days before the date fixed for consideration of the application a bill of costs setting out the expenses, fees, disbursements and other charges incurred by the Society to conduct the audit.

Tariff

(2) The bill of costs prepared by the Society shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

Application of certain sections

(3) Subsections 39 (2) and (3) apply, with necessary modifications, to the delivery of the bill of costs under subsection (1).

Consideration of application: procedure

41. (1) Subject to sections 39 and 40 and subsections (2), (3), (5) and (6), the procedure applicable to the consideration of an application for the payment of the cost or a portion of the cost of an audit shall be determined by the benchers and, without limiting the generality of the foregoing, the benchers may decide who may make submissions to him or her, when and in what manner.

Submissions by licensee and Society

(2) The licensee and the Society are entitled to make submissions to the benchers when he or she is considering an application for the payment of the cost or a portion of the cost of an audit.

Ability to pay

(3) In considering an application for the payment of the cost or a portion of the cost of an audit, the benchers shall take into account, among other relevant factors, the licensee's ability to pay.

Authority of benchers

(4) After considering an application for payment of the cost or a portion of the cost of an audit, the benchers shall,

- (a) dismiss the application and declare that the licensee is not required to pay the cost or any portion of the cost of the audit; or
- (b) order that the licensee pay the cost or a portion of the cost of the audit, as requested by the Society in the application or as determined by the benchers, and set the due date for payment.

Tariff

(5) Where the benchers determine under clause (4) (b) that the licensee is to pay the cost or a portion of the cost of the audit other than as requested by the Society in the application, the benchers' determination as to the amount payable by the licensee shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

Reasons for decision

(6) If requested by the licensee or the Society, the benchers shall state in writing the reasons for his or her decision on the application.

Appeal

42. (1) The licensee or the Society if dissatisfied with the benchers' decision under subsection 41 (4) may appeal the decision to a panel of three benchers appointed for the purpose by Convocation.

Time for appeal

- (2) An appeal under subsection (1) shall be commenced,
 - (a) if the licensee is appealing, by the licensee notifying the Society in writing of the appeal within thirty days after the day the benchers deliver his or her decision; or
 - (b) if the Society is appealing, by the Society notifying the licensee in writing of the appeal within thirty days after the day the benchers deliver his or her decision.

Procedure

(3) The rules of practice and procedure apply, with necessary modifications, to the consideration by the panel of three benchers of an appeal under subsection (1) as if the consideration of the appeal were the hearing of an appeal under subsection 49.32 (2) of the Act.

Same

(4) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the panel of three benchers of an appeal under subsection (1).

Payment of cost of audit

(5) Where a licensee or the Society appeals under subsection (1), payment of the cost or a portion of the cost of an audit, as ordered by the benchers under subsection 41 (4), is postponed until the appeal is disposed of by the panel of three benchers.

Decision on appeal

(6) After considering an appeal made under subsection (1), the panel of three benchers shall,

- (a) confirm the benchers' decision; or
- (b) strike out the benchers' decision and substitute its own decision.

Decision final

(7) The decision of the panel of three benchers on an appeal made under subsection (1) is final.

PART VI

PROCEEDINGS AUTHORIZATION COMMITTEE

Part VI incorporates the provisions of by-law 21. It applies to both lawyers and paralegals.
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GENERAL

Definitions

43. In this Part,

"Committee" means the Proceedings Authorization Committee;

"outside counsel" means a person appointed under section 49.53 of the Act to represent the Society in any proceeding under Part II of the Act before the Hearing Panel, the Appeal Panel or a court that concerns a benchers or employee of the Society;

Proceedings Authorization Committee

44. (1) The Proceedings Authorization Committee is continued as the Proceedings Authorization Committee in English and as Comité d'autorisation in French.

Composition

- (2) The Committee shall consist of four benchers appointed by Convocation.

Chairs and vice-chairs of certain standing committees

- (3) The Committee must include,
- (a) the chair or a vice-chair of the Professional Regulation Committee; and
 - (b) the chair or a vice-chair of the Professional Development and Competence Committee.

Restrictions on appointments

- (4) A bencher who holds office under paragraph 1 or 2 of subsection 12 (1), or under paragraph 1 of subsection 12 (2), of the Act may not be appointed to the Committee.

Term of office

- (5) Subject to subsection (6), a bencher appointed to the Committee shall hold office for a term of one year and is eligible for reappointment.

Appointment at pleasure

- (6) A bencher appointed to the Committee holds office as a member of the Committee at the pleasure of Convocation.

Chair

45. (1) Convocation shall appoint one member of the Committee who is an elected bencher as chair of the Committee.

Term of office

- (2) Subject to subsection (3), the chair holds office for a term of one year and is eligible for reappointment.

Appointment at pleasure

- (3) The chair holds office at the pleasure of Convocation.

Function of Committee

46. It is the function of the Committee,

- (a) to review all matters referred to it in accordance with this Part and, in respect of each matter, to determine whether any action mentioned in subsection 51 (1) should be taken; and

- (b) to determine, in any given case, whether the Society should apply to the Superior Court of Justice for an order under section 49.13 of the Act.

REVIEW OF MATTERS REFERRED TO COMMITTEE

Review of matters: quorum of Committee

47. (1) Two members of the Committee constitute a quorum for the purposes of reviewing a matter and taking action in respect of the matter.

Temporary members

(2) If no two members of the Committee are able to constitute a quorum because three or more members of the Committee are unable for any reason to act, subject to subsection (3), the chair of the Committee may appoint one or more benchers as temporary members of the Committee for the purposes of constituting a quorum, and the temporary members shall be deemed, for the purposes of subsection (1), to be members of the Committee.

Ineligible benchers

(3) The chair shall not appoint as a temporary member of the Committee a bencher who holds office under paragraph 1 or 2 of subsection 12 (1), or under paragraph 1 of subsection 12 (2), of the Act.

Review by telephone conference call, etc.

48. The Committee may meet to review a matter by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

No right to participate

49. (1) Subject to subsection (2), no person may participate in the review of a matter by the Committee.

Participation at request of Committee

(2) For the purposes of answering any questions that the Committee might have about a matter referred to it or about actions that may be taken by the Committee with respect to a matter referred to it, the Committee may require one or more of the following persons to participate in a review of a matter:

1. The person who referred the matter to it.
2. An officer, employee, agent or representative of the Society who is or was involved in an audit, investigation, review, search or seizure relating to the matter.

Referral by Society

50. (1) Subject to subsection (2), during or after an audit, investigation or review, the Society may refer to the Committee a matter respecting the conduct of a licensee or group of licensees, the capacity of a licensee or the professional competence of a licensee for one or more of the following purposes:

1. Obtaining directions with respect to the conduct of an audit, investigation or review.
2. Obtaining approval or directions for the informal resolution of the matter.
3. Obtaining authorization for the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.
4. Obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether,
 - i. a licensee has contravened section 33 of the Act,
 - ii. a licensee is or has been incapacitated, or
 - iii. a licensee is failing or has failed to meet standards of professional competence.

Restrictions on referrals by Society

(2) The Society shall not refer to the Committee a matter respecting the conduct of a licensee if the matter is a complaint that has been referred to the Complaints Resolution Commissioner for resolution or review and the Complaints Resolution Commissioner has not yet disposed of the matter.

Referral by panelist

(3) Subject to subsection (4), a member of the Hearing Panel appointed under subsection 42 (6) of the Act to review a proposal for an order made to a licensee may refer to the Committee a matter respecting the professional competence of the licensee for the purpose of obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether the licensee is failing or has failed to meet standards of professional competence.

Restrictions on referrals by panelist

(4) A member of the Hearing Panel appointed under subsection 42 (6) of the Act to review a proposal for an order made to a licensee shall not refer to the Committee a matter respecting the professional competence of the licensee except after the benchers has,

- (a) met with the licensee and the Society, as required under sections 33 and 34, in accordance with sections 35 and 36; and
- (b) refused to make an order under subsection 42 (7) of the Act.

Recommendations for action

(5) A person who refers a matter to the Committee may recommend actions to be taken by the Committee in respect of the matter, and, in making his or her recommendations, the person is not restricted to recommending the actions mentioned in paragraphs 1 to 7 of subsection 51 (1).

Review of matters

51. (1) After reviewing a matter, the 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:

1. Approve, or give directions for, the informal resolution of the matter.
2. Authorize the Society to apply to the Hearing Panel for a determination of whether,
 - i. a licensee has contravened section 33 of the Act,
 - ii. a licensee is or has been incapacitated, or
 - iii. a licensee is failing or has failed to meet standards of professional competence.
3. Invite a licensee to attend before a panel of benchers to receive advice concerning his or her conduct.
4. Invite a licensee to attend before a panel of benchers to receive advice concerning his or her professional competence.
5. Send to a licensee a letter of advice concerning his or her conduct.
6. Send to a licensee a letter of advice concerning his or her professional competence.
7. Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.
8. Any other action that the Committee considers appropriate.

Restriction on authorization of conduct proceedings

(2) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a licensee has contravened section 33 of the Act unless the Committee is satisfied that there are reasonable grounds for believing that the licensee has contravened section 33 of the Act.

Restriction on authorization of capacity proceedings

(3) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a licensee is or has been incapacitated unless the Committee is satisfied that there are reasonable grounds for believing that the licensee is or has been incapacitated.

Restriction on authorization of professional competence proceedings

(4) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a licensee is failing or has failed to meet standards of professional competence unless the Committee is satisfied that there are reasonable grounds for believing that the licensee is failing or has failed to meet standards of professional competence.

Appointment of representative

52. (1) Where the Committee authorizes the Society to apply to the Hearing Panel for a determination of whether a licensee is or has been incapacitated, the Committee may appoint another licensee to represent the licensee in proceedings under Part II of the Act before the Hearing Panel, the Appeal Panel or a court if the Committee is satisfied that,

- (a) the licensee is unable to participate in the proceedings or is unable to instruct counsel to do so;
- (b) the licensee has no legal representation; and
- (c) the licensee does not have a guardian, an attorney or a similar person who has authority to represent the licensee in the proceedings.

Costs

(2) The costs resulting from an appointment under subsection (1) shall be paid for by the Society.

Decision in writing

53. The Committee shall record in writing its decision on every matter referred to it.

Notice

54. The Committee shall give to the Society notice of its decision on every matter referred to it.

Reasons

55. The Committee is not required to provide at any time to any person its reasons for a decision.

Withdrawal of application to Hearing Panel

56. (1) If the Committee authorizes the Society to apply to the Hearing Panel for a determination mentioned in paragraph 2 of subsection 51 (1) but the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, the Society shall not withdraw its application to the Hearing Panel unless the Committee has first authorized the withdrawal.

Request for withdrawal: procedure

(2) A request to the Committee to withdraw an application to the Hearing Panel shall be made by the Society or an outside counsel, as the case may be, and sections 47, 48, 49, 53, 54 and 55 apply, with necessary modifications, to the Committee's consideration of the request.

APPLICATION FOR DISCLOSURE ORDER

Application by Society

57. (1) On application by the Society, the Committee shall determine whether the Society should apply to the Superior Court of Justice for an order under section 49.13 of the Act.

Quorum of Committee

(2) Any two members of the Committee constitute a quorum for the purposes of making the determination under subsection (1).

Factors to be considered

(3) In making the determination under subsection (1), the Committee shall give primary consideration to the extent to which disclosure of information is necessary in order to protect the public and further the administration of justice.

Application of certain sections

(4) Sections 48, 49, 53, 54 and 55 apply, with necessary modifications, to the making of a determination under subsection (1).

Form 11A

Order

(File no., if any)

The Law Society of Upper Canada

(Name of panelist)

(Day and date order made)

In the matter of the *Law Society Act*
and (*identify licensee*), a licensee licensed by The Law Society of Upper Canada

ORDER

A PROPOSAL FOR THIS ORDER was made by the Society, under subsection 42 (4) of the *Law Society Act*, to the licensee (*identify licensee*) on (*specify date*) and was accepted by the licensee on (*specify date*).

(OR, where the order includes modifications to the proposal,

A PROPOSAL FOR AN ORDER was made by the Society, under subsection 42 (4) of the *Law Society Act*, to the licensee (*identify licensee*) on (*specify date*).)

ON READING the final report on the review of the licensee's professional practice, (*the licensee's response to the final report,*) (*and*) the proposal for the order, (*and the licensee's response to the proposal for the order,*)

(ON MEETING with the licensee and the Society (or the Society alone, the licensee not attending and not being represented at the meeting, although properly notified), and on hearing the submissions of the licensee and the Society (or the Society),

OR

ON MEETING with the licensee and the Society and on hearing their submissions on an order that would include modifications to the proposal made by the Society to the licensee (if applicable, add: including their consent to such an order),)

IT IS ORDERED as follows:

1.
2.

(Signature of panelist)

BY-LAW 12

COMPENSATION FUND

This by-law amalgamates all of the provisions in current by-laws applicable to the Compensation Fund in a single by-law. The Compensation Fund Committee serves more of a regulatory purpose than the other committees, which are primarily policy development committees. It has therefore been placed in a separate by-law.

EXERCISE OF POWERS

Exercise of powers, *etc.*

1. The holders of the following offices may exercise the powers and perform the duties under subsection 51 (11.1) of the Act:

1. The office of Director, Professional Regulation.
2. The office of Senior Counsel, Professional Regulation.

COMPENSATION FUND COMMITTEE

Compensation Fund Committee

2. The standing committee known as the Lawyers Fund for Client Compensation Committee is continued as the Compensation Fund Committee.

Application of By-Law

3. The following provisions of By-Law 3 [Benchers, Convocation and Committees] apply to the Compensation Fund Committee:

1. Section 107.
2. Sections 109 to 116.

Mandate

Section 4(1) and (2) repeat the provisions of section 13(1) and (2) of current by-law 9.
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4. (1) The Compensation Fund Committee is responsible to Convocation for the administration of the Compensation Fund.

Powers

- (2) The Compensation Fund Committee may make such arrangements and take steps as it considers advisable to carry out its responsibilities.

BY-LAW 13

LEGAL INFORMATION

This by-law is an amalgamation of current by-laws 23 and 30.
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PART I

REPORTING OF COURT DECISIONS

ONTARIO REPORTS

Part I of this by-law incorporates the provisions of current by-law 23. It applies to paralegals and lawyers.

Copies of Ontario Reports

1. (1) Subject to subsection (2), copies of the Ontario Reports shall be provided at the expense of the Society to,

- (a) licensees who licences are not suspended and who are not in default for payment of an annual fee; and
- (b) such persons as Convocation may from time to time determine.

Exceptions

- (2) Copies of the Ontario Reports shall not be provided to a licensee who has chosen not to receive the Ontario Reports.

Other reports

- (3) Convocation may, from time to time, determine to provide reports of court decisions other than the Ontario Reports to any persons mentioned in subsection (1).

Application of subs. (2)

- (4) Subsection (2) applies, with necessary modifications, to the provision under subsection (3) of reports of court decisions other than the Ontario Reports to licensees.

Advertising in the Ontario Reports

- 2. The Society may permit the publisher of the Ontario Reports to publish with each part of the Ontario Reports such advertising not objectionable to the Society as the publisher may wish to print at his, her or its own expense, but all such advertising shall be kept entirely separate from the text of the Ontario Reports.

REASONS FOR JUDGMENT

Distribution

- 3. Convocation may make provision for the distribution of copies of reasons for judgment on such terms as Convocation may from time to time determine.

PART II

COUNTY LAW LIBRARIES

Sections 4 – 16 incorporate the provisions of current by-law 30. This Part of the by-law will be reviewed together with terms of the new Unanimous Shareholders Agreement recently approved by Convocation, to determine if any changes are necessary.

INTERPRETATION

Definitions

- 4. In this Part,

“association” means a county or district law association formed under Regulation 708 of the Revised Regulations of Ontario, 1990 or any predecessor of it;

“Corporation” means the corporation established as required under section 6;

“county law library” means a law library established by an association;

“trustees”, where an association is incorporated, means the directors of the corporation.

Interpretation: “county law library funded by the Corporation”

5. In this Part, “county law library funded by the Corporation” means,

- (a) a county law library established under Regulation 708 of the Revised Regulations of Ontario, 1990, any predecessor of Regulation 708 of the Revised Regulations of Ontario or any predecessor of this By-Law and in existence on the day on which this By-Law comes into force; and
- (b) a county law library established with the approval of the Corporation after the day on which this By-Law comes into force.

LIBRARY CORPORATION

Corporation to be established

6. (1) The Society shall cause a corporation to be established in accordance with this section for the purposes of,

- (a) establishing and administering a system for the provision of law library services and programs by county law libraries funded by the Corporation;
- (b) establishing policies and priorities for the provision of law library services and programs by county law libraries funded by the Corporation based on the financial resources available to the Corporation;
- (c) providing to associations funding to pay for the operation of county law libraries funded by the Corporation;
- (d) monitoring and supervising the provision of law library services and programs by county law libraries funded by the Corporation, including establishing guidelines and standards for the organization and operation of county law libraries funded by the Corporation and for the provision of law library services and programs by county law libraries funded by the Corporation; and
- (e) advising Convocation on all aspects of the provision of law library services and programs by county law libraries funded by the Corporation, including anything that affects or may affect the demand for or quality of law library services and programs.

Classes of shares

- (2) The Corporation shall have two classes of shares as follows:

1. A class of shares, to be issued to the Society.
2. A class of shares, giving the County and District Law Presidents' Association the exclusive right to elect three directors and the Toronto Law Association the exclusive right to elect one director, to be issued to the County and District Law Presidents' Association and the Toronto Law Association as follows:
 - i. 75 percent of the shares to be issued to the County and District Law Presidents' Association.
 - ii. 25 percent of the shares to be issued to the Toronto Law Association.

Directors

- (3) The Corporation shall consist of eight directors.

COUNTY LAW LIBRARIES

Application to establish county law library

7. (1) An association that wishes to establish a county law library to be operated by the association and funded by the Corporation shall apply to the Corporation for its approval to establish the county law library.

Same

- (2) An application under subsection (1) shall contain the information required by the Corporation.

Operation of county law library

8. (1) A county law library funded by the Corporation shall be operated by the association in accordance with any guidelines and standards established by the Corporation.

Provision of law library services and programs

- (2) A county law library funded by the Corporation shall provide library services and programs in accordance with any guidelines, standards, policies and priorities established by the Corporation.

Library materials

9. (1) The trustees of an association shall continue to hold in trust for the Society all library materials of its county law library that the trustees held in trust for the Society before the day on which this By-Law comes into force.

Same

- (2) Subject to subsection (3), the trustees of an association shall hold the library materials of its county law library in trust for the Society.

Same

(3) Library materials acquired by an association for its county law library after the day on which the Corporation is established shall be held by the trustees of the association in trust for the Corporation.

Return of library materials to Society

(4) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from the Society to return to it the library materials of an association's county law library that are held in trust for it, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library that are held in trust for the Society to the Society, subject to any other directions from the Society.

Return of library materials to Corporation

(5) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from the Corporation to return to it the library materials of an association's county law library that are held in trust for it, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library that are held in trust for the Corporation to the Corporation, subject to any other directions from the Corporation.

Failure to return library materials

(6) If the trustees of an association do not return the library materials of the association's county law library to the Society, as required under subsection (4), or to the Corporation, as required under subsection (5), the Society or the Corporation, as the case may be, may take such steps as it considers advisable to obtain the library materials that were required to be returned to it, and the association shall reimburse the Society or the Corporation for any expense incurred by it in so doing.

Access to law library services and programs

10. A county law library funded by the Corporation shall give access to its law library services and programs to,

- (a) every licensee who holds a Class L1 licence, regardless of whether a licensee is also a member of an Association;
- (b) judges of Ontario courts;
- (c) Ontario justices of the peace; and
- (d) members of boards, commissions or other tribunals established or provided for under Acts of Parliament or the Legislature in Ontario.

FINANCING

Provision of funds by Society

11. The money paid to the Corporation for its purposes shall be paid out of such money as is appropriated therefor by Convocation

Suspension, reduction of funding

12. (1) Convocation may, in its absolute discretion, in respect of a fiscal year, suspend or reduce funding of the Corporation.

Notice to Corporation

(2) Before taking action under subsection (1), Convocation shall give the board of directors of the Corporation notice of its intent and a reasonable opportunity to comply with the relevant provisions of this Part or to provide the required information.

Budget

13. (1) The Corporation shall submit its annual budget for the next fiscal year to the Finance and Audit Committee by such date as may be specified by the Chair of the Finance and Audit Committee.

Same

(2) The Corporation's annual budget shall be in such form as may be specified by the Chair of the Finance and Audit Committee.

Financial statements

14. (1) For the purposes of clause 15 (2) (a), the Corporation shall prepare annual financial statements for each fiscal year in accordance with generally accepted accounting principles.

Audit

(2) For the purposes of clause 15 (2) (a), the financial statements of the Corporation shall be audited by a public accountant.

Annual report

15. (1) The Corporation shall submit an annual report to Convocation within four months after the end of its fiscal year.

Contents

- (2) The annual report shall contain,
 - (a) the audited financial statements of the Corporation;

- (b) a report on the affairs of the Corporation; and
- (c) such other information as Convocation may request.

Other reports

16. Convocation may at any time require the Corporation to report to it on any aspect of its affairs or to provide information on its activities, operations and financial affairs as Convocation may request.

v2

BY-LAW 14

FOREIGN LEGAL CONSULTANTS

By-law 14 incorporates the provisions of current by-law 39.

INTERPRETATION

Definitions

1. (1) In this by-law,

“foreign jurisdiction” means a jurisdiction outside Canada;

“foreign legal consultant” means a person who holds a valid permit authorizing the person to give legal advice in Ontario respecting the law of a foreign jurisdiction;

“licensee” means a licensee who holds a Class L1 licence.

Interpretation: giving legal advice

(2) For greater certainty, in this By-Law, giving legal advice in Ontario respecting the law of a foreign jurisdiction does not include,

- (a) representing a person in a proceeding before an adjudicative body in Ontario;
- (b) selecting, drafting, completing or revising, on behalf of a person, a document for use in a proceeding before an adjudicative body in Ontario; or
- (c) selecting, drafting, completing or revising, on behalf of a person, a document that relates to or deals with the laws of Ontario or the laws of Canada applicable in Ontario.

The wording of section 1(2) has changed to be consistent with the definition of “legal services” in the amended *Law Society Act*.

PROHIBITION

Prohibition against giving foreign legal advice

2. No person shall give legal advice in Ontario respecting the law of a foreign jurisdiction except in accordance with this By-Law.

Insurance and defalcation coverage

3. No person shall give legal advice in Ontario respecting the law of a foreign jurisdiction under this By-Law unless the person,

- (a) has professional liability insurance for the giving of legal advice in Ontario respecting the law of the foreign jurisdiction which is at least equivalent to that required of a licensee for the licensee's practice of law in Ontario; and
- (b) has defalcation coverage which specifically extends to money or other property that may be received by the person in connection with the giving of legal advice in Ontario respecting the law of the foreign jurisdiction and is at least equivalent to the coverage available to a licensee with respect to the licensee's practice of law in Ontario.

PERMIT

Application

4. (1) This section applies to a person if the foreign jurisdiction in respect of the law of which the person wishes to give legal advice in Ontario has provisions respecting the giving of legal advice by a licensee in that jurisdiction respecting the law of Ontario or Canada that are reasonably comparable to the provisions contained in this section.

Persons authorized to give foreign legal advice

(2) A person other than a licensee may give legal advice in Ontario respecting the law of a foreign jurisdiction if the person meets the following conditions:

- 1. The person is resident in Ontario.
- 2. The person is authorized to practise law in the foreign jurisdiction.
- 3. The person is not the subject of any order made against him or her by a tribunal of any governing body of the legal profession in the foreign jurisdiction in which the person is authorized to practise law.
- 4. The person has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in the foreign jurisdiction.
- 5. The person is of good character.
- 6. For a period totalling at least three years within the five-year period immediately before the person applies for a permit authorizing the person to give legal advice

in Ontario respecting the law of a foreign jurisdiction, the person was lawfully engaged in the practice of law in the foreign jurisdiction.

Same

(3) A person other than a licensee may, under the direct supervision of a person qualified under subsection (2) or (4) to give legal advice in Ontario respecting the law of a foreign jurisdiction, give legal advice in Ontario respecting the law of the same foreign jurisdiction if the person meets the following conditions:

1. The person is resident in Ontario.
2. The person is authorized to practise law in the foreign jurisdiction.
3. The person is not the subject of any order made against him or her by a tribunal of any governing body of the legal profession in the foreign jurisdiction in which the person is authorized to practise law.
4. The person has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in the foreign jurisdiction.
5. The person is of good character.
6. For any period of time within the five-year period immediately before the person applies for a permit authorizing the person to give legal advice in Ontario respecting the law of a foreign jurisdiction, the person was lawfully engaged in the practice of law in the foreign jurisdiction.

Licensees authorized to give foreign legal advice

(4) A licensee may give legal advice in Ontario respecting the law of a foreign jurisdiction if the licensee meets the following conditions:

1. The licensee is resident in Ontario.
2. The licensee is authorized to practise law in the foreign jurisdiction.
3. The licensee is not the subject of any order made against him or her by a tribunal of any governing body of the legal profession in the foreign jurisdiction in which the licensee is authorized to practise law.
4. The licensee has no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in the foreign jurisdiction.

Application to Society

5. (1) A person, including a licensee, who wishes to give legal advice in Ontario respecting the law of a foreign jurisdiction shall apply in writing to the Society for a permit authorizing the person to give legal advice in Ontario respecting the law of a foreign jurisdiction.

Application fee

(2) Every application under subsection (1) shall be accompanied by an application fee.

Documents, explanations, releases, *etc.*

(3) For the purposes of assisting the Society to consider an application under subsection (1), the applicant shall provide,

- (a) to the Society such documents and explanations as may be required; and
- (b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Application to be considered by Society

(4) Every application under subsection (1), in respect of which the application fee required under subsection (2) has been paid, shall be considered by the Society, and,

- (a) if the Society is satisfied that the conditions set out in subsection 4 (2), (3) or (4), as the case may be, are met, the Society shall notify the applicant in writing that, upon payment of the permit fee, he or she will be issued a permit; or
- (b) if the Society is not satisfied that the conditions set out in subsection 4 (2), (3) or (4), as the case may be, are met, the Society shall notify the applicant in writing that his or her application for a permit has been rejected.

Application to committee of benchers

(5) If the Society rejects the application of a person, the person may apply to a committee of benchers appointed for the purpose by Convocation for a reconsideration of his or her application.

Time for application

(6) An application under subsection (5) shall be commenced by the person notifying the Society in writing of the application within thirty days after the day the person receives notice of the Society's rejection of the person's initial application.

Parties

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

Quorum

(8) An application under subsection (5) shall be considered and determined by at least three members of the committee of benchers.

Procedure

(9) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (5) as if the consideration of the application were the hearing of an application for a licence under section 27 of the Act.

Same

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

Decision on application

(11) After considering an application under subsection (5), the committee of benchers shall,

- (a) if the committee is satisfied that the conditions set out in subsection 4 (2), (3) or (4), as the case may be, are met, direct the Society to notify the applicant in writing that, upon payment of the permit fee, he or she will be issued a permit; or
- (b) if the committee is not satisfied that the conditions set out in subsection 4 (2), (3) or (4), as the case may be, are met, direct the Society to notify the applicant in writing that his or her application for a permit has been rejected.

Decision final

(12) The decision of the committee of benchers on an application under subsection (5) is final.

Conditions

6. (1) A permit issued to a person who qualified for the permit by meeting the conditions set out in subsection 4 (3) is subject to the condition that the person shall only provide legal advice in Ontario respecting the law of a foreign jurisdiction under the direct supervision of a foreign legal consultant who qualified for his or her permit by meeting the conditions set out in subsection 4 (2) or (4).

Same

(2) A permit may include such terms and conditions as the Society or the committee of benchers, as the case may be, considers appropriate.

Validity of permit

7. (1) Subject to its being revoked, a permit is valid for one year after the day on which it comes into effect.

Renewal of permit

(2) Before the expiry of a permit, the permit holder may apply for its renewal and sections 5 and 6 apply, with necessary modifications, to an application for renewal.

Revocation of permit

8. A permit is automatically revoked immediately the permit holder fails to comply with any of the conditions set out in subsection 4 (2), (3) or (4), as the case may be, fails to comply with any condition imposed on the permit, fails to comply with section 3 or fails to comply with section 12.

GENERAL

Application of Act, *etc.*

9. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the rules of professional conduct for licensees apply, with necessary modifications, to a person who gives legal advice in Ontario respecting the law of a foreign jurisdiction under this By-Law.

Conflict

(2) In the event of a conflict between the provisions of this By-Law and the provisions of any other by-law or any rule of professional conduct, the provisions of this By-Law prevail.

Handling of money and other property

10. A foreign legal consultant shall not in connection with the giving of legal advice in Ontario respecting the law of a foreign jurisdiction receive money or other property in trust for a person or otherwise handle money or other property that is held in trust for a person.

Marketing of Services

11. (1) A foreign legal consultant shall, when advertising or otherwise marketing his or her services as a foreign legal consultant, refer to him or herself as a foreign legal consultant, state the jurisdiction in respect of the law of which he or she is qualified to give legal advice in Ontario and state the professional title applicable to him or her in that jurisdiction.

Same

(2) A foreign legal consultant, other than a foreign legal consultant who is a licensee, issued a permit shall not, when advertising or otherwise marketing his or her services as a foreign legal consultant, use any designation or make any representation from which a person might reasonably conclude that the foreign legal consultant is a licensee.

Report to Society

12. A foreign legal consultant shall notify the Society immediately the person fails to comply with the continuing legal education requirements of any governing body of the legal profession in the jurisdiction in which the person is authorized to practise law.

Application for licence deemed application for permit

13. If, immediately before the day before this By-Law comes into force, an application for a licence as a foreign legal consultant has not yet been accepted or refused, the application shall be deemed to become, on the day this By-Law comes into force, an application for a permit as a foreign legal consultant.

BY-LAW 15

CERTIFIED SPECIALIST PROGRAM

This by-law incorporates the provisions of current by-law 38.

PART I

GENERAL

Definitions

1. In this By-Law,

“Board” means the Certified Specialist Board;

“certification” means certification as a specialist;

“certification staff” means employees of the Society assigned by the Chief Executive Officer the responsibility of supporting the work of the Board and the specialty committees;

“Committee” means the Professional Development and Competence Committee.

Exercise of powers by Committee

2. The performance of any duty, or the exercise of any power, given to the Committee under this By-Law is not subject to the approval of Convocation.

PART II

CERTIFIED SPECIALIST BOARD

Board to be established

3. (1) There is established the Certified Specialist Board.

Composition of Board

(2) The Board shall consist of seven persons appointed by the Committee as follows:

1. Four benchers who are not lay benchers.
2. One lay bencher.
3. Two persons who are certified specialists who are not benchers.

Term

(3) Subject to subsection (4), a person appointed to the Board shall hold office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(4) A person appointed to the Board holds office as a member of the Board at the pleasure of the Committee.

Chair

4. (1) The Committee shall appoint one member of the Board as chair of the Board.

Term of Office

(2) Subject to subsection (3), the chair holds office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(3) The chair holds office at the pleasure of the Committee.

Function of Board

5. It is the function of the Board,

- (a) to establish specialty committees;
- (b) to oversee the work of the specialty committees;
- (c) subject to section 12, to establish standards for the certification of licensees as specialists;
- (d) to determine the areas of law in respect of which licensees may be certified as specialists;
- (e) to make, subject to this By-Law, rules of practice and procedure with respect to the consideration by the specialty committees and the Board of an application under section 17 and the consideration by the Board of an application under subsection 32 (3), subsection 32 (5), subsection 32 (6) or section 34 and the exercise by the Board of its discretion under subsection 32 (2) or subsection 33 (2);

- (f) to develop for the Committee's approval policies relating to the certification of licensees as specialists;
- (g) to recommend to the Committee the amount of the fees payable by applicants for certification and certified specialists under this By-Law; and
- (h) to certify licensees as specialists.

Quorum

6. Four members of the Board constitute a quorum for the purposes of the transaction of business.

Meeting

7. (1) The Board shall meet at the call of the chair and in no case shall the Board meet less often than twice a year.

Meeting by telephone conference, *etc.*

(2) Any meeting of the Board may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Annual report to Committee

8. Not later than March 31 in each year, the Board shall make a report to the Committee upon the affairs of the Board of the immediately preceding year.

Confidentiality

9. (1) A member of the Board shall not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under this By-Law.

Exceptions

- (2) Subsection (1) does not prohibit,
 - (a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;
 - (b) disclosure required of a member of the Board under the Society's rules of professional conduct that apply to the member;
 - (c) disclosure of information that is a matter of public record; and
 - (d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

PART III

SPECIALTY COMMITTEES

Board to establish committees

10. (1) The Board shall establish a specialty committee for each area of law in respect of which a licensee may be certified as a specialist.

Composition of specialty committee

(2) A specialty committee shall consist of at least five and not more than nine members appointed by the Board.

Eligibility for appointment

- (3) Only the following licensees may be appointed to a specialty committee:
1. If there are licensees certified as specialists in the area of law in respect of which a specialty committee has been established, a licensee certified as a specialist in the area of law.
 2. If there are no licensees certified as specialists in the area of law in respect of which a specialty committee has been established, a licensee who practises law in the area of law and undertakes to become certified as a specialist in the area of law within one year of certification in the area of law being available.

Term

(4) Subject to subsection (5), a licensee appointed to a specialty committee shall hold office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(5) A person appointed to a specialty committee holds office as a member of the specialty committee at the pleasure of the Board.

Chair and vice-chair

11. (1) For each specialty committee, the Board shall appoint,
- (a) one member of the specialty committee as chair of the committee; and
 - (b) one member of the specialty committee as vice-chair of the committee.

Term of Office

(2) Subject to subsection (3), the chair and vice-chair hold office for a term not exceeding three years and are eligible for reappointment.

Appointment at pleasure

- (3) The chair and vice-chair hold office at the pleasure of the Board.

Function of specialty committee

12. It is the function of a specialty committee,
- (a) to develop for the Board's approval standards for the certification of licensees as specialists;
 - (b) to review and accredit continuing legal education programs for purposes of sections 16 and 30;
 - (c) to review applications from licensees for certification as specialists; and
 - (d) to recommend to the Board licensees for certification as specialists.

Quorum

13. The majority of the members of a specialty committee constitute a quorum for the purposes of the transaction of business.

Meeting

14. (1) A specialty committee shall meet at the call of the chair and in no case shall the committee meet less often than twice a year.

Meeting by telephone conference, *etc.*

- (2) Any meeting of a specialty committee may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Confidentiality

15. (1) A member of a specialty committee shall not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under this By-Law.

Exceptions

- (2) Subsection (1) does not prohibit,
- (a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;
 - (b) disclosure required of a member of a specialty committee under the Society's rules of professional conduct that apply to the member;
 - (c) disclosure of information that is a matter of public record; and

- (d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

PART IV

CERTIFICATION

Requirements for certification

16. (1) A licensee may be certified as a specialist in an area of law in respect of which certification is available if the licensee meets the following conditions:
1. The licensee has engaged in the practice of law for at least seven years immediately before the day on which the licensee applies for certification.
 2. The licensee has practised in the area of law for at least five of the seven years mentioned in paragraph 1 as follows:
 - i. Two years immediately before the day on which the licensee applies for certification.
 - ii. Any other three years.
 3. The licensee has comprehensive knowledge of the substantive law and the practices and procedures in the area of law.
 4. In each of the five years in which the licensee practised in the area of law, the licensee has completed in the area of law,
 - i. the number of hours of self-study specified by the Committee, and
 - ii. the number of hours of accredited continuing legal education programs specified by the Committee.
 5. The licensee is not the subject and has no record, within the five year period immediately before the day on which the licensee applies for certification, of any order made against the licensee by a tribunal of the governing body of the legal profession in any jurisdiction.
 6. The licensee has and has had, within the five year period immediately before the day on which the licensee applies for certification, no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in any jurisdiction in which the licensee is authorized to practise law.
 7. The licensee is not, in any jurisdiction in which the licensee is authorized to practise law, the subject of a review of the licensee's professional business for the purpose of determining if the licensee is meeting standards of professional competence.
 8. The licensee has and has had, within the five year period immediately before the day on which the licensee applies for certification, no serious claims or substantial number of claims made against the licensee in the licensee's professional capacity

or in respect of the licensee's practice of law in any jurisdiction in which the licensee is authorized to practise law.

Same

(2) Despite subsection (1), if a licensee is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the licensee is authorized to practise law, the licensee may not be certified as a specialist in an area of law in respect of which certification is available unless to certify the licensee as a specialist would not be contrary to the public interest.

Interpretation: practice in area of law

(3) In this section, in any year, a licensee practises in an area of law if in that year the licensee practises in the area of law for the time specified by the Board from time to time.

Application for certification

17. (1) A licensee who wishes to be certified as a specialist shall apply to the certification staff.

Application form

(2) An application under subsection (1) shall be contained in a form provided by the certification staff.

Accompanying documents, *etc.*

- (3) An application under subsection (1) shall be accompanied by,
 - (a) a certificate of standing from the governing body of the legal profession in each jurisdiction in which the applicant is or was authorized to practise law issued during the three month period immediately before the day on which the applicant makes the application;
 - (b) written references from such persons and such number of persons as determined by the Committee from time to time, not one of whom is,
 - (i) a person whose licence is in abeyance under subsection 31 (1) of the Act,
 - (ii) a partner, an associate, a co-worker, an employer or an employee of the applicant,
 - (iii) an individual who is counsel to the applicant, to the applicant's employer or to the applicant's firm or company;
 - (iv) a relative of the applicant,
 - (v) a member of a specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist;
 - (vi) a member of the Board,

- (vii) a bencher, or
- (viii) an employee of the Society; and
- (c) an application fee.

Documents, explanations, releases, *etc.*

(4) For the purpose of assisting the specialty committee and the Board to consider an application under subsection (1), the applicant shall provide,

- (a) to the certification staff, such documents and explanations as may be required; and
- (b) to a person named by the certification staff, such releases, directions and consent as may be required to permit the person to make available to the certification staff such information as may be required.

Application to be considered by specialty committee

18. Every application under section 17, to the extent that the application deals with the conditions set out in paragraphs 1 to 4 of subsection 16 (1), shall be considered by the specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist and the committee shall,

- (a) if satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 16 (1), recommend to the Board that the applicant be certified as a specialist; or
- (b) if not satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 16 (1), recommend to the Board that the applicant not be certified as a specialist.

Interview

19. (1) Prior to making a recommendation to the Board, a specialty committee may require an applicant to attend an interview.

Same

- (2) An interview under subsection (1) shall be conducted by,
 - (a) three members of the specialty committee selected by the chair of the committee; or
 - (b) three licensees who are certified as specialists selected by the specialty committee.

Report to committee

(3) If an interview is conducted by three licensees who are certified as specialists, the licensees shall prepare a written report on the interview and submit the report to the specialty committee.

Notice

20. If a specialty committee intends to recommend to the Board that the applicant not be certified as a specialist, before making the recommendation the committee shall give the applicant the opportunity,

- (a) to withdraw the application; or
- (b) to submit additional information to the committee.

Application to be considered by Board

21. Every application under section 17 shall be considered by the Board.

Recommendation to certify and determination by Board

22. (1) If the specialty committee recommends to the Board that the applicant be certified as a specialist, the Board may,

- (a) certify the applicant as a specialist if,
 - (i) the Board is satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 16 (1); and
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 16 (2) is not present; or
 - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
- (b) not certify the applicant as a specialist if,
 - (i) the Board is not satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 16 (1); or
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 16 (2) is present; and
 - (B) it would be contrary to the public interest to certify the applicant as a specialist.

Recommendation to not certify and determination by Board

(2) If the specialty committee recommends to the Board that the applicant not be certified as a specialist, the Board may,

- (a) certify the applicant as a specialist if,
 - (i) the Board is satisfied that the applicant meets the conditions set out in subsection 16 (1); and
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 16 (2) is not present; or
 - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
- (b) not certify the applicant as a specialist if,
 - (i) the Board is not satisfied that the applicant meets the conditions set out in subsection 16 (1); or
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 16 (2) is present; and
 - (B) it would be contrary to the public interest to certify the applicant as a specialist.

Notice

23. (1) If the Board does not certify the applicant as a specialist under clause 22 (2) (b), the Board shall notify the applicant in writing of its decision.

Decision final

- (2) The decision of the Board on an application under this part is final.

Issuance of certificate

24. The Board shall issue to an applicant certified as a specialist a certificate of specialty stating the area of law in which the applicant has been certified as a specialist.

Continuation of certification

25. A licensee certified as a specialist shall continue to be certified as a specialist so long as the licensee,

- (a) practises in the area of law in which the licensee has been certified as a specialist within the meaning of subsection 16 (3);
- (b) maintains comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the licensee has been certified as a specialist;

- (c) is not the subject and has no record of any order made against the licensee by a tribunal of the governing body of the legal profession in any jurisdiction;
- (d) has and has had no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in any jurisdiction in which the licensee is authorized to practise law;
- (e) is not, in any jurisdiction in which the licensee is authorized to practise law the subject of a review of the licensee's professional business for the purpose of determining if the licensee is meeting standards of professional competence;
- (f) has and has had no serious claims or substantial number of claims made against the licensee in the licensee's professional capacity or in respect of the licensee's practice of law in any jurisdiction in which the licensee is authorized to practise law; and
- (g) fulfils all requirements under this By-Law.

PART V

CERTIFIED SPECIALISTS

Definition

26. In this Part,

"certified specialist" means a licensee who is certified as a specialist by the Board under Part IV.

Specialist designation

27. (1) A certified specialist may use the following designation:

Certified Specialist [*area of law in which certified as specialist*]

Same

(2) A licensee who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the licensee is a certified specialist.

Requirement to pay annual fee

28. (1) Every year a certified specialist shall pay to the Society an annual fee and any taxes that the Society is required to collect from the certified specialist in respect of the payment of the annual fee.

Payment due

(2) Payment of the annual fee is due on January 31 of each year.

Certified specialists

(3) Subsection (2) applies only to licensees who are certified specialists on January 31.

Licensees certified after January 31

(4) A licensee who is certified as a specialist after January 31 shall pay, in respect of the year in which the licensee is certified as a specialist, an amount of the annual fee as determined by the formula,

$$(A \div 12) \times B$$

where,

A is the annual fee, and

B is the number of whole calendar months remaining in the year after the month in which the licensee is certified as a specialist.

Payment due

(5) Payment of the amount of the annual fee specified in subsection (4) is due on the day on which the licensee is certified as a specialist.

Requirement to submit annual report

29. (1) A certified specialist shall submit a report to the certification staff by January 31 of each year in respect of the certified specialist's compliance with this By-Law during the immediately preceding year.

Report form

(2) The report required under subsection (1) shall be in a form provided by the certification staff.

Continuing legal education requirements

30. Every year a certified specialist shall complete in the area of law in which the specialist is certified,

- (a) the number of hours of self-study specified by the Committee, and
- (b) the number of hours of accredited continuing legal education programs specified by the Committee.

Proof of compliance

31. (1) A certified specialist shall, upon the request of the certification staff and by not later than the day specified by the staff, provide proof to the satisfaction of the staff of the certified specialist's compliance with this By-Law.

Deemed failure to comply

(2) A certified specialist who fails to provide proof to the certification staff by the day specified by the staff of the certified specialist's compliance with this By-Law, the certified specialist shall be deemed not to be in compliance with this By-Law.

Notice to Society

(3) A certified specialist shall notify the Society immediately the certified specialist is not in compliance with this By-Law.

Automatic abeyance

32. (1) A certified specialist's certification is in abeyance while,
- (a) the certified specialist's licence is in abeyance under subsection 31 (1) of the Act;
 - (b) the certified specialist has terms, conditions, limitations or restrictions imposed on the certified specialist's authorization to practise law in any jurisdiction in which the certified specialist is authorized to practise law;
 - (c) the certified specialist is, in any jurisdiction in which the certified specialized is authorized to practise law, the subject of a review of the certified specialist's professional business for the purpose of determining if the certified specialist is meeting standards of professional competence; or
 - (d) the certified specialist has serious claims or a substantial number of claims made against the certified specialist in the certified specialist's professional capacity or in respect of the certified specialist's practice of law in any jurisdiction in which the certified specialist is authorized to practise law.

Abeyance by Board: discretion

(2) The Board may place a certified specialist's certification in abeyance if the certified specialist is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the certified specialist is authorized to practise law and to not do so would be contrary to the public interest.

Abeyance by Board: mandatory

(3) The Board shall place a certified specialist's certification in abeyance if the certified specialist applies to the Board to have the certification placed in abeyance.

Restoration

(4) If the conditions mentioned in subsection (1) are no longer present and the certified specialist's certification has not been revoked under subsections 33 (1) or (2), upon notice to the certification staff of the change in conditions, the certified specialist's certification shall be restored.

Same

(5) If the condition mentioned in subsection (2) is no longer present and the certified specialist's certification has not been revoked under subsections 33 (1) or (2), on the application of the certified specialist, the Board may restore the certification if to do so would not be contrary to the public interest.

Same

(6) If the Board placed a certified specialist's certification in abeyance under subsection (3) and the certified specialist's certification has not been revoked under subsections 33 (1) or (2), on the application of the certified specialist, the Board shall restore the certification if,

- (a) none of the conditions in subsection (1) are present; and
- (b) the condition in subsection (2) is not present, or if it is, the Board is satisfied that it would not be contrary to the public interest to restore the certification.

Revocation

33. (1) A certified specialist's certification is automatically revoked immediately,
- (a) the certified specialist ceases to practise law in Ontario;
 - (b) the certified specialist ceases to practise in the area of law in which the certified specialist has been certified as a specialist within the meaning of subsection 16 (3);
 - (c) the certified specialist is the subject of any order made against the certified specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
 - (d) the certified specialist fails to pay an annual fee or submit an annual report;
 - (e) the certified specialist fails to meet the requirement set out in section 30; or
 - (f) the certified specialist's certification has been in abeyance for more than 12 months.

Same

(2) The Board may revoke a certified specialist's certification if the certified specialist does not maintain comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the certified specialist has been certified as a specialist.

Surrender of certification

34. (1) A certified specialist who wishes to surrender his or her certification shall submit a request to surrender in writing accompanied by the applicable certificate of specialty to the Board and the Board shall approve the request.

Same

(2) A licensee ceases to be certified as a specialist immediately the Board approves the licensee's request to surrender his or her certification under subsection (1).

The following material was distributed to Convocation:

- (1) Bound plastic covered copy of "By-Laws made under the *Law Society Act*".
- (2) Bound copy of "Red-Lined Versions of "By-Laws 3, 6, 8 and 13".
- (3) One-page copy of "By-Law 3, section 73 (Acting Treasurer)".
- (4) One-page copy of By-Law 3, section 108 (Standing Committees).
- (5) One-page copy of "section 13 (1) and (2) of By-Law 13 (Budget)".
- (6) Copy of "By-Law 3, section 117 (Finance and Audit Committee)".
- (7) Copy of "By-Law 4 (Licensing)".

The following amendments were made:

- (a) copy of By-Law 3, section 73 (Acting Treasurer) set out in the handout, replaces section 73 on page 37 in the bound "By-Laws made under the *Law Society Act*".
- (b) copy of By-Law 3, section 108 (Standing Committees) set out in the handout, replaces section 108 on pages 50 and 51 in the bound "By-Laws made under the *Law Society Act*".
- (c) copy of By-Law 3, section 117 (Finance and Audit Committee) pages 1 to 8 set out in the handout, replaces pages 53 to 61 under Part VI of By-Law 3 in the bound "By-Laws made under the *Law Society Act*".
- (d) copy of section 13 (1) and (2) of By-Law 13 (Budget) set out in the handout, replaces section 13 (1) and (2) under Part II of By-Law 13 on page 6 in the bound "By-Laws made under the *Law Society Act*".
- (e) that section 11 of By-Law 6 (Deductibles) in the bound By-Law Review Committee Report is deleted.

It was moved by Mr. Millar, seconded by Mr. Murray, that By-Laws 1 to 3 be approved.

It was moved by Mr. Millar, seconded by Mr. Murray, that By-Laws 5 to 15 be approved.

Carried

Mr. Copeland abstained.

It was moved by Mr. Millar, seconded by Mr. Murray that By-Law 4 be approved.

Carried

It was moved by Mr. Silverstein, seconded by Mr. Wright, that any individual who provides legal services without a license pursuant to Part V under By-Law 4 shall not be entitled to receive any compensation, including a fee, gain or reward, direct or indirect for the provision of the legal services.

This matter was referred to the Paralegal Standing Committee.

It was moved by Mr. Millar, seconded by Mr. Murray, that effective May 1, 2007, By-Laws 1 to 39, in force immediately before May 1, 2007 be revoked and By-Laws 1 to 15 be made.

Carried

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REPORTS NOT REACHED

Compensation Committee Report (in camera)

Emerging Issues Committee Report

Governance Task Force Report

Professional Regulation Committee Report

- Vacating Discipline Records

Report to Convocation
April 26, 2007*

Emerging Issues Committee

Committee Members
Ron Manes, Co-chair
Bonnie Warkentin, Co-chair
Robert Aaron
Paul Copeland
Susan Elliott
Richard Filion
Holly Harris
Allan F. Lawrence
Janet Minor
Julian Porter
Joanne St. Lewis

Purpose of Report: Decision

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

* deferred from March 29, 2007 Convocation

COMMITTEE PROCESS

1. The Emerging Issues Committee ("the Committee") met on January 10, 2007. In attendance were Ron Manes and Bonnie Warkentin (Co-Chairs), Paul Copeland (by telephone), Allan Lawrence, Holly Harris, Julian Porter and Joanne St. Lewis. Staff in attendance were Katherine Corrick, Jim Varro, Roy Thomas and Allyson O'Shea.

DISSOLUTION OF THE EMERGING

ISSUES COMMITTEE

MOTION

2. That Convocation approve the dissolution of the Emerging Issues Committee.

Background

3. The Emerging Issues Committee ("the Committee") was created as a standing committee of Convocation in July 2001 and tasked with "providing long-range intelligence on issues of concern to the profession". The Committee's original mandate in By-Law 9 (Committees) was as follows:

The mandate of the Emerging Issues Committee is to monitor emerging policy issues affecting the Society and the legal profession that do not fall directly within the jurisdiction of any other standing committee, to undertake and direct research into such policy issues and to develop for Convocation's approval strategic plans and other proposals relating to such policy issues.

4. After their first meeting, the new Committee's co-chairs reported to Convocation in November 2001 seeking an amendment to the mandate. The co-chairs felt it was "inevitable" that in "most cases", issues of concern to the profession would directly impact on issues of interest to other standing committees or task forces. The co-chairs did not want the Emerging Issues Committee to be restricted in the matters that it could consider, and asked that the words, "that do not fall directly within the jurisdiction of any other standing committee," be deleted from the Committee's mandate. Convocation agreed. The current mandate of the Committee is as follows:

The mandate of the Emerging Issues Committee is to monitor emerging policy issues affecting the Society and the legal profession, to undertake and direct research into such policy issues and to develop for Convocation's approval strategic plans and other proposals relating to such policy issues.

Evolution of the Committee and Reasons for Dissolution

5. The Committee has noted that over time, its role and function have shifted away from its stated mandate. The Committee has also met less frequently in the past two years. In the Committee's view, these developments are primarily the result of
 - a. a mandate that, if fully realized, would require an allocation of resources that is not possible to achieve,
 - b. the Committee performing a "triage" function in initially reviewing issues and then referring them to other appropriate committees or to discrete task forces to study (e.g. the task force on issues relating to sole practitioners and small firms, and the task force on corporate governance)¹,
 - c. improved processes for dealing with new issues at the Society, and

¹ For example, the Committee's issue relating to access to a lawyer in smaller communities was subsumed within the Sole Practitioner and Small Firm Task Force and the issue of priorities and planning was subsumed within the Governance Task Force.

- d. a more experienced staff who facilitate policy development for benchers' decision-making in Convocation.
6. After thoughtful consideration, the Committee has concluded that the dissolution of the Emerging Issues Committee would be appropriate, for the following reasons.

The Committee's "Triage" Function

7. In many cases, the Committee was assigned issues that it quickly realized would have more appropriately been assigned to other standing committees or to a task force. This effectively saw the Committee fulfilling a "triage" function, increasingly so in recent years. What the first co-chairs perceived at the outset – that the majority of issues that would be considered by the Committee would interest or impact on the work of other committees – has indeed become the case. The Committee essentially sorted new issues to determine their appropriate "home" within one of the other established committees or whether a task force was required.
8. Exceptions to this "triage" function have been few. In the past five years, the Committee undertook significant work on three projects:
- a. An examination based on the core values of the profession which led to referrals to the Professional Regulation Committee for recommended regulatory reforms and to Convocation's creation of a Governance Task Force;
 - b. Review of United States legislation, The *Sarbanes-Oxley Act*, and the resulting recommendations, through the Professional Regulation Committee, for further regulatory reforms to address the lawyer's role when he or she discovers corporate wrongdoing; and
 - c. Review of intellectual property professionals' attempt to obtain a legislated agent-client privilege.
9. The Committee understood early in these projects that these matters would eventually be referred to other Committees or groups. The first two issues, as noted, were referred to the Professional Regulation Committee for what would become amendments to the *Law Society Act*, the By-Laws and the *Rules of Professional Conduct*. The third item was referred to the Federation of Law Societies of Canada, given its national scope. A committee was established there to carry on with the work on that subject.
10. It has been over a year since the Committee has produced any significant analysis of new issues. Moreover, it is the Committee's view that even the above-mentioned policy issues could have been assigned to other standing committees of Convocation, or alternatively, assigned to a new task force or working group formed specifically for those issues.
11. Accordingly, the Committee believes that the current triage function of the Committee is neither necessary nor the best use of resources.

Improved Channeling of Policy Issues

12. The manner in which issues arriving at the Society are reviewed and assigned has improved in the past few years.

13. Issues relating to the Society's mandate find their way to committees and, if necessary, Convocation in a number of ways. Benchers and staff become aware of issues through colleagues, political or other networks and through legal and mainstream media. Typically, these issues have already "emerged". Benchers and staff, the latter through the CEO or Director of Policy, bring these issues to the attention of the Treasurer. On occasion, benchers will approach staff regarding new issues or matters of concern. These are then reviewed and appropriate action is taken to address them.
14. With increasingly experienced staff in the policy and other key departments, matters are quickly channeled to the appropriate group, if required, for consideration. This enhances the process of information sharing among benchers, staff, and the Treasurer. This process, although still informal, has become sufficiently sophisticated so that new issues of importance to the Society are appropriately and quickly assessed and routed accordingly.
15. Convocation's adoption of recommendations of the Governance Task Force to improve Convocation's priority-setting responsibilities, of which this process is a part, will bring more structure to priority planning and priority setting. In particular, the recommendation that Convocation institute a full review of priorities as part of plan to achieve the Society's strategic objectives will envelope the Committee's forward-looking responsibilities and make its separate existence redundant.²

Bencher, Staff and Financial Resource Issues

16. It appears that, initially, the Emerging Issues Committee was intended to proactively determine new issues on the legal horizon in order to provide an analysis of "not yet emerged" issues that were relevant to the Law Society's mandate. This was never realized, as to do so would require substantial use of the Society's policy staff (and others) and may involve significant financial expenditures that might be difficult to link to any specific regulatory priority.
17. With respect to staff, when the Law Society restructured its governance in 1996, the number of standing committees of Convocation was reduced to four. When the Emerging Issues Committee was created in 2001, it brought the number of standing committees to six. The number of committees has since grown to 12. The number of Policy Counsel in the Policy Secretariat who support the work of the committees, their working groups and stand-alone task forces has remained at three since 1996, with the more recent addition of Counsel to the Office of the Director of Policy.
18. While the Policy staff has gained experience over the years and has become better at handling these increased responsibilities, appropriate allocation of these human resources must be observed. Practically speaking, these resources are not available for the type of exercise described in paragraph 16. Policy Counsel attend the meetings of Convocation and all committees. Policy Counsel draft the required Reports to Convocation and Committee Agendas on a two-week cycle during the bencher year for the vast majority of these committees and groups. In addition, the task of scheduling meetings and finding meeting rooms for 13 different committees has also become exceedingly challenging for staff. To fulfill the proactive function described above in a

² These recommendations were adopted by Convocation on March 29, 2007.

meaningful way, additional resources, and the related financial expenditure, would inevitably be required.

19. In any event, in the Committee's view, it is questionable whether this type of forward-looking initiative would have borne results such that the Society would have been "ahead of the curve" in policy development related to the Society's mandate. The Society has improved, and continues to improve, its ability to take timely action on information that comes to the Society, as previously described.
20. At a higher level, the Committee considered its role within the overall corporate governance structure. The Committee's view is that responsible use of financial and human resources makes the continuation of the Committee unnecessary. Time that benchers devote to the Committee, and the associated travel and accommodation expense for out of town benchers, could be better utilized in more focused work that is directly linked to the Society's governance mandate.
21. The dissolution of the Committee will not affect the integrity of the Society's ability to govern the profession, nor impact negatively on the manner in which the benchers organize themselves corporately for the Society's governance responsibilities. The Committee's view is that it is not contributing significantly to the work of Convocation, and that resources devoted to it may be more usefully applied elsewhere.

Other Options Considered

22. The Committee briefly considered other options for revamping the Committee's structure. For example, the Committee considered transforming itself into a "brainstorming" group with a more philosophical focus that would include a multi-disciplinary element, such as non-bencher lawyers and academics. Another option would be to have the Committee continue without any permanent members, other than a named chair, so that it could be called upon on an *ad hoc* basis to deal with defined issues. Under that model, the Committee could then be populated for those specific issues.
23. The Committee favoured elements of the latter option. However, it determined that creating a committee on an *ad hoc* basis for a specific issue really amounts to the creation of a task force, something which is currently done by Convocation when deemed necessary.

Current Processes and Recommended Improvements are Sufficient

24. The Committee favours the current process whereby the Treasurer and Convocation assign new policy issues to the appropriate standing committee. Where a new issue of importance to the Society does not fall within the mandate of one of the standing committees, the Treasurer should continue to use his or her discretion to form a task force and populate it with benchers (or others if necessary) who have the appropriate expertise with the particular subject matter. These issues can then be studied in a more focused way that maximizes bencher and outside expertise, and makes more efficient use of Law Society human and financial resources.
25. The Governance Task Force recommendations, noted earlier, will also improve the manner in which issues are identified and dealt with as a matter of priority.

26. For all of the above reasons, the Committee requests that Convocation dissolve the Committee. If Convocation agrees with this request, amendments to By-Law 9 to revoke the Committee's mandate will be required.

Governance Task Force
April 26, 2007

Third Report to Convocation

Task Force Members
Thomas Heintzman (Chair)
Vern Krishna (Vice-Chair)
Sy Eber
Abraham Feinstein
Janet Minor
William Simpson

Purposes of Report: Decision

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

GOVERNANCE TASK FORCE
RECOMMENDATIONS

1. Motion

RECOMMENDATION 1

That Convocation:

- a. subject to paragraph b.,
 - i. end the status of *ex officio* bencher for elected benchers who have held the office of bencher for at least 16 years (life bencher); and
 - ii. provide that all elected benchers who have held the office of bencher for at least 16 years may choose to become “emeritus benchers”, which will permit them to continue as benchers with the rights and privileges of life benchers for an additional four years after which they will cease to be benchers;
- b. grandparent all existing life benchers (including those who qualify in the current bencher term ending May 2007) who will remain as *ex officio* benchers with the current rights and privileges attaching to that status as life benchers; and
- c. direct that the Law Society seek amendments to the *Law Society Act* to implement this recommendation.

RECOMMENDATION 2

That Convocation

- a. revise the status of *ex officio* benchers for former Treasurers as follows:
 - i. All former Treasurers (including the current Treasurer) will retain voting privileges in Convocation provided they regularly attend Convocation;
 - ii. Any former Treasurer who fails to attend six consecutive regular Convocations will cease to have a vote in Convocation; and
 - iii. If voting rights are lost under ii., the former Treasurer may reinstate his or her voting rights by attending three of five consecutive regular Convocations; and
- b. direct that the Law Society seek amendments to the *Law Society Act* to implement this recommendation.

GOVERNANCE TASK FORCE

THIRD REPORT TO CONVOCATION

Introduction

2. In accordance with its terms of reference¹, the Governance Task Force has been meeting since May 2006 to review a number of issues relating to the Society's governance structure and processes.
3. These issues include:
 - a. the effectiveness of Convocation as a board;
 - b. the methods of priority-setting for Convocation; and
 - c. efficient and effective co-ordination of corporate governance with the operational management of the Law Society under the leadership of the Chief Executive Officer.
4. The Task Force has met on sixteen occasions to date. It has provided two reports to Convocation dealing with
 - a. certain procedures for the Treasurer's election in By-Law 6,
 - b. matters relating to the setting of Convocation's agenda,
 - c. a strategic planning process that enables Convocation to identify priorities for its policy agenda,
 - d. the integrity of the Law Society's financial statements and financial systems, and
 - e. the integrity of Convocation as a board.
5. This third report deals with the size of Convocation and in particular, the issue of *ex officio* benchers and their role in Convocation.

¹See Appendix 1 for the terms of reference.

6. This issue is related to the effective self-management of Convocation, and involves a review of the manner in which the board is constituted for the purpose it fulfills.
7. The fundamental character of Convocation is that of a democratically elected board. Benchers are elected as members of Convocation every four years. The eligible voters are the 38,000 members of the Law Society. The bencher election provides lawyers and paralegals with a transparent process for electing their governors. To that extent, members of the Society have the opportunity to influence their governance through the election process. To complement the elected majority in Convocation, the *Law Society Act* authorizes others to serve as benchers, including lay appointees and *ex officio* benchers (former Treasurers, current and former Attorneys-General of Ontario and life benchers).
8. In the Task Force's view, the democratic principle that operates to provide Convocation with its elected core is of paramount importance. It is the basis for the accountability required of the board in governing lawyers and paralegals in the public interest. It also becomes an important consideration when an increasing number of the Society's board members are unelected.
9. Convocation benefits from the experience of *ex officio* benchers. This report proposes a structure for the participation of two groups of unelected benchers that acknowledges the importance of Convocation's democratic foundation.
10. Implementation of the recommendations in this report, if adopted, will require amendments to the *Law Society Act*. The Task Force urges Convocation to direct the Law Society to pursue these amendments at the appropriate time should these recommendations be approved.²

Size and Composition of Convocation

11. Forty-two elected benchers - 40 lawyers and two paralegals - serve in Convocation. With the addition of eight lay benchers and 26 *ex officio* benchers, who include former Treasurers, current and former Attorneys-General and life benchers, the total number of benchers is 76.
12. In the Task Force's view, the Society's board of directors (the benchers in Convocation) is large for the type of organization. The Task Force recognized that a smaller board is generally more efficient and more effective in completing its business. Because of its efficiency, a smaller board could meet less often, but frequently enough to ensure that required business is completed.
13. The Task Force believes that the way Convocation operates is, in part, linked to the size of the board. There is reluctance on the part of some benchers to speak because of the number of potential speakers if everyone spoke, and concerns about the length of time of the meeting. Because of the number of potential speakers, debate or dialogue that gradually narrows the issue to its essentials is less possible. The effect of this dynamic

² Relevant sections of the *Law Society Act* appear at Appendix 2.

is seen when matters on Convocation's agenda are put over to the next or subsequent meetings, which delays decision-making and can create a backlog of issues for the meeting.

14. The Task Force is aware of the previous consideration given to the issue of the size of Convocation and how it affects decision-making. It was discussed in the Strategic Plan of 2000, which proposed that the size and composition of Convocation be reviewed to determine whether it could be structured to be more effective in its policy decision-making.
15. The Strategic Planning Committee's report of January 2001 included a suggestion that, to improve the efficiency of Convocation's decision-making, rules of procedure for Convocation be adopted and that a Treasurer's Advisory Committee be established. The latter recommendation was defeated. The Task Force is not proposing to revisit this issue.
16. Rules of procedure were adopted by Convocation in June 2006 after a trial basis for several months beginning in 2005. The rules form part of By-Law 8 (Convocation). To the extent that they will bring more structure to the consideration of issues at Convocation, the Task Force is pleased that the rules in By-Law 8 have been adopted. They provide guidance to the Treasurer and benchers on proper procedures in Convocation. The Task Force hopes that over time this guidance will lead to more efficient Convocations.
17. Looking beyond procedural enhancements, the Task Force focused on what if anything should be done to address the size of the board. The questions were whether good reasons existed to reduce the size of the board, and if so, how the reduction should occur.
18. In this examination, the Task Force also considered the size of Convocation's unelected benchers component. The primary question was whether it is appropriate to maintain a system that effectively provides for an increasing number of unelected governors. Within that question, others arise. Is there an expectation that the large majority of those who govern the profession should be elected? Is it democratic to have 26 unelected benchers, including 11 former Treasurers who may vote, who do not have the same accountability as elected benchers? Does the benefit of having these unelected individuals as benchers outweigh these concerns?
19. The Task Force reviewed a range of options that might be available to address the number of benchers in Convocation and the elected and unelected composition of Convocation. These included:
 - a. reducing the number of elected benchers;
 - b. reducing the number of terms elected benchers be permitted to serve;
 - c. reducing the length of the elected benchers term;
 - d. eliminating the status of *ex officio* benchers for benchers who have served 16 years as an elected benchers ("life benchers");
 - e. eliminating the status of *ex officio* benchers for former Treasurers;
 - f. eliminating the status of *ex officio* benchers for former Attorneys-General of Ontario.

Elected Benchers

20. The Task Force discussed at some length the merits of reducing the number of elected benchers, or reducing the length of term or number of terms that may be served by an elected bencher.
21. The Task Force determined that at this stage, these methods of reducing the size of the elected portion of the board should not be pursued, for the reasons described below.

Number of elected benchers

22. A proposal to reduce the number of elected benchers cannot be made in isolation. In the Task Force's view, while a reduction in numbers might well improve the efficiency and collegiality of Convocation, it might have other significant impacts that must be carefully assessed.
23. Reducing the number of elected benchers may impact on the adequacy of representation of members within and outside of Toronto and on the number of elected benchers in relation to lay benchers and paralegal benchers. It may also affect the functions that the benchers fulfill at the Society beyond participation in Convocation, such as committee work and adjudication.
24. The current number of seats for elected benchers provides an opportunity for members from various geographic and specialty areas to run for and be elected as bencher. This fact, in turn, impacts the diversity of the board and the prospect of a range of views to assist in decision-making that benefits the broad membership. On the issue of diversity, it is arguable that a reduction in the number of benchers may profoundly affect the ability to ensure diversity on the board, such that appointing individuals to the board may be the only way to address this concern.
25. A significant reduction in the number of elected benchers, for example to a board of 15, would create an entirely different dynamic in Convocation than a board of 40 elected members. A decision to make such a change should be preceded by comprehensive research on the optimum number of members for a board like Convocation, something the Task Force has not undertaken. A smaller reduction, for example, to a board with 25 to 30 elected members, may not be sufficient to address any perceived deficiencies that the larger board creates.
26. It may be that the number of elected benchers creates a measure of inefficiency that affects how the board fulfills its responsibilities. But given the potential impacts of reducing the number of elected benchers, noted above, the Task Force concluded that it is preferable to address the size issue through other reforms and address the potential inefficiencies through better priority setting mechanisms. The rules of procedure for Convocation, noted earlier, a commitment to formalize a process to plan Convocation's priorities and the proposal to rationalize the financial responsibilities of the Law Society with separate Finance and Audit Committees with higher visibility, will all help in this effort. The Task Force's recommendation for creation of a Priority Planning Committee, adopted by Convocation on March 29, 2007, is directly linked to the effort to improve Convocation's efficiency and effectiveness.

27. After considering the issues and options, the Task Force could not justify recommending that the number of elected benchers be reduced to 15. Nor could it see that reducing the number of elected benchers from 40 to 25 or 30 would result in a distinctly better governance than the present size of the board. In the result, the Task Force's recommendation, as set out in its second report, is that improved governance be achieved through better priority setting of Convocation's agenda, and a more direct and visible audit responsibility with respect to the Society's financial affairs.

Number of bencher terms

28. The Task Force assessed the "pros and cons" of limiting the number of terms a bencher is entitled to serve if elected. At the outset, the Task Force noted other law societies' treatment of the issue.³
29. While some turnover occurs in the membership of Convocation at each bencher election, it usually amounts to between 25% and 30% of the existing board. A limit on the number of terms a bencher may serve would renew the membership of Convocation on a more regular basis.
30. One benefit of such a system is that over time, a larger portion of the legal and paralegal professions would serve as elected benchers. This would mean that a larger and likely more diverse group of the professions would have the opportunity to contribute to and participate in the Society's governance. In this way, Convocation becomes a more inclusive, rather than exclusive, board.
31. Depending on the number of terms chosen, a limit on bencher terms may also effectively end the process by which a bencher may currently become a "life bencher" by serving four consecutive terms. The issue of life benchers is discussed later in this report.

³ Information on length of terms and limits on terms in other law societies in Canada appears below:

Law Society	Term for Bencher
British Columbia	Two year term.
Alberta	Three year term.
Saskatchewan	Three-year term, subject to re-election but with a limit of two consecutive terms.
Manitoba	Election held every even-numbered year; benchers hold office until their successors take office.
New Brunswick	Two-year term.
Nova Scotia	Council members can only serve maximum of three two-year terms; Term of council runs from Annual General Meeting to Annual General Meeting.
Prince Edward Island	One-year term; retiring members of council are eligible for re-election.
Newfoundland	Bencher election held every year; benchers are elected for four-year terms, but benchers can serve two terms (eight years) and then must wait 12 months after the end of the term to run again for election. In each year, four elective benchers and one appointed bencher shall cease holding office.

32. The concern about a limit on the number of terms a benchers may serve relates to the “learning curve” at the Law Society for new benchers. Depending on the number of terms chosen, if term limits cause a more frequent change in board members, Convocation will lose some members who are familiar with and have gained an understanding of the workings of the organization. This familiarity and knowledge is beneficial to the Society, the profession and the public.
33. Ultimately, the Task Force concluded that no recommendation be made at this time to reduce the number of terms a benchers may serve. If a benchers wishes to run for re-election, he or she should be free to do so. The electorate will determine his or her success or failure as a candidate. The Task Force considered that the present level of turnover each election, discussed above, is a reasonable level of renewal in the board every four years. Appointment of benchers to the court or other changes during the term also results in new benchers in Convocation.
34. The Task Force notes that this issue was raised at the January 2007 Convocation in the course of discussing spending limits on benchers candidates’ campaigns. That matter was reviewed by the Equity and Aboriginal Issues Committee/Comité sur l’équité et les affaires autochtones. The Task Force believes that it should give further consideration to the implications for governance that arise from term limits. The Task Force proposes to do so in consultation with other groups, including the Equity and Aboriginal Issues Committee/Comité sur l’équité et les affaires autochtones, following the benchers election in May 2007.

Length of benchers term

35. Similar to the review of term limits, the Task Force considered the benefits and concerns associated with changing the length of the benchers term to a period less than four years.
36. A shorter term could make service on the board more attractive to some lawyers and paralegals because the time period to which they commit may be more manageable for their practices. This may also permit more individuals from diverse legal communities to serve.
37. A more frequent renewal of the board membership, as with term limits, may result in the gradual increase in the portion of the lawyers and paralegals who participate in the professions’ governance, with a potential for increased vigor within the board to its governance responsibilities.
38. At a higher level, this may also be a way to broaden the knowledge of more members of the professions about the importance of a self-governing profession and the need for an effective governing body.
39. The primary concern about reducing the length of the benchers term to a period less than four years is the potential loss of valuable board members who do not run in the next election and who may have only become comfortable and knowledgeable in the role after two years or so. As noted earlier, all benchers understand that the learning curve at the Society can be steep.

40. Another concern is that a benchner election would be required more often, with the attendant financial and human resource costs.⁴
41. At this stage, the Task Force concluded that no change should be made to the length of the benchner term. In the Task Force's view, the benefits that may result from this change do not outweigh the potential costs.

Ex Officio Benchers

42. As noted above, the Task Force reviewed the following options to address the issues arising from a large unelected benchner component in Convocation:
 - a. eliminating the status of *ex officio* benchner for benchners who have served 16 years as an elected benchner ("life benchner");
 - b. eliminating the status of *ex officio* benchner for former Treasurers; and
 - c. eliminating the status of *ex officio* benchner for former Attorneys-General of Ontario.
43. The Task Force recognized that changes to the current regime, if warranted, must be made in ways that acknowledge the value of the Law Society's unique history, culture and traditions, which have influenced its governance structure.
44. No one disputes the contribution that former Treasurers, life benchners and former Attorneys-General have made to the Law Society in their service as benchners. Their experience, institutional knowledge and appreciation for the fiduciary and political aspects of board membership enhance their contributions as members of the board. This adds value to the role they play in the Society's governance.
45. The question is whether the number of *ex officio* benchners is appropriate in light of the present-day needs of the governance structure of the Law Society.
46. The *ex officio* group of benchners continues to grow. The number of *ex officio* benchners presently totals 26 and represents 65% of the number of elected benchners. Eight elected benchners are eligible to become *ex officio* benchners at the end of the current term. The total number of *ex officio* benchners would then be 34 and would represent 85% percent of the number of elected benchners.
47. This group exercises certain influence among benchners and in Convocation. The more that Convocation seeks to include new members who are not experienced in the ways of Convocation, the more the unelected members may have influence especially during the early period of each bench.
48. In the Task Force's view, there is a need to balance the value that the *ex officio* members bring to Convocation with the need for an accountable board that reflects the democratic principles by which it is initially constituted.

⁴ The Budget for the benchner election IN 2003 WAS \$250,000. This cost will continue to increase with future elections as the membership increases.

49. To address this issue, the Task Force proposes that the *ex officio* status for life benchers be ended and that the rights and privileges of former Treasurers should be revised. To an extent, this would also assist in managing the size of the board without affecting the elected component. As noted earlier in this report, the proposals, described below, would require amendments to the *Law Society Act*.

Life Benchers

50. A bencher attains *ex officio* status as a life bencher when he or she has served as an elected bencher for 16 years. Life benchers do not have a vote in Convocation, but may vote in committees.
51. Appointment for life as a bencher was the *status quo* in the early days of the Law Society. However, the design for the office has not remained static, and changes led to the development of the designation of life bencher. The following passage from Christopher Moore's history of the Law Society explains the changes and the evolution of the office of life bencher:

Until 1871 all appointments to convocation were life appointments. From 1871 to 1912 the only life benchers were those who had held some office (such as attorney general) which conferred automatic membership in convocation. In 1912, benchers who had been re-elected several times became eligible for life appointments. Only after 1970 did life appointments for long service become non-voting positions.⁵

52. There are currently six life benchers, only a few of whom participate regularly in Convocation. As already noted, there are eight elected benchers who are eligible to become life benchers in May 2007. If all those persons became life benchers, there would be a total of 14 life benchers, or 35% percent of the number of elected benchers. In the next term, depending on the May 2007 election results, there could be nine additional elected benchers eligible for life bencher status, for a total of 23, or 57% of elected benchers. Some other law societies in Canada include the office of life bencher.⁶
53. The office of life bencher, as noted earlier, has a lengthy history at the Law Society. Its value lies in facilitating a way for Convocation to draw on the experience and expertise of those who have served several terms as elected benchers. However, the structure of the office through the decades has experienced change, and now the Task Force believes further change should be made. As noted earlier in this report, a balance must be maintained between the value life benchers bring to Convocation and the need for a board that embodies the democratic principles through which its elected core is constituted. The Task Force is of the view that Convocation can recognize and honour the contribution made by those benchers who have served for 16 years in a different way.

⁵ Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997* (University of Toronto Press: 1997), p. 139.

⁶ See the chart at Appendix 3.

54. The proposal is to end the status of life bencher and create the new designation of "emeritus bencher". The circumstances in which this would occur would be similar to those that lead to the status of life bencher.⁷
55. Elected benchers who serve for 16 years would be eligible to choose the status of emeritus bencher, in the same way as they choose to become a life bencher. Upon making the choice to become an emeritus bencher, such benchers would serve an additional four years (the equivalent of a bencher term) as a bencher with the rights and privileges that attach to life bencher status. At the end of the four years, after which the individual will have served 20 years as a member of Convocation, the service as a bencher will end.
56. Similar to what occurs when an elected bencher is eligible for life bencher status, if the elected bencher eligible for emeritus status decides to run as a candidate in the next bencher election, but is not re-elected, he or she, having served as a bencher for 16 years, would be permitted to remain in Convocation as an emeritus bencher for the next four years.
57. If the elected bencher who is eligible for emeritus status is re-elected in the next bencher election, he or she can choose to continue to serve as an elected bencher, but at anytime thereafter may choose to serve as an emeritus bencher, and remain in Convocation for the next four years.

⁷ The relevant sections of the *Law Society Act* are as follows:

Benchers by virtue of their office

12. (1) The following, if and while they are members, are benchers by virtue of their office:

...

3. Every person who has held the office of elected bencher for at least 16 years.

...

Elected bencher's choice

(6) An elected bencher who becomes qualified as a bencher under subsection (1) or (2) shall choose whether to continue in office as an elected bencher or to cease to hold office as an elected bencher and serve as a bencher under subsection (1) or (2).

Same

(7) If a bencher chooses under subsection (6) to continue in office as an elected bencher, he or she is eligible to be re-elected in any subsequent election of benchers without prejudice to his or her right to become a bencher under subsection (1) or (2) at any time so long as he or she is still an elected bencher.

58. The Task Force recognizes that the emeritus benchers proposal may have the following effects:
- a. some institutional memory may be lost in limiting the number of years that a benchers may sit in Convocation after the 16 year period;
 - b. some benchers may be less likely to choose emeritus status and may run for re-election, which may mean that fewer new benchers will have an opportunity to be elected in a given benchers election; and
 - c. there is the potential for fewer experienced benchers available to sit as members of the Hearing Panel.
59. On balance, the Task Force has come to the conclusion that the benefits of its proposal, in keeping with the paramountcy of democratic principles, outweigh these concerns, for the following reasons.
60. Institutional memory is difficult to quantify. In the Task Force's view, there is no optimum number of long serving benchers or a particular qualification on the part of benchers that will create the "critical mass" to ensure that the memory is preserved. As such, given the rolling number of emeritus benchers that will remain in Convocation, and to the extent that each individual will make his or her best contribution, potential loss of institutional memory should not be an overriding concern.
61. On the matter of the potential for fewer new benchers, the current process in which life benchers may run for re-election can create the same dynamic. In the history of the Society, this has not appeared to impact significantly on the election of new benchers.
62. With respect to the concern about the number of adjudicators, in the Task Force's view, the number of benchers available for hearings is only one factor to be considered in composing panels for hearings. The level of skill as an adjudicator, subject expertise and the appropriate utilization of life benchers are other important considerations. As such, in the Task Force's view, it does not necessarily follow that its proposal will significantly affect the ability of the Society to schedule benchers for the required number of hearings.
63. In the Task Force's view, the proposal recognizes the valuable and lengthy commitment benchers have made to the Society in serving for 16 years, but provides a reasonable limit on their participation in Convocation as unelected benchers. It also provides a way to maintain an ongoing number of emeritus benchers available to assist Convocation with their experience and insight, but not a growing number of those benchers in any event. A benchers service for 20 years is a generous period of time within which an individual can make a valuable contribution to the governance of the Law Society.
64. Nothing would prevent any of these individuals from running as a candidate in the next benchers election after the four years as an emeritus benchers.
65. This proposal is on a going forward basis. The Task Force proposes that all current life benchers and those who qualify in this term as life benchers should be grandparented and should continue to enjoy the rights and privileges currently accruing to life benchers.

Former Treasurers

66. The creation of the office of *ex officio* benchers for former Treasurers is explained in summary fashion by former Treasurer John Arnup, who addressed newly elected benchers in Convocation on May 22, 2003 with a short history of the Society. On the subject of former Treasurers, he said the following:

All ex treasurers have automatically become life Benchers. This came into existence, really, as a tribute to Cyril Carson who was Treasurer for seven years, the last two at a strenuous urging of other Benchers including me because we were building the education wing. We were in the throes of intense negotiations with the university, and we didn't want Carson to leave us as our leader. So we did two things. We arranged ex treasurers would be life Benchers....

67. Thus, while practical expediency appears to have been one of the bases on which *ex officio* status was extended to former Treasurers, no doubt foresight of the valuable contribution former Treasurers can make to the Society's governance through Convocation also informed this decision.
68. The Task Force recognizes the important role that the Treasurer fulfills in the Society's governance. The Task Force also understands the honour and privilege attached to attaining the office of Treasurer. The Task Force found the following narrative description provided by bencher Ron Manes, transcribed from Convocation's discussion of the Strategic Planning Report on January 25, 2001, to be instructive:

...when it comes to defining what the Treasurer does, it's important we understand the scope of the Treasurer's job and how it has evolved from what historically may be termed a largely ceremonial position to what is now a real integral function to the internal operations of the Law Society and to Convocation.

The Treasurer, it is true, presides over Convocation, presides over our agenda to ensure that what comes before us is properly before us, and, of course, regulates the debate. The Treasurer oversees all committees, all task forces, and all working groups to ensure that they all achieve their objective.

The Treasurer is responsible for coordinating. The Treasurer is an *ex officio* member of all of those committees, task forces, and working groups, and in our experience with our present Treasurer, attends many of these committee meetings, task force meetings, et cetera.

The Treasurer, in addition to that, monitors the CEO. We have decided that now. It is clear to us that the Treasurer is going to be accountable to us to monitor the performance of the CEO. Now, this entails, just so we understand, not only defining for the CEO or translating what we have defined for the CEO what the CEO's objectives are, but also measuring the CEO against those objectives.

Now, anyone who knows that responsibility knows how onerous it is, and it is not a responsibility that in our view the Treasurer can possibly discharge on his own. And then he comes to recommend to us, in a formal way, what we or how we assess the performance of the CEO.

The Treasurer, in addition to that oversight and in addition to his responsibilities here at Convocation, must liaise with the public, must liaise with the profession, must liaise with the bench, liaise with the press, deal with interest groups and constantly write letters to the Globe and Mail.

...

The Treasurer is the face of Convocation. Yes, it is a ceremonial job. It is a huge job. He represents us at a substantial number of functions, more functions than we can possibly count or comprehend."

69. As noted earlier, among the group of *ex officio* benchers are 11 former Treasurers who are permitted to vote in Convocation. This constitutes 27% percent of the elected benchers. Six former Treasurers attend Convocation regularly, but all vote on some occasions. The Treasurer's election is one such occasion. In these elections in the last six years, all former Treasurers have voted. Most vote in the advance poll.
70. Former Treasurers can wield substantial influence. As an increasingly large group within Convocation, their influence is exercised without electoral accountability. Although once elected, they will never lose their office through an election process.
71. The Treasurer's contribution to the Society, as indicated above, is extensive and of distinct value. The benefits of drawing on a former Treasurer's expertise in matters of governance are understood. The Task Force's proposal with respect to former Treasurers seeks to wed this important component of governance with the broad objective of the accountability of board members.
72. The Task Force proposes that former Treasurers should continue to enjoy *ex officio* bencher status and should be permitted to vote in Convocation provided they attend regularly.
73. This additional requirement for attendance acknowledges the former Treasurers' unique status as unelected benchers who have a vote in Convocation and the value that their participation in Convocation can bring. As a means to encourage the participation of former Treasurers in the Law Society's governance, the Task Force proposes that if a former Treasurer is absent from Convocation for six consecutive regular Convocations, he or she will lose the right to vote.
74. To reinstate voting rights that have been lost, the former Treasurer must attend three of five consecutive regular Convocations.⁸

⁸ Former Treasurers who have been appointed to the bench would be subject to this requirement following retirement from the bench, reinstatement of their membership status and their return to Convocation as *ex officio* benchers.

Former Attorneys-General

75. The Task Force's view is that including the current Attorney-General as an *ex officio* member of the Society is appropriate. Indeed, from the public's perspective, it is important that the chief legal officer in the province be connected to the governance of the profession in this way. The current Attorney-General has voting rights in Convocation and in committees.
76. There are currently ten former Attorneys-General. Only two regularly participate in Convocation⁹, and these individuals have made outstanding contributions as board members, notwithstanding that they have no voting rights in Convocation or in committees.
77. The Task Force obtained the views of the Government Relations Committee on the merits of retaining this group of *ex officio* benchers. The Committee advised that the rationale for former Attorneys-General continued status as *ex officio* benchers rests largely in the value they bring from the political perspective, particularly in relation to the Society's government relations activities. Their unique understanding of the workings of government can provide insights that would not otherwise be available to the Society.
78. The majority of the Task Force members agreed with these views. The Task Force also believes that former Attorneys-General bring their own public interest perspective to the work of Convocation that may not otherwise be present.
79. For these reasons, the Task Force concluded that no change should be made to the status of former Attorneys-General as *ex officio* benchers.

Appendix 1

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

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

⁹ Marion Boyd, who is now a lay bencher, and Allan Lawrence.

- b. procedural issues relating to Committee recommendations and motions before Convocation, arising from adoption of Rules of Procedure for Convocation (amendments to By-Law 8) on March 23, 2006;
- 3. The Task Force expects to report to Convocation from time to time with specific recommendations throughout 2006 and 2007, completing its work by April 2007.

Appendix 2

EXCERPTS FROM THE LAW SOCIETY ACT

BENCHERS

Government of the Society

10. The benchers shall govern the affairs of the Society, including the call of persons to practise at the bar of the courts of Ontario and their admission and enrolment to practise as solicitors in Ontario. R.S.O. 1990, c. L.8, s. 10.

Note: Effective May 1, 2007, section 10 is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule C, section 11 and the following substituted:

Government of the Society

10. The benchers shall govern the affairs of the Society. 2006, c. 21, Sched. C, s. 11.
See: 2006, c. 21, Sched. C, ss. 11, 138 (2).

Honorary benchers

11. Every person,
 (a) who is an honorary bencher on the 1st day of October, 1970; or
 (b) who after that day is made an honorary bencher,
 is an honorary bencher but as such has only the rights and privileges prescribed by the by-laws. R.S.O. 1990, c. L.8, s. 11; 1998, c. 21, s. 5.

Benchers by virtue of their office

12. (1) The following, if and while they are members, are benchers by virtue of their office:

Note: Effective May 1, 2007, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 21, Schedule C, subsection 12 (1) by striking out "members" in the portion before paragraph 1 and substituting "licensees". See: 2006, c. 21, Sched. C, ss. 12 (1), 138 (2).

- 1. The Minister of Justice and Attorney General for Canada.
- 2. The Solicitor General for Canada.
- 3. Every person who has held the office of elected bencher for at least 16 years. 1998, c. 21, s. 6.

Same: attorneys general

(2) The following, whether or not they are members, are benchers by virtue of their office:

Note: Effective May 1, 2007, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 21, Schedule C, subsection 12 (2) by striking out "whether or not they are members" in the portion before paragraph 1. See: 2006, c. 21, Sched. C, ss. 12 (2), 138 (2).

- 1. The Attorney General for Ontario.

2. Every person who has held the office of Attorney General for Ontario. 1998, c. 21, s. 6.

Same

(3) Subsection (2) does not apply to a person whose membership is in abeyance under section 31. 1998, c. 21, s. 6.

Note: Effective May 1, 2007, subsection (3) is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule C, subsection 12 (3) and the following substituted:

Same

(3) Subsections (1) and (2) do not apply to a person whose licence is in abeyance under section 31. 2006, c. 21, Sched. C, s. 12 (3).

See: 2006, c. 21, Sched. C, ss. 12 (3), 138 (2).

Rights and privileges

(4) Benchers by virtue of their office under subsection (1) or (2) have the rights and privileges prescribed by the by-laws but, except as provided in subsection (5), may not vote in Convocation or in committees. 1998, c. 21, s. 6.

Voting

(5) The following voting rights apply:

1. The Attorney General for Ontario may vote in Convocation and in committees.
2. Benchers by virtue of their office under paragraph 3 of subsection (1) or paragraph 2 of subsection (2) may vote in committees. 1998, c. 21, s. 6.

Elected bencher's choice

(6) An elected bencher who becomes qualified as a bencher under subsection (1) or (2) shall choose whether to continue in office as an elected bencher or to cease to hold office as an elected bencher and serve as a bencher under subsection (1) or (2). 1998, c. 21, s. 6.

Same

(7) If a bencher chooses under subsection (6) to continue in office as an elected bencher, he or she is eligible to be re-elected in any subsequent election of benchers without prejudice to his or her right to become a bencher under subsection (1) or (2) at any time so long as he or she is still an elected bencher. 1998, c. 21, s. 6.

Note: Effective May 1, 2007, subsection (7) is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule C, subsection 12 (3) and the following substituted:

Same

(7) If a bencher licensed to practise law in Ontario as a barrister and solicitor chooses under subsection (6) to continue in office as an elected bencher, he or she is eligible to be re-elected under subsection 15 (1), without prejudice to his or her right to become a bencher under subsection (1) or (2) at any time so long as he or she is still an elected bencher. 2006, c. 21, Sched. C, s. 12 (3).

Same

(8) If a bencher licensed to provide legal services in Ontario chooses under subsection (6) to continue in office as an elected bencher, he or she is eligible to be re-elected under subsection 16 (1), without prejudice to his or her right to become a bencher under subsection (1) or (2) at any time so long as he or she is still an elected bencher. 2006, c. 21, Sched. C, s. 12 (3).

See: 2006, c. 21, Sched. C, ss. 12 (3), 138 (2).

Attorney General, guardian of the public interest

13. (1) The Attorney General for Ontario shall serve as the guardian of the public interest in all matters within the scope of this Act or having to do with the legal profession in any way, and for this purpose he or she may at any time require the production of any document or thing pertaining to the affairs of the Society. R.S.O. 1990, c. L.8, s. 13 (1); 1998, c. 21, s. 7 (1).

Note: Effective May 1, 2007, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 21, Schedule C, section 13 by striking out “having to do with the legal profession in any way” and substituting “having to do in any way with the practice of law in Ontario or the provision of legal services in Ontario”. See: 2006, c. 21, Sched. C, ss. 13, 138 (2).

Admissions

(2) No admission of any person in any document or thing produced under subsection (1) is admissible in evidence against that person in any proceedings other than proceedings under this Act. R.S.O. 1990, c. L.8, s. 13 (2); 1998, c. 21, s. 7 (2).

Protection of Minister

(3) No person who is or has been the Attorney General for Ontario is subject to any proceedings of the Society or to any penalty imposed under this Act for anything done by him or her while exercising the functions of such office. R.S.O. 1990, c. L.8, s. 13 (3); 1998, c. 21, s. 7 (3).

Former Treasurers

14. Every member who previously held the office of Treasurer is a benchers by virtue of his or her office. 1998, c. 21, s. 8.

Note: Effective May 1, 2007, section 14 is amended by the Statutes of Ontario, 2006, chapter 21, Schedule C, section 14 by striking out “member” and substituting “licensee”. See: 2006, c. 21, Sched. C, ss. 14, 138 (2).

Election of benchers

15. (1) Forty benchers shall be elected in accordance with the by-laws. 1998, c. 21, s. 9.

Regions

(2) The benchers elected under subsection (1) shall be elected for regions prescribed by the by-laws. 1998, c. 21, s. 9.

Vacancies

(3) Any vacancies in the offices of elected benchers may be filled in accordance with the by-laws. 1998, c. 21, s. 9.

Note: Effective May 1, 2007, section 15 is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule C, section 15 and the following substituted:

Benchers licensed to practise law

15. (1) Forty persons who are licensed to practise law in Ontario as barristers and solicitors shall be elected as benchers in accordance with the by-laws. 2006, c. 21, Sched. C, s. 15.

Regions

(2) *The benchers elected under subsection (1) shall be elected for regions prescribed by the by-laws. 2006, c. 21, Sched. C, s. 15.*

Vacancies

(3) *Any vacancies in the offices of benchers who are licensed to practise law in Ontario as barristers and solicitors may be filled in accordance with the by-laws. 2006, c. 21, Sched. C, s. 15.*

Ceasing to be bencher

(4) *A person who is elected as a bencher under subsection (1) or who holds the office of elected bencher under subsection (3) ceases to be a bencher if the person ceases to be licensed to practise law in Ontario as a barrister and solicitor. 2006, c. 21, Sched. C, s. 15. See: 2006, c. 21, Sched. C, ss. 15, 138 (2).*

Benchers licensed to provide legal services

16. (1) Two persons who are licensed to provide legal services in Ontario shall be elected as benchers in accordance with the by-laws. 2006, c. 21, Sched. C, s. 16.

Regions

(2) If the by-laws so require, the benchers elected under subsection (1) shall be elected for regions prescribed by the by-laws. 2006, c. 21, Sched. C, s. 16.

Vacancies

(3) Any vacancies in the offices of benchers who are licensed to provide legal services in Ontario may be filled in accordance with the by-laws. 2006, c. 21, Sched. C, s. 16.

Ceasing to be bencher

(4) A person who is elected as a bencher under subsection (1) or who holds the office of elected bencher under subsection (3) ceases to be a bencher if the person ceases to be licensed to provide legal services in Ontario. 2006, c. 21, Sched. C, s. 16.

First election

(5) The first election of benchers under subsection (1) shall take place on the day prescribed by the by-laws. 2006, c. 21, Sched. C, s. 16.

Interim benchers

(6) Until the first election of benchers under subsection (1) takes place, their offices shall be filled by two persons appointed by the Attorney General for Ontario from among the five persons appointed to the Paralegal Standing Committee under clause 25.2 (2) (a). 2006, c. 21, Sched. C, s. 16.

Same

(7) The benchers who hold office under subsection (6) at the time of the first election of the five persons referred to in clause 25.1 (3) (a) to the Paralegal Standing Committee continue to hold office under subsection (6) until the first election of benchers under subsection (1) takes place. 2006, c. 21, Sched. C, s. 16.

17.-21. Repealed: 1998, c. 21, s. 11.

Removal for non-attendance

22. The benchers may remove from office any elected bencher who fails to attend six consecutive regular Convocations. R.S.O. 1990, c. L.8, s. 22.

Lay benchers

23. (1) The Lieutenant Governor in Council may appoint eight persons who are not members as benchers. 1998, c. 21, s. 12.

Note: Effective May 1, 2007, subsection (1) is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule C, subsection 17 (1) and the following substituted:

Lay benchers

(1) The Lieutenant Governor in Council may appoint eight persons who are not licensees as benchers. 2006, c. 21, Sched. C, s. 17 (1).

See: 2006, c. 21, Sched. C, ss. 17 (1), 138 (2).

Term of office

(2) Every appointment under subsection (1) expires immediately before the first regular Convocation following the first election of benchers that takes place after the effective date of the appointment. 1998, c. 21, s. 12.

Note: Effective May 1, 2007, subsection (2) is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule C, subsection 17 (2) and the following substituted:

Term of office

(2) Every appointment under subsection (1) expires immediately before the first regular Convocation following the first election of benchers under subsection 15 (1) that takes place after the effective date of the appointment. 2006, c. 21, Sched. C, s. 17 (2).

See: 2006, c. 21, Sched. C, ss. 17 (2), 138 (2).

Reappointment

(3) A person appointed under this section is eligible for reappointment. 1998, c. 21, s. 12.

Deemed reappointment

(4) A person whose appointment expires under subsection (2) shall be deemed to have been reappointed until his or her successor takes office. 1998, c. 21, s. 12.

Note: Effective May 1, 2007, section 23 is amended by the Statutes of Ontario, 2006, chapter 21, Schedule C, subsection 17 (3) by adding the following subsection:

Termination of appointment

(5) A person's appointment under this section is terminated if the person becomes a licensee. 2006, c. 21, Sched. C, s. 17 (3).

See: 2006, c. 21, Sched. C, ss. 17 (3), 138 (2).

Quorum

24. Ten benchers present and entitled to vote in Convocation constitute a quorum for the transaction of business. R.S.O. 1990, c. L.8, s. 24.

Election of Treasurer

25. (1) The benchers shall annually, at such time as the benchers may fix, elect an elected bencher as Treasurer. 1998, c. 21, s. 13.

Bencher by virtue of office

(2) The Treasurer is a bencher by virtue of that office and ceases to hold office as an elected bencher. 1998, c. 21, s. 13.

Re-election

(3) The Treasurer is eligible for re-election as Treasurer, despite having ceased to hold office as an elected bencher, but, after a new election of benchers takes place under subsection 15 (1), the Treasurer may be re-elected only if he or she is an elected bencher. 1998, c. 21, s. 13.

Note: Effective May 1, 2007, subsection (3) is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule C, section 18 and the following substituted:

Re-election as Treasurer

(3) *The Treasurer is eligible for re-election as Treasurer, despite having ceased to hold office as an elected bencher, but,*

(a) *after a new election of benchers takes place under subsection 15 (1), a Treasurer who is a person licensed to practise law in Ontario may be re-elected as Treasurer only if he or she was elected as a bencher in that election; and*

(b) *after a new election of benchers takes place under subsection 16 (1), a Treasurer who is a person licensed to provide legal services in Ontario may be re-elected as Treasurer only if he or she was elected as a bencher in that election. 2006, c. 21, Sched. C, s. 18.*

See: 2006, c. 21, Sched. C, ss. 18, 138 (2).

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

Copy of a Table entitled "Other Law Societies Governance."

(pages 29 – 35)

Report to Convocation
April 26, 2007

Professional Regulation Committee

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

Purposes of Report: Decision

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

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on April 12, 2007. In attendance were Heather Ross (Vice-chair and Acting Chair), Tom Heintzman (Vice-chair), Alan Gold, Gary Gottlieb, Allan Gotlib, Paul Henderson (by telephone) and Ross Murray. Staff attending were Naomi Bussin, Zeynep Onen, Jim Varro and Sheena Weir.

VACATING DISCIPLINE AND CONDUCT RECORDS

Motion

2. That Convocation decide that there are no circumstances in which a discipline or conduct record should be vacated after some period of time

Introduction and Background

3. On June 25, 1999, Convocation reviewed a report from the Committee which addressed the policy issue of whether discipline or conduct records of members of the Law Society should be vacated. The June 1999 report appears at Appendix 1.
4. After its review and based on the information in the report, Convocation made a policy decision on June 25, 1999 by answering “yes” to the following question:

Are there are any circumstances in which a discipline or conduct record should be vacated after some period of time?
5. The matter was then sent back to the Committee to determine the circumstances in which and the process by which discipline or conduct records should be vacated, and to consider the effect of vacating information from a conduct or discipline record. A working group of the Committee was created to focus on these issues and report back to the Committee.¹
6. In considering the range of options for vacating a record in a process that would involve a hearing before the Society's Hearing Panel, the working group considered four models:
 - a. a blended system with three options - expunging records, sealing records, and pardons;
 - b. a blended system with two options - sealing records and pardons;
 - c. one option - a pardon; and

¹ Gavin MacKenzie (chair), Andrew Coffey, Todd Ducharme and Heather Ross, assisted by Lesley Cameron and Jim Varro.

- d. one option – expunging records.
- 7. The working group prepared a draft report for the Committee, which the working group's chair received for review in January 2002. The working group's report was only recently considered by the Committee, when Benchers Larry Banack requested that it consider the matter. In January 2007, the Committee's chair agreed to have the Committee review the matter, including the reports referred to above, and prepare a report for Convocation. The Committee considered this matter at its February, March and April 2007 meetings.
- 8. After considering the June 1999 report and the working group's draft report, the overall consensus of the Committee was that Convocation's decision in June 1999 should be reversed, and that a process to vacate discipline or conduct records should not be pursued.

The Committee's Review of the Working Group's January 2002 Proposal

- 9. The Committee reviewed the working group's draft report from January 2002 and considered the merits of its proposals. The report in draft form, which the Committee has prepared for Convocation's review, appears at Appendix 2.
- 10. In the draft report, the working group was preparing to put the following proposal to the Committee:
 - a. that if the issue of vacating conduct or discipline records in some circumstances is to be pursued, a pardon, rather than expungement or sealing, be the method for dealing with conduct or discipline records for any misconduct² ;
 - b. that five years must elapse after the conduct or discipline order has issued, or after fulfillment of the terms of the order, before a member may apply for a pardon;
 - c. that a detailed written application be provided by a member in every case;
 - d. that a public hearing be held before the Hearing Panel to determine the question of whether a pardon should be granted, with discretion to consider the seriousness of the misconduct in assessing the matter;
 - e. that an application fee be paid by a member applying for a pardon;
 - f. that a by-law be drafted describing the process for a pardon.

The Committee's Reasons for its Recommendations – The Significance of Developments Since 1999

- 11. In the nearly eight years that have elapsed since Convocation made its policy decision, there have been a number of important developments internal and external to the Law Society that, in the Committee's view, impact on a policy for vacating discipline records.

² The working group described a pardon as follows: "If a pardon were granted, the public would still be informed of the matters between the member and the Society, in aid of the obligation to assure the public that the Society's regulatory mandate is being responsibly fulfilled, including the fact that the member has been "forgiven" for the conduct." The full discussion is in the working group report at Appendix 2.

12. As a general observation, the Committee notes that since 1999, to borrow a phrase, times have changed. Within the sphere of self-regulation, regulators facing pressures from governments, interest groups and the general public have been forced to examine their roles, to justify their existence and respond to the scrutiny that they experience from time to time as a result of increased expectations for transparency, effectiveness and accountability.
13. For the Law Society, this has increased sensitivity to the manner in which the regulation of the profession and regulatory processes are structured. A number of initiatives over the past few years have addressed this subject, including the Tribunals Task Force and the Investigations Task Force. The report from the Investigations Task Force, adopted by Convocation in May 2006, said:

Timely investigations are critical to the effectiveness of the Law Society's regulatory process. The timely completion of an investigation is necessary to maintain the public's and the profession's confidence in the Law Society's regulation of lawyers. The regulatory process should be:

- a. Expeditious and meaningful in responding to complaints,
 - b. Transparent and accessible,
 - c. Principled and reasoned in its outcomes,
 - d. Flexible in providing for alternative resolution options where appropriate, and
 - e. Able to undertake necessary action to prevent harm in the public interest.
14. Against this background, the following are the specific developments and issues that informed the Committee's decision to recommend that a process to vacate records should not be pursued.
 15. This decision was also informed by the issues discussed at paragraph 54 of the June 1999 report to Convocation at Appendix 1, and the views of the working group about the procedural intricacies attached to the issue at paragraphs 7 through 9 of its draft report at Appendix 2³.

The *Finney* Decision

16. In the decision of the Supreme Court of Canada in *Finney v. Barreau de Quebec*, [2004] 2 S.C.R. 17, the Court, after an examination of the Barreau's investigation of a member's

³ The working group said:

...[I]mplementing a policy to vacate discipline or conduct records would involve a time-consuming and possibly expensive operational process and potentially significant bench time.

The working group raises this issue only because it believes that Convocation, in approving the general policy question, could not have envisaged the complexity of the issue without the benefit of the same type of in-depth review. Given the intricacies of the issue, a key question is whether a decision to devise methods to vacate records can be practically implemented.

conduct, enunciated some key principles about lawyer regulation.⁴ These included the following:

- a. **Timeliness:**
All stages of the complaint process should be completed with diligence and in a timely manner. These steps would include, as appropriate, investigation/inspection, analysis and prosecution. In *Finney*, the Court found a number of instances where the Barreau could have acted much sooner. For example, the Barreau had determined at a preliminary stage that the member's competency was in question, and yet it took a year to obtain a "provisional disbarment".
- b. **Effective response to risk:**
A law society must utilize the tools at its disposal to investigate and prosecute a member's conduct. Of the many issues raised by the lawyer in this case, some were based on complaints while others arose out of an assessment of his competence. The Barreau seemed to get caught up in a web of process that did not advance the public protection or complaints response mandates.
- c. **Effective communications with complainants:**
Complainants must be kept up-to-date on the progress of their complaint;
- d. **Integration of information in the complaints and discipline history of a member:** A member's entire disciplinary history is relevant, *inter alia*, to assess the risks that a lawyer poses to the public;⁵

⁴ The *Finney* case was a suit in damages, in which the Barreau du Quebec was found liable to the client of the lawyer under investigation for the Barreau's failure to adequately address the issues of professional conduct. The Court found that the Barreau, because of its failure, could not claim the protection of the immunity clause in its governing legislation, where acts done in good faith in the performance of the Barreau's duties could not be prosecuted. The Barreau was found to be negligent, indifferent and careless to the point where its actions amounted to bad faith. Mrs. Finney was awarded \$25,000 and costs on a solicitor and client basis.

⁵ Lebel J. noted the following:

At the point when fresh complaints were made by the respondent, the Barreau had to have been aware of Belhassen's problematic professional history. In the language of criminal law, he had a record. He had committed disciplinary offences and had been found guilty of them. Furthermore, the Professional Inspection Committee had conducted a lengthy investigation into his professional practices and competence, and had stated its concerns in that respect in the clearest terms possible. ...The Barreau and its Syndic had to have been aware of this situation and must have taken it into account in considering the complaint and making a decision on it. In spite of the necessary administrative separation between discipline and professional inspection, the Barreau had knowledge of everything that Belhassen had done and of his record of professional misconduct.

...The nature of the complaints and the lawyer's professional record in fact made it plain that this was an urgent case that had to be dealt with very diligently to

- e. Appropriate response to risks presented by a member:
A law society can and must use its discretion in deciding whether or not to pursue a complaint, but it is unacceptable for a law society to do nothing;
 - f. Transparency:
A law society's decision to either discontinue or proceed with a complaint investigation must be communicated, with reasons, to the complainant. The complainant should be given the opportunity to have this decision reviewed or challenged. The Court found that the Barreau essentially did not respond to complaints, even when they were repeated, for long periods of time.
 - g. Fair process:
Diligence and timeliness must be measured against the self-imposed procedural requirements. However, the rights of a lawyer who is the subject of a complaint should not be sacrificed in favour of a quick outcome.
17. Paragraph d. above is particularly relevant to the question of access to a member's discipline record, and its importance to a transparent and effective regulatory process. Limitations on access to discipline records will become an issue if the Law Society implements any of the models for vacating records.

The Law Society's Publications Policy

18. The most recent enhancements to the Society's policy for publication of discipline decisions were the result of the report of the Tribunals Task Force in April, 2005. Convocation adopted a number of recommendations, including those relating to publication issues. On this subject, the Task Force said:

In analyzing publication issues it is important to consider the role that publication of tribunal matters plays in the Law Society's self-governance. The Law Society regulates the profession in the public interest. Today's public demands more openness and accountability from self-regulating professions.

One of the Law Society's most important public interest functions is ensuring that lawyers who commit acts of professional misconduct are held accountable for their actions. While it is essential to ensure that the tribunals process is fair, transparent and consistent, *it is also important that information about matters before panels and their decisions are easily accessible by the public, whenever there is a public interest in having that information.*

In response to lawyer misconduct, the Law Society must not only act, but must be seen to act. Otherwise, the public confidence in self-regulation is called into question. *To the extent that the Law Society deviates from a policy of transparency and public information, there must be good cause for doing so.* (Emphasis added)

ensure that the Barreau carried out its mission of protecting the public in general and a clearly identified victim in particular.

19. Convocation adopted the following recommendation on publication:

It is appropriate for the Law Society to post its tribunals decisions on its web site. The policy question raised by the issue is whether there is a public interest in making that information available without time limit. The Task Force weighed whether the actual tribunal reasons should remain on the website indefinitely or whether it would be sufficient, after a period of time, to provide only information on the finding and penalty against the member.

Currently, what is on the Law Society web site is the case digests that are printed in the Ontario Lawyers' Gazette (the Gazette). These remain on line indefinitely because the Gazette issues remain in the Archives section of the web site. Law Society decisions are also available on CanLII and QuickLaw, and as with all jurisprudence, are available indefinitely. Given the increasing demand for regulator accountability, transparency and information, it is appropriate that the actual decisions be available on the website. To do otherwise is to open the Society to the argument and perception that it is delaying, hiding or otherwise impeding the public's "right to know". However, the Task Force is of the view that after a period of time, it is not necessary for the Law Society web site to include the actual decision, which is available elsewhere, provide the finding and penalty against the member remain posted.

The Task Force recommends that,

- a. the Law Society post tribunal decisions on its web site for a period of three years; and
- b. after three years the finding and penalty against the member remain on the website, with a link to the CANLII or QuickLaw sites where the decision may be found. The decision itself would no longer be available on the Law Society web site.

20. This means that currently, findings and penalties against members are maintained on an ongoing basis on the Society's website, and decisions are published on the CanLII and QuickLaw websites, for the reasons of access and transparency discussed earlier.
21. Publication through CanLII and Quicklaw creates an historical database. For anyone accessing information on lawyer discipline, there could be a "disconnect" between what appears through these sources and information the Law Society would provide if it vacated a discipline or conduct record. This may create a negative perception about the integrity of the manner in which information from the Law Society is available to the public about members.

Operational Resources and Budget Issues

22. The working group's 2002 proposal considered by the Committee involved a hearing process for granting a pardon. If this type of process were to be recommended and adopted, the impact on operational resources could be considerable.
23. At this stage, it is impossible to project how many members may take advantage of a process for granting a pardon. Statistics for the last 10 years, however, will put the issue in some perspective, if the assumption is made that the opportunity to seek a pardon

would generally be attractive to members. Since 1996⁶, 720 disciplinary orders were issued for penalties other than those that terminate membership in the Society (i.e. disbarment and permission to resign⁷). Several hundred orders would also have been made in the decades before 1996.

24. The cost of such a process cannot be estimated at this stage, although it is a fact that a hearing process will involve resources from both the Professional Regulation Division and the Tribunals Office. The majority of the work (preparation for the hearings) would fall to the Professional Regulation Division.
25. The allocation of time and resources to work required in advance of the hearing process to vacate records will become a concern, and will have additional budgetary implications, if such allocation is at the expense of resources needed for investigative work.
26. The Professional Regulation Budget has already been increased for 2007 by almost \$2 million. The Division's 2007 budget for 2007 is approximately \$14.6 million (of a Law Society operating budget in excess of \$51 million), up from \$12.7 million in 2006. The Finance and Audit Committee Report to October 2006 Convocation reflected that the increase is attributable to a number of factors including:
 - a. Staffing level increases for mortgage fraud investigations and prosecutions,
 - b. Additional staff for Complaints Resolution,
 - c. Additional funds for outside counsel to support the increasingly complex investigations and prosecutions, and
 - d. Salary merit and market adjustments.

Bencher Resources

27. If a hearing type of process were to be recommended, the impact on benchers adjudication resources must be considered.
28. It is a fact that the hearing calendar for the upcoming year is solidly booked and that this trend is expected to continue. The workload of the Hearing Panel has increased considerably since June 2003. A hearing process for the purposes of a pardon, or another type of order respecting a discipline record, will increase the pressure on the Hearing Panel and generally will affect timely decision-making.
29. A panel of benchers will have adjudicated a matter that resulted in a disciplinary order. This raises a second issue, namely, whether those benchers should consider the related pardon application. If the answer is no, timely scheduling and availability of Hearing Panel members will likely become more of an issue.

By-Law 33 and Inter-Provincial Practice of Law

⁶ Source: Law Society Annual Reports, 1996-2005. See Appendix 3 for the actual statistics.

⁷ The working group recommended that any process to vacate records should not at present be available to former members whose membership was terminated by a disciplinary order.

30. By-Law 33 implements the regulatory scheme for the inter-provincial mobility of Canadian lawyers in Ontario pursuant to the Federation of Law Societies' Interjurisdictional Practice Protocol.
31. The By-Law addresses the occasional practice of law (100 days) and the practice of law for 20 days on 10 matters in 12 months. The By-Law provides that a non-Ontario lawyer may practice in Ontario without prior permission of the Law Society if, *inter alia*, he or she "is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member" and additionally for the 100 days, "is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each jurisdictions of which the person is a member suspending or limiting the rights and privileges of the person."
32. Other law societies who are signatories to and observe the Agreement have similar regulations for lawyers coming into their jurisdictions, including Ontario lawyers.
33. If a change is made to the manner in which the Law Society maintains discipline records, the impact on the regulation of lawyer mobility must be considered. The specific question is whether this would affect other law societies' rules as applied to Ontario lawyers who wish to practice without prior permission in another province.

Amendments to the *Law Society Act* to Create the Register

34. The amended *Law Society Act* now includes authority for the Society to maintain a register of licensees. The Act also includes by-law-making authority with respect to the nature of the register, including what information may be removed from the register. The relevant sections are:

27.1 (1) The Society shall establish and maintain a register of persons who have been issued licences.

Contents of register

(2) Subject to any by-law respecting the removal of information from the register, the register shall contain the following information:

1. The name of each licensee.
2. The class of licence issued to each licensee.
3. For each licensee, all terms, conditions, limitations and restrictions that are imposed on the licensee under this Act, other than terms, conditions, limitations and restrictions that are imposed by the by-laws on all licences of that class.
4. An indication of every suspension, revocation, abeyance or surrender of a licence.
5. Any other information required by the by-laws.

Availability to public

(3) The Society shall make the register available for public inspection in accordance with the by-laws.

62. (0.1) Convocation may make by-laws,

...

49. governing the register that the Society is required to establish and maintain under section 27.1, including prescribing information that the register must contain in addition to the information required under section 27.1, governing the removal of information from the register and governing the Society's duty under section 27.1 to make the register available for public inspection;

35. This statutory requirement imposes on the Law Society an obligation to maintain this information and make it available to the public. As indicated above, some of the information relates to matters that may arise from disciplinary orders.
36. In the Committee's view, the fact that the register is now a statutory requirement means that increased importance is attached to information about members and how that information may be accessed by the public. The Committee's sees this as part of the Society's role to regulate in the public interest. Vacating records would not appear to be consistent with this obligation.

Summary of the Committee's Views

37. At a time when there are increased expectations that professional regulation will be effective, transparent, and accountable, the Committee views a policy by which discipline or conduct records may be vacated as untenable. As the Supreme Court of Canada noted in *Finney*, a lawyer's discipline history is a relevant factor in assessing risks to the public.
38. On those occasions when the Law Society is scrutinized for its effectiveness as a regulator, it should be prepared to justify its policies in light of its public interest mandate. In the Committee's view, the Society will not be criticized in the public realm for maintaining a record of those members who have breached professional conduct, but may well be criticized for qualifying the fact of the breach or removing it entirely from its public records.
39. Membership in the Law Society is a privilege, not a right. With that privilege comes responsibilities collectively and individually to accept regulation and the consequences that follow when breaches occur. Maintaining disciplinary records without qualification or amendment, as is currently the practice, is the responsible way for the Law Society to deal with this information. A transparent approach to regulation, including a complete and accessible record of members' discipline, will help to support effective self-regulation of the legal profession.

APPENDIX 1

Professional Regulation Committee
June 10, 1999

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

REVIEW OF CIRCUMSTANCES RESPECTING THE VACATING OF DISCIPLINE RECORDS

A. INTRODUCTION

1. Recent interest has been expressed by some members of the profession in the issue of whether discipline records should continue to exist and be available to the public indefinitely. This, together with the fact that the issue was independently suggested for review by two Committee vice-chairs, has prompted the Committee's current review of this issue.
2. The Committee reviewed a discussion paper prepared by a working group of the Committee⁸ on issues relating to discipline or conduct records and the competing policy considerations on possible limits on a record's existence. While the focus of this paper was on conduct issues, the Committee acknowledged that similar issues may arise with respect to competence or capacity orders that are a matter of public record.
3. This report includes the Committee's proposal that Convocation consider whether a policy should be instituted that in certain circumstances, discipline or conduct records may be vacated.

B. BACKGROUND

The Law Society's "Record"

4. At present, a discipline record of a member, through the documents which evidence the occurrence of a member's discipline by the Law Society, exists forever. This is the case even when a member, for example, is readmitted after disbarment.
5. There are no provisions in any of the governing legislation, regulations or by-laws directly dealing with the contents of a member's Law Society record.⁹ The current practice is to maintain in the member's file a record of any public discipline (now called conduct) proceedings, and within the Discipline Department itself, the findings of

⁸ Gavin MacKenzie, assisted by Lesley Cameron and Jim Varro.

⁹ The amended *Law Society Act* refers to a member's record, but only in the context of reviews of the professional conduct or competence of benchers and Law Society employees, where the person conducting the review may access "all information in the records of the Society respecting the bencher or employee..." (s. 49.7). The Complaints Resolution Commissioner is accorded the same access with respect to member or student member complaints (s. 49.15(3)).

professional misconduct or conduct unbecoming and the penalties imposed. Presumably, this will now include any competence or capacity orders to the extent that they are public.

Uses of the Record

6. The Law Society routinely answers requests from a variety of people (complainants, potential clients, other lawyers, the media, etc.) about the discipline history of members.¹⁰
7. The Society discloses any discipline record that resulted from a public hearing, and any public result of an *in camera* hearing. It also discloses any pending public conduct hearing once the conduct application has been served on the member or 10 days after mailing of the application by registered mail, whichever is earlier. Records of invitations to attend ("ITAs") are not disclosed in response to requests for discipline records. Complaints or applications that have been dismissed are not disclosed in response to requests for members' discipline records. For example, if a caller asks whether a lawyer has a discipline record and a dismissal is the only matter noted, the answer is "no". If the caller, however, asks about the disposition of a specific formal complaint, he or she will be informed that the complaint or application was dismissed.
8. Specific requests for information are received from the Judicial Appointments Office, when members apply or are chosen for judicial appointments. Prior to the Society receiving the request, the member waives confidentiality with respect to information from the Society about his or her complaints and discipline record. Currently, the Society discloses all complaints (current or past), ITAs, and all discipline (present and past, including dismissals).
9. Another type of specific request is received from members who are requesting occasional appearance certificates in other Canadian jurisdictions. A member completes an application which, to be complete, requires him or her to waive confidentiality for current complaints (a waiver is required on every file) and any current or past public discipline, including formal complaints or applications (but not invitations to attend) that have been issued, even if they have been dismissed at a hearing. The latter information is captured because the question is "has this person been the subject of formal discipline?".

Records in Other Jurisdictions

Alberta

10. In sections 39 and 40 of the Rules made under Alberta's *Law Society Act*, the members' roll of the Society and the student register are described. For members, the roll includes "a brief description of any finding...of guilt of conduct deserving of sanction, of conduct unbecoming a barrister and solicitor or of a professional misdemeanor". For

¹⁰ Without the waiver of the member, past or current complaints which have not led to formal discipline proceedings are never disclosed, as they are matters of confidence between the Law Society and the member.

students, there is a similar provision for “any finding of guilt of conduct deserving sanction...”. No reference is made to the time period for which this information is to be maintained on the roll.

Federation of Law Societies

11. The Inter-Provincial Practice Protocol of the Federation discusses the use made of a discipline record of a member of a provincial law society in the section on temporary mobility of lawyers within Canada. Ontario is a signatory to the protocol.
12. As a requirement for the lawyer’ practice in a province, the lawyer “shall have no discipline record in any jurisdiction in which the lawyer is or was a member and no criminal record”. There is some discretion on the part of the Secretary, recognized among signatories to the protocol, to allow lawyers from outside Ontario to practice in Ontario even with a discipline history, and the same would apply outside of Ontario for Ontario lawyers. It was recommended at a meeting of the Federation in August 1995 that the host jurisdiction be entitled to rely on the home jurisdiction to advise whether or not a particular lawyer meets the criteria set out in the protocol.

American Bar Association (“ABA”)

13. The ABA Model Rules of Lawyer Disciplinary Enforcement, as promulgated by the Standing Committee on Professional Discipline, state as follows:

Disciplinary counsel shall maintain or have ready access to current information relating to all lawyers subject to the jurisdiction of the board including:

...

(j) nature, date, and place of any discipline imposed and any reinstatements in any other jurisdiction.

14. In the section of the same rules on procedure for disciplinary proceedings, in Rule 16 entitled Access to Disciplinary Information, the ABA states:

The board shall transmit notice of all public discipline imposed against a lawyer, transfers to or from disability inactive status, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

15. The rationale in the commentary following the rule states that “Once a finding of probable cause has been made [leading to formal disciplinary charges], there is no longer a danger that the allegations against the respondent are frivolous. The need to protect the integrity of the disciplinary process in the eyes of the public requires that at this point further proceedings be open to the public.” And further, “exchange of public information between agencies contributes to more effective enforcement. It is absurd for one agency to struggle with a substantive or procedural problem completely unaware that the same problem has been faced and resolved by an agency in another state.”
16. The National Lawyer Regulatory Data Bank is operated by the ABA’s Center for Professional Responsibility. The description of the service provided by the Data Bank includes the following:

Through the voluntary co-operation of state and federal courts in forwarding orders of public disciplinary action to the Data Bank, the ABA has been able to offer a valuable service to the profession and the public. The Data Bank not only provides ready access to information concerning sanctions imposed on individual lawyers but also offers a means of gathering national statistics on disciplinary cases. The service is particularly helpful to disciplinary authorities and bar admissions agencies in that it provides a means of identifying instances where reciprocal discipline is warranted and where out-of-state disciplinary action should be taken into account in considering admissions applications.

The Example of the Criminal Justice System

17. The Committee reviewed processes within the criminal justice system which, while not entirely analogous to the regulatory scheme of a self-governing profession, provide insight into the issue.
18. The issuance of pardons is the method by which criminal records in effect are removed after a period of time. According to the *Criminal Records Act* R.S.C. 1990, c. 12, a grant of pardon for an indictable offence may be made if the National Parole Board is satisfied that the applicant, for the five years following the end of a sentence, period of parole or payment of a fine, is of good conduct and has not been convicted of a federal offence. For summary convictions, the period is three years. There is provision for inquiries to be made of the applicant and for the Board to receive oral or written representations by or on behalf of the applicant.
19. A pardon is evidence of the fact that the Board after making proper inquiries was satisfied that the applicant was of good behavior and that the conviction in respect of which the pardon is granted should no longer reflect adversely on his or her character. A pardon vacates the conviction in respect of which it was granted.
20. A pardon may be revoked by the Board if certain events occur (e.g., the person is convicted of a subsequent summary conviction offence or is no longer of good conduct). In such cases, the person is given the opportunity to make oral or written representations to the Board after the Board serves notice of the proposal to revoke. A pardon ceases to have effect if the person is convicted of an indictable offence under federal law or regulation.

C. POLICY DISCUSSION

The Primary Issue and Key Questions

21. As a matter of public policy, the government in the context of the criminal justice system has decided that individuals should have the ability to seek and obtain a pardon. For a self-regulating profession such as law, the Committee believes that the overarching question is whether a similar process would be consistent with the mandate of the Law Society to govern the profession in the public interest. The Committee, acknowledging the working group's deliberations in this respect, considered five key questions, each discussed below.

a. Are there any circumstances in which discipline records should be vacated?

22. The Committee identified three constituencies in relation to this question. They are the public, the profession generally, and the individual member whose record is the subject of interest.

The Public

23. As professionals and members of the Law Society, lawyers are granted the privilege of practicing as barristers and solicitors. By their membership, lawyers are subject to the authority of the regulator and must accede to its jurisdiction or otherwise risk the loss of the privileges afforded by the membership. Part of that authority includes the right to impose disciplinary sanctions against members within the appropriate process. This is a key responsibility of those professions that have been granted the right of self-regulation by the government.

24. The Royal Commission Inquiry into Civil Rights of 1968 (the McRuer Report) commented on the rationale behind self-governing professions and the public interest, as follows:

The granting of self-government is a delegation of legislative and judicial functions and can only be justified as a safeguard to the public interest. The power is not conferred to give or reinforce a professional or occupational status.

...

The traditional justification for giving powers of self-regulation to any body is that the members of the body are best qualified to ensure that proper standards of competence and ethics are set and maintained. There is clear public interest in the creation and observance of such standards. This public interest may have been well serviced by the respective bodies which have brought to their task an awareness of their responsibility to the public they serve, but there is a real risk that the power may be exercised in the interests of the profession or occupation rather than in that of the public. This risk requires adequate safeguards to ensure that injury to the public interests does not arise.

25. The public is entitled to expect that a self-governing profession will exercise its authority and design its processes to consistently protect the public interest. Lawyers' discipline records generally are treated as public information for the following reasons:

- to ensure the transparency of the process so that the public has the ability to judge the manner in which the profession is exercising its governance mandate, and
- to allow the public to make informed choices in selecting legal representation,

all in aid of engendering public confidence in the exercise of governance of the profession by the profession.

26. If not all information about a member's discipline record is public because the Society has imposed a limit on the availability of information, arguably the public may question why the information is not available and, depending on the reasons, may conclude that the Society has given precedence to the interest of the particular lawyer, or the

profession, over the public interest in knowing what exists on a member's discipline record or how the regulator has responded to issues about a member.

27. On the other hand, reasonable and well-informed members of the public would probably accept that there may be circumstances in which a minor infraction committed early in a member's career "should no longer reflect adversely on his or her character" (in the words of the *Criminal Records Act*), for the same reasons that in such circumstances a criminal record should no longer do so.

The Profession

28. The Committee considered that, like the public, the profession has an interest in ensuring that the governance mandate of the profession is appropriately and responsibly exercised. From this perspective, the profession may view the transparency of the process and the public availability of information flowing from it, without limitation, as a necessary feature of the regulator's responsibility.
29. The profession may also wish unrestricted access to discipline records for its own purposes, for example, in making decisions about hirings or referrals.
30. The profession, however, is sensitive at the same time to the need to avoid unfair consequences to individual members. The question is whether a balance should be struck between the desirability of unrestricted access to discipline records and the potentially disproportionate consequences to members with discipline records of unrestricted access to those records, for example, where the offence was minor and the lawyer has never engaged in similar conduct since. The ultimate question is what is required to maintain the public's confidence in self-regulation.

The Individual Member

31. The Committee believes that many disciplined members would welcome the opportunity to "clear" their record of discipline dispositions if the opportunity were available. For most members, the stigma attached to a disciplinary record creates a sense of personal and professional embarrassment. It may also affect their ability to attract clients, obtain employment or form other relationships.
32. As members of the Society, lawyers are held to a collective standard of conduct that will be enforced by the Society if necessary, and most lawyers accept this aspect of professional responsibility. In a broader sense, an individual's membership in the Law Society places him or her in a privileged position, and as such, lawyers are subject to a discrete standard, apart from the general public, and should be prepared to accept as a function of membership the entire scope of regulation, including the public nature of discipline and the fact that information related to that process is permanently maintained.
33. In this respect, the analogy between the process available to convicted offenders to receive pardons in the criminal justice system and a process that would permit lawyers to apply to have their discipline records vacated, may break down. Facilitating pardons is, in part, in aid of rehabilitation in the broad public realm. Vacating a discipline record for lawyers would apply in a context in which the need for accountability is more acute because of the unique trust relationship the public enjoys with lawyers. One could argue

that this need for accountability should supersede even the most deserving rehabilitative efforts.

34. Vacating information on the record may also impinge on processes for readmission after disbarment or permission to resign. Readmission hearings are generally held in public. The question is whether the information once removed from the record for public purposes may be relied on by the Society.
35. In some cases to “pardon” a member in respect of a disciplinary offence would present only a negligible risk to the public interest, a risk that may well be outweighed by the potentially unfair consequences to the member of maintaining a public record of the offence indefinitely.
36. For example, a lawyer reprimanded in committee since and for years after the event may carry on an exemplary practice, indicating effective rehabilitation, that he or she is not a threat to the integrity of the profession or the public interest and that by his or her standard of practice, the lawyer has gained the respect and confidence of clients and, perhaps, any prospective clients who may not be aware of the discipline history. A prospective or current client or other information seeker may consider the lawyer’s discipline record in context and may not give it undue weight in these circumstances. Nevertheless, the continuation of the lawyer’s discipline record and the effect that knowledge of it may have on prospective clients and other lawyers may be disproportionate to the offence.
37. The Committee considered that an incidental benefit of implementing a system that would allow for “pardons” in appropriate cases may be that lawyers will be encouraged to discuss reasonable dispositions of matters at the pre-hearing stage if they appreciate that a discipline record that may result from an admission of guilt or negotiated settlement will not necessarily be on the public record permanently.

b. Are there types of misconduct in respect of which it would be inappropriate to vacate a discipline record? If so, what are they?

38. Views were expressed at Committee that a case by case analysis would be required. A lawyer who has been found guilty of minor misconduct on one occasion may have been involved in a series of discipline cases that evidence a pattern of conduct that would be incompatible with a “pardon”. Serious misconduct that has resulted in a lengthy suspension may also be inconsistent with vacating the record. The nature of the misconduct should be a key factor in every case, regardless of the penalty. Reprimands in committee have been imposed for fairly serious misconduct, such as borrowing from clients, in some cases.
39. Cases in which conduct orders impose continuing restrictions or conditions on practice may also be inappropriate candidates for orders vacating a discipline record. The proper avenue for relief in such cases may be an application to vary the order of the hearing panel or appeal panel that imposed the restrictions or conditions. The Society may wish to impose a time restriction on when an application to vacate a discipline record may be brought, just as applications for pardons under the *Criminal Records Act* may not be brought until five years have expired after the applicant’s sentence has been served (three years for offences prosecuted by summary conviction.) The time period could be defined to run from the date any conditions or restrictions are removed.

40. It was also suggested that a risk analysis would be in order for every case. Is there a risk that the public interest may be affected to its detriment by vacating the record? Is there a risk that the integrity of the regulatory mandate of the Society will be adversely affected? Is there a risk that the reputation of the profession generally will be tainted if the record is vacated?
- c. Should vacating a record ever be automatic after a certain period of time?
 d. If not, what period of time should pass before consideration is given to vacating the record?
41. It was suggested that, if a case by case analysis of a lawyer's record is necessary as a standard feature in a process to address the vacating of records, it would not be a responsible exercise of authority for the Society to automatically vacate a lawyer's record within a specified time after the occurrence of the discipline.
42. The next question becomes what length of time should run before consideration is given to vacating a record. As noted above, the *Criminal Records Act* requires a conviction-free period of five years after the end of a sentence for indictable offences (three years for summary convictions). It was suggested that a similar period would be appropriate for lawyers for certain offences, but that other factors may have to be considered, including complaints made within the period and the type of activity in which the member was engaged after the sanction was imposed.
- e. Should an application process be required?
43. If the Law Society were to determine that it is appropriate that discipline records be vacated in some cases, some members of the Committee believed that an application process should be devised.
44. A process not unlike that for obtaining a pardon for a criminal conviction was suggested as a model. In that process, an individual must satisfy the National Parole Board that he or she is of good conduct. The process also permits inquiries to be made of the applicant and an opportunity for the applicant to be heard if the Board proposes to refuse to grant a pardon.
45. If the Law Society were to adopt a similar process, the reasoning is that it would not only provide the applicant with an opportunity to provide any information he or she felt appropriate to the application, but would give the Society a framework in which to consider these requests, and the ability to set reasonable standards and thresholds.
46. It was also suggested that it would be appropriate to consider circumstances in which a vacated record may be reinstated, for example, where a member is found guilty of subsequent misconduct that illustrates that he or she is not truly rehabilitated.

Jurisdiction to Clear Information from Records

47. The Committee noted that nothing in the *Law Society Act* or any subordinate legislation or rules makes reference to any matters concerning the discipline records of members, except as noted earlier in this report. As such, there may be a question about the ability

of the Law Society to vacate records under the current legislative scheme. The *Law Society Act* does not explicitly permit records to be vacated.

48. Proceedings of administrative tribunals are generally governed by the *Statutory Powers Procedures Act* ("SPPA"), which states that such proceedings, unless ordered to be in camera, are public. This presumably would also apply to the results of any hearing, which may be reflected as a public matter in a discipline record.
49. The *Law Society Act* permits Convocation to make procedural rules which oust, in effect, the application of the SPPA. Law Society proceedings, out of which such records are created, at least from February 1, 1999 onwards, are governed by the Rules of Practice and Procedure, which state that all proceedings, unless otherwise held *in camera*, are public. This would also apply to the results of the proceedings and presumably any record reflecting the results.
50. The rules theoretically could provide for a procedure by which records could be vacated, but the rules only apply to a "proceeding". Unless the process for vacating the record were a proceeding, the rules could not apply. However, the *Law Society Act* sets out all proceedings to which the Rules apply, and currently, as noted above, it does not include anything connected with vacating a record.
51. By-law making authority in the *Act* may be a vehicle through which a discipline or conduct record review process could be established. Section 62(0.1) gives Convocation by-law making authority "relating to the affairs of the Society", and the power to make by-laws governing members and student members and prescribing their rights and privileges.

Summary of the Committee's Views

52. There was significant discussion in Committee on the threshold question of whether to permit the vacating of records and the benefits and the risks involved in doing so. In addition to the above discussion of the "pros and cons", Committee members raised additional points both in support of and against a process for vacating discipline records.
53. The following points were made in support of exploring a process to vacate discipline or conduct records:
 - a. such a process would recognize rehabilitative efforts of members;
 - b. a disciplinary record may have a disproportionate effect on a lawyer's reputation and livelihood, as for example where a potential client decides not to retain a lawyer because of a finding of professional misconduct for a minor infraction many years earlier;
 - c. apart from a small percentage of members who are truly dishonest and unscrupulous, many members who are before the Society's hearing panels are suffering from personal problems which influenced the conduct and to whom some consideration should be given through this type of process;
 - d. many of the arguments against establishing such a process could be made with equal force with regard to the pardon process established by the Criminal Records Act, yet that process has been in place for many years and appears to work effectively;

- e. vacating of the record could be made conditional, for example, in circumstances where a lawyer becomes the subject of another finding of misconduct;
 - f. some types of serious misconduct could if necessary be excluded from the realm of what may be considered for removal from a record;
 - g. time clarifies matters for an individual, and it is possible to protect the public interest and permit a disciplined lawyer to lay claim to the assertion that he or she, notwithstanding the past discipline, is of good character, such as to warrant vacating the discipline record.
54. Concerns about pursuing an initiative to vacate records included the following:
- a. there is a distinction that must be made between those convicted of criminal offences (using the pardon scheme as an example) and members of the Law Society, who have assumed a public trust and by their conduct, have breached it; to say that past conduct can be vitiated may not serve the public interest;
 - b. a criminal pardon is not certification to the world by the federal government that the individual pardoned is of good character, whereas vacating a disciplinary record can be expected to indicate that the Law Society is confident that the lawyer can with integrity serve the public through the provision of legal services;
 - c. the Society in effect regulates a monopoly, and on the premise that the Society knows best how to exercise its governance mandate, great caution must be exercised in changing the fact of a record denoting a disciplinary issue with a member;
 - d. vacating a disciplinary record will have the effect of undermining the public's confidence in the Society, in that the public will sense that they are not receiving all of the information to which they are entitled;
 - e. if an offence is minor, the public will assess that and consider it against the lawyer's current circumstances in context;
 - f. the purported loss of clients because of a disciplinary record is not of significant impact on the profession;
 - g. if a process were devised, it could be expensive to administer.
55. The Committee acknowledged that if the key question of whether to permit discipline records to be vacated in any circumstances is answered in the affirmative, the Law Society will be required to carefully map out what type of process should be designed for reviewing these requests. Public interest considerations should be a primary focus, as should the integrity of the profession, and fairness to members whose reputation and livelihood may be unfairly affected if their discipline records remain public permanently.
56. The Committee ultimately decided that, for the purposes of reporting to Convocation, it would:
- provide its views on the issue;
 - not recommend a particular course of action or offer a model for a particular scheme or process, but place before Convocation the policy question: Are there any circumstances in which a discipline or conduct record should be vacated after some period of time?
 - if the answer is yes, seek Convocation's approval to design a model for Convocation's further review.

D. DECISION FOR CONVOCATION

57. Convocation is asked to decide whether there are any circumstances in which a discipline or conduct record should be vacated after some period of time.
58. If the answer is yes, the Committee seeks the direction of Convocation for the purposes of designing a process to implement this policy decision.

APPENDIX 2

draft

Professional Regulation Committee
Working Group Report
January, 2002

Issues Relating to Discipline or Conduct Records

Prepared by the Working Group on Vacating Discipline/Conduct Records

INTRODUCTION

1. At the June 25, 1999 Convocation, benchers reviewed a report from the Committee (drawn from a discussion paper prepared by a working group of the Committee) which requested Convocation to answer the following question:

Are there are any circumstances in which a discipline or conduct record should be vacated after some period of time?
2. Convocation answered the question in the affirmative and directed that the Committee provide Convocation with proposals for implementing the decision. The working group of the Committee¹¹ presented a report to the Committee in September 2000, which included proposals on:
 - a. circumstances in which in would be permissible for members to have conduct or discipline records vacated;
 - b. a process for dealing with requests to vacate;
 - c. the effect of vacating information from a conduct or discipline record.
3. In this report, the working group initially determined that three methods of vacating a record - expungement, sealing and a pardon - should be considered as the range of

¹¹ Gavin MacKenzie (chair), Andrew Coffey, Todd Ducharme and Heather Ross, assisted by Lesley Cameron and Jim Varro.

options that the Society may wish to consider in a process whereby members apply to the Society for vacating a record. The process would involve a hearing before the Society's Hearing Panel.

4. In contemplating how these options may be utilized in the process, the working group considered four alternative models:
 - a. a blended system with three options - for expunging, sealing, and pardons;
 - b. a blended system with two options - for sealing and pardon;
 - c. one option - a pardon; or
 - d. one option - expungement.
5. The working group discussed whether only a member of the Society may apply for vacating a record, or whether the process should be open to former members (disbarred or otherwise). It is possible that some former members may not want to be reinstated as members but may want to clear their names. For the present, the working group concluded that whatever system is approved, it should be confined to members, leaving to another day the debate on whether former members could apply.

The Committee's Review of the Working Group's Proposals

6. After discussing the proposals, the Committee requested that the working group reconvene to flesh out the options, elaborate on additional options for the process, and consider the costs of the process, including human resources.

DISCUSSION OF THE OPTIONS

7. When the working group reconvened for its discussion, it recognized in a more profound way that implementing a policy to vacate discipline or conduct records would involve a time-consuming and possibly expensive operational process and potentially significant bench time.
8. The working group raises this issue only because it believes that Convocation, in approving the general policy question, could not have envisaged the complexity of the issue without the benefit of the same type of in-depth review. Given the intricacies of the issue, a key question is whether a decision to devise methods to vacate records can be practically implemented.
9. It is in this setting that the working group provides the following report on the options, based on the last discussion at Committee.

Framing the Question

10. The working group determined that in the context of the Society' mandate and the public interest, it would be appropriate to identify what would initially be a small range of matters that may be vacated, rather than starting with the assumption that, generally, records may be vacated, and then carve out exceptions.

Public Interest Issues

11. In considering the process in terms of the public interest, one theory advanced was that as an effort towards the rehabilitation of members. Arguably, there is a tenuous link between benefit to the public interest and vacating discipline records. But it is possible that this process may help to contextualize for the public certain types of misconduct. In particular, it may assist in the public's own assessment or understanding of what specific misconduct means for lawyers generally or perhaps for the lawyer a member of the public has retained or wishes to retain.
12. For the member, to the extent that such a system would aid in rehabilitation, the working group felt that that concept must apply equally to minor and serious misconduct, balancing any compromise to the public interest that may result from vacating serious discipline records.

Methods of Vacating Records

13. As noted above, the working group identified three ways that removing information from a discipline record could be accomplished.

Expunging the record

14. This method would clear a member's record of any discipline order, as if the record had never existed. In effect, the discipline record would be destroyed, and could not be restored.
15. The working group's initial thinking on this method was that it be restricted to "low level" discipline, resulting from minor or administrative offences or those cases that result in a minor penalty (i.e. reprimands or admonitions).
16. The concern, however, is that given the significant variance among orders of the Hearing Panel and in Convocation (when it sat as a discipline Convocation), it would be very difficult to articulate a standard for expunging a record.
17. A second concern is that an expungement order of an administrative tribunal would apply universally, including to the Society. This may be problematic for the Society if it sought to prove ungovernability of a member and no record existed of past discipline.
18. The question of whether a lawyer, for certain purposes, should have the option to oust the operation of the expungement by his or her own waiver and have the information on the record disclosed also arises.

Sealing a record

19. By sealing a record, the information in the record would still exist but would not be accessible to anyone, except through a process for the record to be unsealed or for the sealing to be revoked, applicable equally to Law Society personnel and external parties.
20. The types of misconduct or penalty for which sealing would be available are the same as those listed above under "expunging the record".

21. Sealing may be revoked (such feature to be included in the order) if the member engages in subsequent discipline (or subsequent discipline that results in any penalty of a reprimand or higher). Revocation should be confined to circumstances where there is a subsequent finding of misconduct or conduct unbecoming and a penalty imposed. The process would either be automatic or the issue put to a panel of benchers. Letters of advice, invitations to attend and conduct applications that do not result in a finding of professional misconduct or conduct unbecoming would not lead to the reinstatement of a previously sealed record.
22. Similar to expungement, a sealing order of an administrative tribunal would apply universally, including to the Society. The same question on the option of a waiver also arises with sealing.

Pardon

23. If a pardon were granted, the public would still be informed of the matters between the member and the Society, in aid of the obligation to assure the public that the Society' regulatory mandate is being responsibly fulfilled, including the fact that the member has been "forgiven" for the conduct.
24. The pardon envisaged for the Society is unlike that provided for in the criminal justice system, where pardon vacates the conviction for the criminal offence.¹²
25. The pardon could be revoked in appropriate circumstances. Revocation could be confined to circumstances where there is a subsequent finding of misconduct or conduct unbecoming and a penalty imposed. The process could either be automatic, or the issue put to a panel of benchers for argument. Letters of advice, invitations to attend and conduct applications that do not result in a finding of professional misconduct or conduct unbecoming would not lead to the reinstatement of a previously pardoned record.
26. While a pardon may be viewed by some as only slightly better than having a discipline record, because of the nature of a pardon, a stronger argument exists that it should be available for all disciplinary matters and all records, especially if it is a one-time occurrence. In this way, the public will be fully informed.

¹² According to the *Criminal Records Act* R.S.C. 1990, c. 12, a grant of pardon for an indictable offence may be made if the National Parole Board is satisfied that the applicant, for the five years following the end of a sentence, period of parole or payment of a fine, is of good conduct and has not been convicted of a federal offence. For summary convictions, the period is three years. A pardon is evidence of the fact that the Board after making proper inquiries was satisfied that the applicant was of good behavior and that the conviction in respect of which the pardon is granted should no longer reflect adversely on his or her character. A pardon vacates the conviction in respect of which it was granted. A pardon may be revoked by the Board if certain events occur (e.g., the person is convicted of a subsequent summary conviction offence or is no longer of good conduct). A pardon ceases to have effect if the person is convicted of an indictable offence under federal law or regulation.

The Working Group's Views on the Appropriate Threshold

27. The working group concluded that the primary criteria for determining whether a member can apply to have a discipline or conduct record vacated is the seriousness of the original misconduct, based on the penalty imposed.
28. Mindful that the policy behind the process should be transparent to the membership to avoid any claims that it is arbitrary in its application, the working group then considered the following questions:
 - (a) what method should be applied, and
 - (b) what are the types of penalties that would be available for vacating?
29. The working concluded that the following are the options:
 - a. expungement for minor discipline
 - b. a pardon for minor discipline
 - c. expungement for minor discipline and a pardon for serious discipline
 - d. a pardon for any type of discipline but with the seriousness of the misconduct factored in
 - e. expungement for any type of discipline but with the seriousness of the misconduct factored in
30. The working group decided that sealing, essentially a “half way” measure between expungement and a pardon, from a number of perspectives would be an unattractive option, and is not recommending that it be pursued.
31. The working group determined that option (d) is the best choice, for the reasons that follow.
32. A pardon does not vacate the fact of the record, like expungement, and thus avoids the public interest issues that deleting a record (through expungement) raises. The record still exists, but the member is “forgiven” for the conduct, a fact which would be publicly stated.
33. A pardon would be available for any type of misconduct. Thus, the limitation by nature of conduct or penalty is eliminated, subject to consideration on a case by case basis of the seriousness of the original misconduct. This discretionary authority would be exercised by the Hearing Panel on review of the application and any evidence presented by the member.
34. A pardon scheme avoids the potential unfairness of a system that uses only a specific type of penalty as a threshold. As noted above, penalties for similar misconduct can vary widely in decisions made by the Hearing Panel and in Convocation.
35. A scheme to deal with discipline or conduct records has implications beyond the Law Society. The Society is a signatory to the 1994 Federation of Law Societies Inter-Provincial Practice Protocol, which references temporary mobility of lawyers within Canada, includes provision for the use made of a discipline record of a member of a provincial law society. As a requirement for the lawyer' practice in a province, the lawyer

“shall have no discipline record in any jurisdiction in which the lawyer is or was a member and no criminal record”.

36. It was recommended at a meeting of the Federation in August 1995 that the host jurisdiction be entitled to rely on the home jurisdiction to advise whether or not a particular lawyer meets the criteria set out in the protocol.
37. More recent developments in mobility of lawyers within Canada emphasize the importance of information about the conduct of members. In August 2001, the Federation of Law Societies established a National Task Force on Mobility to examine full mobility rights and conditions for lawyers in Canada. The Society has its own Inter-Jurisdictional Mobility Committee, which informs the work of the Federation's committee from Ontario's perspective.
38. A survey conducted of the law societies in Canada has revealed broad similarity of approach on significant regulatory provisions among jurisdictions. The Inter-Jurisdictional Committee's view is that such similarity contributes to the feasibility of enhanced mobility because common understanding of appropriate regulation already exists.
39. In the working group's view, this includes information relating to the conduct records of lawyers who move among jurisdictions and the access to those records.
40. Given the above, the working group is of the view that a scheme that retains the record but allows for a pardon of the conduct on which the record is based is the only workable alternative.

OTHER REQUIREMENTS OF THE PROCESS

Time

41. The working group considered that before a member may apply for a pardon, a minimum period of five years should pass after imposition of the penalty or the end of the suspension or fulfilment of the conditions of the order where the period is finite and does not entail continuing obligations, whichever is later. Five years is an appropriate period, with the added requirement that the member must not have been the subject of other conduct applications within the five year period.

The Process

42. With respect to the application process, the working group felt that members should be required to file a detailed written application, with information sufficient for the Society to proceed with a hearing. As a result of information obtained in the application, the working group acknowledged that in some cases, an investigation of the member may be required to address certain issues.
43. The working group also felt that in every case, a public hearing would be required for the purpose of determining whether the record should be vacated. Using the Secretary¹³ to make the determination on each application, even according to guidelines, with the

¹³ Bill 14, which in 2007 amends the *Law Society Act*, eliminates the office of Secretary. For the purposes of this report, this individual would be the Director of Professional Regulation.

availability of a review of the decision by an application to the hearing panel, is not a viable option in the working group's opinion. The Secretary is essentially the chief prosecutor. It would be unseemly to have that office review and make decisions on matters so closely connected to previous decisions made by the Secretary to investigate and prosecute members.

44. The working group recognized that instituting a hearing process will require more benchers and staff time. It also made the assumption that if the process is made available, there will be a large volume of applications in the first few months after the process is available. This initial volume of applications could overwhelm staff and the Hearing Panels. The implications for human resources, discussed in more detail below, could be significant.

"User Pay"

45. It was suggested that to cover the costs of administering the process, it should provide for a fee to be charged to each member who applies to have his or her record vacated. The purpose of the fee would be to cover all or some of the staff and infrastructure costs that could be incurred, for example, in:
 - a. receipt and review of the applications,
 - b. review of the records (discipline, complaints, investigations)
 - c. correspondence sent or received in connection with the applications,
 - d. investigation
 - e. arranging the hearings and the hearings themselves,
 - f. follow-up administrative duties post-hearing to confirm the order.
46. The working group considered the appropriate amount of the fee. It recognized that if the fee is too high, it could be a barrier to universal access to the process. If the amount is too low, however, it will have a negligible impact on recovering of the Society's costs.
47. The working group felt that the fee should reflect the type of administrative work that will be added to an already busy staff. This may mean a flat fee for all applications with an increased amount per item on a discipline record. Consideration should also be given to recovering the Society's costs of the hearing, depending on how matters unfold before the Hearing Panel.

Impact on Those Who Access Information from the Record

48. It was suggested that the working group speak with the Judicial Appointments Office to determine how they may view a process which would either see a record sealed or expunged (i.e. where access to the information is no longer available).
49. As the working group is recommending that a pardon scheme be pursued, which maintains the record, the issue of inaccessibility to records does not arise. In the event that the Committee wishes to pursue options other than a pardon, this issue should be revisited.

Jurisdictional Question

50. Nothing in the *Law Society Act* or any subordinate legislation or rules makes specific reference to any matters concerning the discipline or conduct records of members. However, the by-law making authority in the Act may be a vehicle through which a discipline or conduct record review process could be established. Section 62(0.1) gives Convocation by-law making authority “relating to the affairs of the Society”, and the power to make by-laws governing members and student members and prescribing their rights and privileges.
51. The Law Society Act permits Convocation to make procedural rules. Law Society proceedings, out of which conduct records are created, at least from February 1, 1999, are governed by the *Rules of Practice and Procedure*, which provide that all proceedings are public, subject to narrow exceptions. If a by-law describes a proceeding for pardoning members after a hearing, the rules could provide for a procedure for this “proceeding”.

SUMMARY

52. The working group, based on the above, is proposing the following:
- a. that if the issue of vacating conduct or discipline records in some circumstances is to be pursued, a pardon, rather than expungement or sealing, be the method for dealing with conduct or discipline records for any misconduct;
 - b. that five years must elapse after the conduct or discipline order has issued, or after fulfillment of the terms of the order, before a member may apply for a pardon;
 - c. that a detailed written application be provided by a member in every case;
 - d. that a public hearing be held before the Hearing Panel to determine the question of whether a pardon should be granted, with discretion to consider the seriousness of the misconduct in assessing the matter;
 - e. that an application fee be paid by a member applying for a pardon;
 - f. that a by-law be drafted describing the process for a pardon.

APPENDIX 3

DISCIPLINE STATISTICS 1996-2005
(Source : Law Society Annual Reports)

Note:

The manner in which statistics were prepared and reported varies in this period. The amendments to the Law Society Act effective February 1999 also impact on how the reports appear.

1996

Number of lawyers:

Reprimanded in Committee	60
Reprimanded in Convocation	18

Suspended	59
Disbarred	18
Given permission to resign	11

1997

Number of lawyers:	
Reprimanded in Committee	57
Reprimanded in Convocation	12
Suspended	50
Disbarred	15
Permitted to resign	7

1998

Number of lawyers:	
Reprimanded in Committee	37
Reprimanded in Convocation	9
Suspended	51
Disbarred	7
Permitted to resign	13

1999

Number of lawyers:	
Reprimanded in Committee	11
Reprimanded by Convocation and Hearing Panel	13
Admonished by Hearing Panel	22
Suspended	47
Disbarred	13
Permitted to resign	9

2000

Number of lawyers:	
Reprimanded in Committee	9
Reprimanded by Convocation and Hearing Panel	9
Admonished by Hearing Panel	17
Suspended	21
Disbarred	8
Permitted to resign	1

2001

Number of matters heard and disposed of by hearing panel	86*
Reprimands	10
Admonishments	11
Suspensions	31

Disbarments	8
Permission to resign	4
Dismissed	2
Withdrawn	9
Withdrawn/dismissed and converted to an invitation to attend	4
Finding of professional misconduct with conditions, no penalty imposed	1
Admission applications	2
Readmission applications	1
Applications to vary order of hearing panel	1
Capacity proceedings	2

* individual matters heard by discipline panel may include more than one complaint

2002

Number of matters heard and disposed of by hearing panel	79
Admonitions	10
Reprimands	10
Suspensions	26
Permission to resign	10
Disbarments	8
Other	1
Dismissed	3
*Withdrawn	14

* 3 of these members are also counted in the disposition category of disbarments and suspensions because the matter was not withdrawn in full.

2003

Number of matters heard and disposed of by hearing panel	56
Admonitions	7
Reprimands	2
Suspensions	20
Permission to resign	6
Disbarments	11
Other	1
Dismissed	1
Withdrawn	8

2004

Number of Matters Heard and Disposed of by Hearing Panel	
Admonitions	12
Reprimands	5
Suspensions	18

Permission to Resign	3
Disbarments	11
Withdrawn	3
Dismissed	2
Interim Suspensions	1
Readmissions Granted	2
Readmissions Denied	3
Reinstatements Granted	2
Appeals by Member	11
Appeals by LSUC	1
Total:	74

2005

Number of matters heard and disposed
of by Hearing Panel

Admonitions	8
Reprimands	9
Suspensions	39
Permission to resign	5
Disbarments	9
Dismissed	3
Withdrawn	5
Total:	78

REPORTS FOR INFORMATION ONLY

Lawyers Fund for Client Compensation Committee Report

- Year-End Report and Fund Status
- Grants Paid by the Fund

Professional Development, Competence and Admissions Committee Report

- Specialist Certification
- Quarterly Benchmark Report

Report to Convocation
April 26, 2007

Lawyers Fund For Client Compensation

Committee Members

Brad Wright, Chair
Marshall Crowe, Vice-Chair
Robert Aaron
Richard Filion
Allan Gotlib
Holly Harris
Alan Silverstein

Gerald Swaye

Purpose of Report: Information

Prepared by the Lawyers Fund for
Client Compensation Department

COMMITTEE PROCESS

1. The Committee met on April 11, 2007. Members in attendance were Bradley Wright (Chair), Marshall Crowe (Vice-Chair), Dr. Richard Filion, Holly Harris, Alan Silverstein, Gerald Swaye and Dr. Allan Gotlib (by telephone). Staff in attendance were Zeynep Onen, Dan Abrahams, Maria Loukidelis and Leslie Greenfield.

FOR INFORMATION

YEAR-END REPORT AND FUND STATUS

2. The Committee was provided with a report by Craig Allen, Vice-President and Actuary at LawPRO, reporting on the unpaid claims liability and Fund balance as of December 31, 2006. The report indicates a decrease of approximately \$1.4 million in unpaid claims liability between December 31, 2005 and December 31, 2006. In addition, the Fund Balance has increased from \$17.9 million to \$19.5 million during the same period. The improvement is attributable to a positive variance in current year internal costs and greater than expected recoveries and capital gains. A copy of Mr. Allen's report is attached as Appendix "1".

GRANTS PAID BY THE FUND

3. The Committee wishes to report that the following grants were approved and paid from the Fund between October 21, 2006 and March 30, 2007, in the amounts shown. (Only members whose discipline proceedings are completed or who are deceased are identified by name.)

Member (Status if Disciplined)	Number of Claimants	Total Grants Paid (\$)
Anderson, Cameila (Permitted to Resign May 31, 2006)	3	\$25,245.56
Anyadiegwu, Okay H. (Disbarred November 1, 2006)	3	\$14,650.00
Buzaglo, David (Disbarred June 28, 2006)	1	\$40,000.00
Campbell, Gordon D. (Disbarred October 19, 2005)	3	\$210,000.00
Dullege, Roy (Permitted to Resign November 23, 2006)	5	\$23,923.50
Fellin, Renato R. (Disbarred April 26, 2006)	1	\$11,993.44
Goldstein, Harry Solomon (Deceased August 10, 2005)	1	\$600.00
Haque, Zeyaul (Deceased May 7, 2005)	4	\$7,564.32
Kuzak, Gerald N. (Permitted to Resign January 25, 2005)	1	\$24,500.00
Mcaskie, Emily J. (Deceased May 28, 2006)	1	\$14,000.00
Muslim Sarko, Mohammed M. (Permitted to Resign September 14, 2006)	1	\$18,000.00

Steinberg, Sheldon Howard (Disbarred November 5, 2003)	1	\$270.00
Tokar, George O. (Permitted to Resign May 16, 2001)	1	\$14,265.65
Solicitor #75 (Suspended May 6, 2002)	1	\$70.70
Solicitor #89 (Suspended June 16, 2000)	1	\$2,000.00
Solicitor #138 (Suspended September 30, 2005)	1	\$1,566.96
Solicitor #150 (Suspended October 6, 2006)	1	\$539.49
Solicitor #154 (Suspended September 30, 2005)	2	\$3,400.00
Solicitor #157 (Suspended October 6, 2006)	4	\$156,266.07
Solicitor #158 (In good standing - Discipline Pending)	1	\$500.00
Solicitor #161 (Suspended October 6, 2006)	7	\$148,950.70
Solicitor #164 (Suspended October 6, 2006)	1	\$5,500.00
Solicitor #165 (In good standing - Investigation ongoing)	1	\$10,000.00
Solicitor #166 (In good standing - Discipline Pending)	1	\$3,083.00
		\$736,889.39

Appendix 1

LAWYERS' PROFESSIONAL INDEMNITY COMPANY
MEMORANDUM

TO: LAW SOCIETY OF UPPER CANADA

FROM: CRAIG ALLEN

CC: MICHELLE STROM

DATE: JANUARY 23, 2007

RE: UNPAID CLAIMS LIABILITY, DECEMBER 31, 2006, LAWYERS' FUND FOR
CLIENT COMPENSATION

The unpaid claims liability, as at December 31, 2006 for the Lawyers' Fund for Client Compensation, is estimated to be \$9,243,000. This amount is

- discounted for the time value of money (in the amount of \$467,000),
- includes a provision for internal claims handling expenses (in the amount of \$2,559,000), and
- includes a margin to provide for unfavourable developments as claims proceed toward resolution (in the amount of \$990,000).

The December 31, 2006 unpaid claims liability is below that at December 31, 2005, which was set at \$10,678,000.

On a nominal basis the liability at December 31, 2006 is \$8,720,000, which compares to a nominal liability of \$10,049,000 at December 31, 2005.

To calculate the unpaid claims liability amount, add the margin for unfavourable developments and subtract the time value of money.

Nominal claims liability	\$8,720,000
Add: Margin for unfavourable developments	\$990,000
Less: Time value of money	\$467,000
Unpaid Claims Liability	\$9,243,000

The following table summarizes the individual items that account for the carrying forward of the December 31, 2005 nominal claims liability through to December 31, 2006:

	Claims	Internal Costs	Total
Claims Liability at December 31, 2005	\$6,903,000	\$3,146,000	\$10,049,000
Add: Adverse (Favourable) Development on Claims Reported before December 31, 2005	337,000	286,000	623,000
Claims Liability at December 31, 2005 with Benefit of Hindsight	7,240,000	3,432,000	10,672,000
Add: Claims Incurred in Jan.- December 2006	2,800,000	956,000	3,756,000
Less: Payments Made in Jan.- December 2006	4,024,000	1,684,000	5,708,000
Claims Liability at December 31, 2006	6,016,000	2,704,000	8,720,000

Fund Balance

The Fund Balance as at December 31, 2006 is \$19.5 million, increased from \$17.9 million at December 2005. The 2006 budget was set to break even – thus, the growth in the Fund Balance is explained by variances from budget. The increase of \$1.6 million is primarily explained by the following items, and their respective variances from budget:

Item	Actual	Budget	Variance Favorable/(Unfavorable)
Current Year Claims	\$2,800,000	\$2,700,000	(\$100,000)
Development on Prior Year Claims	\$623,000	\$0	(\$623,000)
Current Year Internal Costs	\$956,000	\$1,705,000	\$749,000
Release of PFAD *	\$154,000	\$0	\$154,000
Recoveries	\$1,149,000	\$95,000	\$1,054,000
Spot & Focussed Audit	\$1,847,000	\$1,997,000	\$150,000
Capital Gains	\$255,000	\$0	\$255,000
Total			\$1,639,000

* The Provision for Adverse Deviation (PFAD) is a supplement added to discounted claims liabilities, to increase the likelihood that the claims provision is sufficient. As the undiscounted provision has decreased from \$10,049,000 to \$8,720,000, the PFAD required has declined correspondingly. This reduced requirement, when released, is an addition to income.

Report to Convocation
April 26, 2007

Professional Development, Competence & Admissions Committee

Committee Members
Laurie Pawlitza (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Robert Aaron
Kim Carpenter-Gunn
James Caskey
Carole Curtis
Paul Henderson
Vern Krishna
Laura Legge
Daniel Murphy
Judith Potter
Bonnie Warkentin

Purposes of Report: Information

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

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COMMITTEE PROCESS

1. The Committee met on April 12, 2007. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice-Chair), Mary Louise Dickson (Vice-Chair), Robert Aaron, Kim Carpenter-Gunn, James Caskey, Carole Curtis, Paul Henderson, Vern Krishna, Laura Legge, Judith Potter, and Bonnie Warkentin attended. Bencher Gerry Swaye also attended. Staff members Diana Miles, Nancy Reason and Sophia Sperdakos attended.

SPECIALIST CERTIFICATION

2. The Committee's Report to Convocation respecting the Specialist Certification program was provided to all the members of the Specialty Committees for their comment. The comments received are set out at APPENDIX 1.
3. As a result of the number of comments received the Committee was of the view that it should discuss the issue further before the Report goes to Convocation for its consideration.
4. At its meeting the Committee determined that its consideration of the issues would be facilitated by the convening of a group of Specialty Committee members to consider the comments in some detail and report its views to the Committee.
5. Once the group has reported, the Committee will provide a further report to Convocation.

PROFESSIONAL DEVELOPMENT AND COMPETENCE DEPARTMENT-QUARTERLY REPORT

6. The Quarterly Benchmarking Report of the Director, Professional Development and Competence, for the period ending March 31, 2007 is provided to Convocation for information at APPENDIX 2.

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

- (1) Copies of comments from members respecting the Specialist Certification program.
(Tab A, Appendix 1, pages 4 – 171)
- (2) Copy of the Quarterly Benchmarking Report of the Director, Professional Development and Competence for the period ending March 31, 2007.
(Tab B, Appendix 2, pages 173 – 187)
- (3) Copy of an Addendum to the Professional Development, Competence & Admissions Committee containing additional Specialist Certification Letters.

CONVOCATION ROSE AT 4:10 P.M.

Confirmed in Convocation this 25th day of May, 2007.

Treasurer