

MINUTES OF CONVOCATION

Thursday, 24th January, 2002  
9:00 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Armstrong, Arnup, Banack, Bindman, Bobesich, Boyd, Braithwaite, Champion, Carey, Carpenter-Gunn, Cass, Chahbar, Cherniak, Copeland, Crowe, Diamond, Divinsky, E. Ducharme, T. Ducharme, Epstein, Feinstein, Finkelstein, Furlong, Go, Hunter, Lamont, Laskin, Lawrence, MacKenzie, Manes, Marrocco, Martin, Minor, Mulligan, Murray, O'Brien, Orved, Porter, Potter, Puccini, Robins, Ross, Ruby, Swaye, Topp, Wardlaw, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S OPENING REMARKS

The Treasurer advised that Marion Boyd would be replacing Todd Ducharme on the Public Legal Education Task Force due to Mr. Ducharme's heavy workload.

The Treasurer noted with regret the passing of Mrs. Victoria Yip, who died on December 23rd, 2001. Mrs. Yip was the wife of the late Mr. Kew Dock Yip whose contributions to the practice of law and to the Chinese Canadian Community were celebrated at a reception at the Law Society on November 22nd, 2001.

Benchers were reminded to advise Patricia Gyulay of their availability for the Call to the Bar ceremonies in February.

The Treasurer outlined the agenda for the spring term of Convocation.

DIRECTORS, BAR ADMISSION REPORT

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Directors, Bar Admission ask leave to report:

B.  
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 24th, 2002:

|                                     |                      |
|-------------------------------------|----------------------|
| Christina Mariett Blaus             | Bar Admission Course |
| John Scott Cowan                    | Bar Admission Course |
| William Brian Karam                 | Bar Admission Course |
| Erik Sven Knutsen                   | Bar Admission Course |
| Isabelle Marie St phanie Landriault | Bar Admission Course |
| James Francis McGrath               | Bar Admission Course |
| Jin Mo                              | Bar Admission Course |
| Sanjit Singh Parhar                 | Bar Admission Course |
| Monica Karen Rieck                  | Bar Admission Course |
| Nassim Banu Shaikh                  | Bar Admission Course |
| Eric Peter Heston Sherbert          | Bar Admission Course |
| Paul Edward Thomas                  | Bar Admission Course |
| Hong Ying Wang                      | Bar Admission Course |
| Robert James Weiler                 | Bar Admission Course |

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 24th, 2002:

|                                |                              |
|--------------------------------|------------------------------|
| Tiziana Aiello                 | Province of Quebec           |
| Erin Marie Alexander           | Province of British Columbia |
| Marnie Axelrod                 | Province of Quebec           |
| Matthew Herbert Britton        | Province of Manitoba         |
| Alison Scott Butler            | Province of Nova Scotia      |
| Russell Walter Cornett         | Province of British Columbia |
| Jay Howard Hershfield          | Province of Manitoba         |
| Sanjay Mayur Joshi             | Province of British Columbia |
| Charles Kazaz                  | Province of Quebec           |
| Maria Lopes                    | Province of Quebec           |
| Michael David Steven Schachter | Province of Alberta          |
| Michael Rhodes Skutezky        | Province of Nova Scotia      |
| Todd William Thomson           | Province of Manitoba         |
| Janie Tremblay                 | Province of British Columbia |



Jay Howard Hershfield  
Sanjay Mayur Joshi  
Charles Kazaz  
Maria Lopes  
Michael David Steven Schachter  
Michael Rhodes Skutezky  
Todd William Thomson  
Janie Tremblay

Transfer, Province of Manitoba  
Transfer, Province of British Columbia  
Transfer, Province of Quebec  
Transfer, Province of Quebec  
Transfer, Province of Alberta  
Transfer, Province of Nova Scotia  
Transfer, Province of Manitoba  
Transfer, Province of British Columbia

FINANCE & AUDIT COMMITTEE REPORT

Mr. Ruby presented the Report of the Finance & Audit Committee for approval by Convocation.

Finance and Audit Committee  
January 24, 2002

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Report to Convocation

Purpose of Report:        Decision  
                                  Information

Prepared by the Finance Department  
Andrew Cawse (947-3982)

**TERMS OF REFERENCE/COMMITTEE PROCESS**

The Finance and Audit Committee ("the Committee") met on January 10, 2002. Committee members in attendance were: Ruby C. (c), Crowe M. (vc), Epstein S. (vc) Cass R., Chahbar A., Coffey A., Diamond G., Divinsky P., Lamont D., Lawrence A., Swaye G., D. White D., Wright B.. Staff attending were Heins M., Tysall W., Grady F., Cawse A..

The Committee is reporting on the following matters:

Decision

- 2003 Budget Process

Information

- Appropriate and Affordable Membership Fee
- Specialist Certification

FOR DECISION

2003 BUDGET PROCESS

1. The budget process is reviewed each year to adapt it to changing circumstances and to accommodate directions from Convocation and management. Most benchers did not indicate any need to change the budget process, but the Committee is grateful for suggestions that might improve it. Some suggestions concerning the process expressed by benchers during the budget debate in October 2001 were:
  - Convocation does not give the Finance and Audit Committee sufficient instructions in advance of compiling the budget. The Committee thought this was a very useful suggestion. The process set out in the attached timetable gives Convocation the opportunity to provide input at the start of the process in early 2002, during the process and at the final approval stage.
  - Convocation should provide policy and priority choices to the Finance and Audit Committee to guide budget development. Again this was a helpful suggestion. The 2003 budget process invites this input at both Committee level and Convocation level at the early stage of development.
  - Budget development is an opportunity for accountability reviews on existing programs. Comprehensive program reviews of selected major programs will be completed in much greater depth than previous years. To allow reviews of adequate depth, a rotation of program reviews will be carried out each year with the objective of reviewing all programs within a two or three year cycle.
  - Convocation would find the provision of options for the membership fee and major programs to be a useful tool in the budget deliberations. The process of program reviews will allow the provision of options to Convocation both at the program and the organisational level, whenever the Committee thinks it appropriate in the particular case.
  
2. Possible options for Convocation can be summarised as:
  - a) Set a specific fee in advance. The Committee considered this option because it provides discipline to a process which has limited constraints. This emphasises the limited resources available from members and provides the certainty of a known fee at the start of the process. However, this is an abstract approach and the Committee favoured a more concrete approach that is based on an actual and careful analysis of each particular program. A fee set in advance still has the risk of being too high or too low and consensus on a total fee and how it is apportioned is difficult without the foundation of underlying programs to direct discussion.
  - b) Base the budget upon individual program review. Management's task is to take policy directions from Convocation and implement them via efficient programs. The budget is built by assessing the program components individually and marrying them to arrive at a total, which would establish an appropriate fee to achieve Convocation's objectives. While some people think this method has the effect of inflating the membership fee, it is the most scientific method, contains provisions for operational accountability and incorporates the consideration of options at the individual program level. It also focuses the budget process and evaluation on measuring output product or program success and at what cost. This is the recommended method as it assist in determining value for membership fees, and allows Convocation to assess individual programs, their value and their cost.

3. The Committee therefore recommends that a series of program reviews be used as the primary budget tool, allowing Standing Committees to assess program objectives. This would allow the Finance and Audit Committee to adhere to its mandate including the “review of budget plans and projections...” and “review the integrity and effectiveness of policies...”. The Committee respects the existing decisions of Convocation that have put the existing programs in place. The Committee will not assess the policies behind the programs but will provide an analysis to measure the financial implications of the program, program efficiencies, values, costs and effectiveness in furthering the interests of the public and the profession.
  
4. The recommended timetable for the 2003 budget process is summarised below.

| DATE                  | 2003 BUDGET PROCESS   |
|-----------------------|---|
| February<br>2002      | <p>Senior Management Team (SMT) commences the budget process by reviewing and developing budget assumptions for the upcoming year such as member numbers and investment returns. Draft departmental budgets prepared based on assumptions developed by SMT, current program plans and anticipated program changes for 2003.</p> <p>SMT reviews consolidated departmental budgets and recommends programs for review including 2002 operational review and 2003 program plan.</p>  |
| March /<br>April 2002 | <p>For selected programs Standing Committees explore operational review options for program delivery, templates of evaluation, benchmarking, outcome criteria and make recommendations on what programs should be delivered to achieve Convocation’s mandate.</p>   |
| April / May<br>2002   | <p>Budgets for programs and administrative functions not subject to the extensive program review process are compiled and reviewed at management level.</p> <p>The results of staff and Committee input into the selected programs are provided to the Finance and Audit Committee together with analysis of the financial implications of the programs. This analysis is provided to Convocation for consideration.</p> <p>LibraryCo submits 2002 business plan and 2003 projections to the Finance and Audit Committee.</p>   |
| June 2002             | <p>A draft budget is compiled incorporating the results of the program review process, and programs that have not been reviewed for the 2003 budget year. Following review by SMT, the draft budget including assumptions used in its development, is presented to the Finance and Audit Committee.</p> <p>Committee Chairs attend with appropriate senior manager at Finance and Audit Committee to support the presentation of budget material implementing Convocation policy objectives relevant to their Committee.</p> <p>2003 budget requests from external organisations such as CDLPA will have been requested, received and reviewed by this time, with staff making recommendations and included in draft budget.</p> <p>Draft budget with options for consideration presented to Convocation. Convocation to provide direction on options for inclusion in final budget for presentation to Convocation in October.</p> |
| September<br>2002     | <p>CEO and SMT prepare final budget for review by Finance and Audit Committee. Finance and Audit Committee reviews, adopts and/or amends budget proposal and makes recommendation to Convocation on the annual membership fee.</p>  |

|                 |   |
|-----------------|---|
| October<br>2002 | Convocation receives, reviews and recommends adoption of 2003 budget and annual membership fee. |
|-----------------|---|

5. The Committee recommends that Convocation approve the program review model for compiling the 2003 budget and the budget timetable set out in paragraph 4 above.

FOR INFORMATION

APPROPRIATE AND AFFORDABLE MEMBERSHIP FEE

6. In the Budget Debate during October 2001 Convocation, the concept of a budget based on an “appropriate and affordable” membership fee was discussed. The Treasurer referred the matter to the Finance and Audit Committee who commenced examining the issue at the January 2002 Committee meeting.
7. The Committee noted that appropriateness and affordability were abstract concepts. A definition presented was that an “affordable” membership fee is one that represents a fair charge to the membership at large for services provided by the Law Society, including maintaining the standards, image and reputation of the profession, while accommodating individual member’s circumstances. An “appropriate” membership fee is one that provides the Law Society with the financial resources to fulfil its mandate and implement Convocation policies.
8. In discussing appropriateness and affordability during the October Convocation debate, Law Society membership fees were compared to membership fees of other regulatory organisations in Ontario. The Committee noted that because of differences in programs, a direct comparison of fees may not always be accurate. An initial quantification of some fee components listed which are unique to the Law Society and its mandate is set out below.

|  |              |
|--|--------------|
| No other organisation has a Compensation Fund with the scale and mandate of the Lawyers Fund for Client Compensation<br><i>Full charge is shown</i>                              | \$290        |
| No other organisation has a program similar to the County Law Libraries<br><i>Full charge is shown</i>   | \$208        |
| No other organisation administers an entrance exam on the scale of the Bar Admission Course<br><i>Estimated net cost is shown</i>  | \$49         |
| Osgoode Hall Capital Fund. No other organisation is accommodated in a heritage building with associated maintenance costs.<br><i>Full charge is shown</i>                        | \$50         |
| No other organisation maintains a resource similar to the Great Library<br><i>Full charge is shown</i>   | \$124        |
| No other organisation requires a professional regulation program on the scale of the Law Society’s<br><i>Component cost based on half the total professional regulation cost</i> | \$202        |
| <b>TOTAL</b>   | <b>\$923</b> |

- 9. The Committee requested further comparative analysis. This will include a comparison with other major Canadian Law Societies in terms of membership, programs offered and information on micro-economic factors such as lawyer's incomes in the respective provinces.
- 10. The difficulty of measuring how well the Law Society is functioning in terms of its mandate was noted. It is difficult to assess output product or measure success. The Committee concluded that to make appropriateness and affordability less conceptual, but still a part of our task, the Law Society should be examining present programs to assess what the Law Society is taking on and what value the Law Society is receiving. This type of examination will form the structure of the 2003 budget process and it will be enriched by the comparative data procured by staff.

SPECIALIST CERTIFICATION

The Treasurer, in setting the Agenda of Convocation, has deferred consideration of this issue as the Professional Development and Competence Committee is also considering it at this time. Mr. Ruby and Mr. Cherniak will consult each other with a view to enable the fullest possible discussion of this issue in Convocation.

- 11. The Specialist Certification program was approved in 1986 on the basis that it be self funding, and Convocation confirmed this principle in 1999. In the Budget Debate during October 2001 Convocation the issue of the self funding of the specialist certification was raised, and the Committee reviewed the matter.
- 12. The Specialist Certification program first certified specialists in 1988 and currently has ten areas of specialisation with 618 specialists in such areas as construction, civil and criminal law. In 2000 and 2001 applications (49 and 26 respectively) have exceeded the attrition rate of 10 members in each year, although 25% of applicants are rejected.

Direct Expenses

- 13. The table below analyses certification revenues and expenses before the allocation of indirect expenses. Total variable expenses includes salaries, benefits, operating and program expenses

|                                  | 2000<br>ACTUAL<br>(\$) | 2001<br>BUDGET<br>(\$) | 2001<br>ACTUAL<br>(\$) | 2002<br>BUDGET<br>(\$) |
|----------------------------------|------------------------|------------------------|------------------------|------------------------|
| Certification Revenue            | 133,800                | 150,000                | 154,000                | 164,000                |
| Total Variable Expenses          | 119,700                | 128,400                | 125,000                | 136,400                |
| Net Revenue Before Indirect Exp. | 14,900                 | 21,600                 | 29,000                 | 27,600                 |

- 14. It is apparent from the above table that specialist certification revenues are budgeted to exceed direct costs and achieve this goal.

Indirect Expenses

15. Convocation first approved a policy in March 1986 requiring the program to be self-funding. This was in the era prior to the adoption of the accounting model that allocates indirect costs. A further motion approved by Convocation in October 1999 stated that "Convocation adopt a policy that the Law Society not subsidize the direct or indirect costs of the program of specialisation". Indirect costs of \$84,000 were applied to specialist certification in 2001 and the net revenues contribute to covering some but not all of these indirect costs.
16. Specialist Certification has two employees and occupies nominal floor space. It therefore has a limited impact on indirect costs, and the elimination of the program would not result in a significant decrease in indirect costs. The excess revenues above direct expenses can be viewed as incremental profit.
17. The Professional Development and Competence Committee is currently reviewing the program. Discussions with staff administering the program indicate that if certification continues in its present form it is most likely that further specialities will be added, and that an effort will be made to increase the profile of the program to the public and the profession. This increase in size and economies of scale should also assist the program to fund the indirect costs allocated to it.

Fee Increase

18. Certification revenues arise from application fees of \$300 paid for the five-year term of the certification and annual fees of \$200. In order to recover all indirect costs in 2001 the 618 specialists would have had to pay nearly \$90 each in additional annual fees. The increased fees would be comparable with those in the market place.
19. The Committee therefore reports to Convocation that:
  - Revenues from the Specialisation program are not completely covering the indirect costs allocated to the program as required by Convocation.
  - Because of the size of the program, failing to cover indirect costs does not have a significant adverse effect on the Law Society.
  - The Professional Development and Competence Committee is currently reviewing all aspects of the program.

The Committee recommends that to comply with Convocation policy, Specialist Certification fees be increased to fund both direct and indirect costs.

Budget Process

It was moved by Mr. Ruby, seconded by Mr. Epstein that the program review model for compiling the 2003 budget and the budget timetable set out in paragraph 4, be approved excluding the reference to Specialist Certification.

Carried

The following items in the Report were for information only:

- Appropriate and Affordable Membership Fee
- Specialist Certification

**PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT**

Mr. Cherniak presented the Professional Development & Competence Committee Report for approval by Convocation.

Professional Development & Competence Committee  
January 24, 2002

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Report to Convocation

Purpose of Report: Policy - For Decision

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

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## TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Committee met on January 11, 2002. Committee members in attendance were Earl Cherniak (Chair), Bill Simpson (Vice-Chair), Susan Elliott, Abe Feinstein, Barbara Laskin, Janet Minor, and Helene Puccini. Greg Mulligan and Rich Wilson attended a portion of the meeting. Staff in attendance were Diana Miles, Director of Professional Development and Competence, Sophia Sperdakos, Ursula Stojanowicz, and Paul Truster.
2. The Committee is reporting on the following matters:  
  
Policy - For Decision

- Proposed Design of the CLE Component of the Competence Model

### POLICY - FOR DECISION PROPOSED DESIGN OF THE CLE COMPONENT OF THE COMPETENCE MODEL

#### BACKGROUND

1. In March 2001, Convocation approved the Committee's Report and Recommendations for implementing the Law Society's competence mandate. The model approved consists of five components, one of which relates to continuing legal education. Set out at Appendix 1 is an excerpt from the March 2001 report regarding the CLE component that was approved by Convocation. The Committee was directed to return to Convocation with a draft detailed design of the CLE component.
2. The purpose of this report is to provide Convocation with a design of the CLE component of the competence model, for its consideration, reflecting the principles already approved in the March 2001 report. In particular, this report focuses on,
  - a. the components of the design;
  - b. the statement of minimum expectations regarding professional development;
  - c. the minimum expectation reporting mechanism; and
  - d. the recommendation regarding accreditation of programs.
3. In addition, the Committee's CLE working group has provided a report for Convocation's information, which is set out at Appendix 2. It canvasses a number of issues relating to the delivery of local CLE. Its findings are relevant to the issue of accessibility of CLE and to the importance of gathering information about professional development.

#### COMPONENTS OF THE DESIGN

##### The Principles

4. The design has been developed on the basis that what is being articulated by the Law Society is a *minimum* expectation. It is not mandatory. What is mandatory is the requirement that members *report* whatever amount of self-study and CLE they do in fact do, whether above or below the minimum expectation. As a component of the competence model the minimum expectation is intended to encourage members to take active steps to maintain their competence.

5. The Committee's March 2001 report stated:

While there can be no legitimate debate, in the view of the Committee, that primary responsibility for maintaining continuing competence through professional development properly rests with the individual lawyer, it is also incumbent upon the Law Society, as regulator of the legal profession, to clearly articulate its expectations concerning continuing legal education and to emphasize the importance that such education plays in assuring competence. For this reason, the Committee recommends the clear articulation of such expectations by the Law Society and, further, that all members should report their educational activities to the Law Society on an annual basis.

6. Through members accurately reporting continuing legal education and self-study activities the Law Society can determine the profession's commitment to career-long learning, and gather information about educational patterns and needs. This will facilitate the further integration of continuing legal education into the Society's competence mandate and assist policy development.
7. The goal of the design of the CLE component of the competence model is to develop a reporting system that is,
- a. transparent;
  - b. fair;
  - c. applicable across the profession;
  - d. capable of producing statistical information that will enhance the implementation of the competence model; and
  - e. easy to administer.
8. All members of the Law Society will be subject to the expectation. Since only reporting is mandatory and since members are only asked to report what they do in fact do, both above *and below* the minimum expectation, it is not necessary to contemplate creating exemptions to the requirement. Members will be provided space on the reporting form to set out, should they wish to do so, reasons for not reaching the minimum expectation in a given year. They will not be required to provide such an explanation. In the event there are reasonable grounds for believing a member is failing or has failed to meet standards of professional competence within the meaning of section 41 of the *Law Society Act*, such that a practice review is ordered or a competence hearing authorized, the member's participation or lack of participation in CLE and self-study may be relevant.
9. The design reflects Convocation's agreement that appropriate professional development consists of both self-study and participation in CLE activities. In designing the minimum expectation the Committee agreed that it is essential to articulate the expectation as including both these types of professional development.
10. In considering an appropriate number of hours to specify, the Committee considered,
- a. the public interest;
  - b. balancing lawyers' time demands, financial realities, and client demands;
  - c. the equal applicability of the minimum expectation to barristers and solicitors, and junior and senior members of the bar;
  - d. availability of CLE programs and activities; and
  - e. approaches used by other professions.

### MINIMUM EXPECTATION

11. The proposed minimum professional development expectation for self-study is 50 hours of self-study annually. This averages out to approximately one hour of reading work-related materials or undertaking approximately one hour of research per week, which the Committee is satisfied is an absolute minimum amount of self-study that lawyers should be undertaking, whether they are in private practice or working in other environments.
12. The minimum expectation for CLE is 12 hours of continuing legal education annually. This is the equivalent of two full day programs per year. As will be seen below this aspect of the requirement can be met through a broad range of activities.

#### Eligible Activities

13. In all cases, to qualify as meeting the minimum expectation the self-study and CLE activities must be related to a lawyer's work and directed at enhancing competence. The Committee's proposal permits both the self-study and the CLE expectation to be satisfied through a broad range of activities, as follows:

#### Self-Study

- a. reading or conducting case specific or work-related research from,
  - i. legal journals;
  - ii. case law;
  - iii. statutes and regulations;
  - iv. relevant interdisciplinary material;
  - v. CLE materials;
  - vi. on-line sources; and
  - vii. texts.
- b. listening to CLE and other inter-disciplinary audiotapes; and
- c. watching CLE program videotapes (not in a group setting).

#### CLE Activities and Programs

- d. live CLE programs, workshops, conferences, in-house programs;
- e. telephone CLE;
- f. interactive on-line CLE;
- g. video replay programs in a group setting;
- h. discussion groups;
- i. participation in post-LLB degree programs;
- j. preparation for and teaching in CLE, BAC, or law school programs as adjunct faculty;
- k. writing published texts, articles, or CLE materials.

14. The Committee considered whether it should recommend that members be encouraged to cover certain specified topics, such as professional responsibility, in their self-study and CLE activities. The Committee is of the view that it is important to introduce the minimum expectation and the reporting requirement in the simplest manner possible. As such the Committee is not recommending the introduction of additional components, at this time.

#### Accessibility of CLE

15. The Committee has considered the issue of accessibility of CLE. The Committee's CLE working group undertook to discuss CLE issues with CLE liaisons in the province's counties. In total the working group spoke with 45 county representatives. As described above, the working group report, set out at Appendix 2, outlines the results of the interviews, noting that the county liaisons were overwhelmingly of the view that CLE is accessible at the local level. In their view, low attendance is the result not of lack of programming, but of a certain degree of apathy among lawyers in their communities.
16. Having said that, the Committee has developed its proposed design with an awareness that accessibility may always be raised as a consideration in the CLE landscape. To that end, the Committee's design,
  - a. contemplates members satisfying the minimum expectation through a wide variety of activities;
  - b. is not premised on the principle that members will have to travel great distances or incur substantial cost to satisfy the CLE expectation;
  - c. is based on a realistic, even modest, number of hours; and
  - d. is one component of an overall model that,
    - i. is intended to support members in their efforts to maintain competence;
    - ii. will be integrated into the operational goals of the Professional Development and Competence department; and
    - iii. takes into account the recommendations for enhancing CLE included in the working group report.

#### Statement of Minimum Expectations

17. As set out in the March 2001 report, in 1997 the Law Society articulated a Statement of General Principles and Minimum Expectations for post-call education. The proposed statement of minimum expectations set out at Appendix 3 for Convocation's consideration goes beyond the 1997 statement to articulate the minimum amount of professional development the Law Society considers that the competent lawyer should undertake on an annual basis.
18. In keeping with the principles discussed above, the statement recognizes the value of both self-study and continuing legal education. It also recognizes that professional development needs vary with each lawyer and with each area of law practised or work undertaken, and may also vary for individual lawyers from year to year. Litigators involved in case preparation, for example, may undertake hundreds of hours of self-study for individual cases that would not be necessary in solicitor practices. The expectation is articulated as a minimum; a reasonable number of hours of self-study and CLE that every lawyer should be able to meet, without difficulty.

### MINIMUM EXPECTATION REPORTING

19. The Committee is recommending that members report their professional development activities on the members' annual report (MAR). The MAR is the appropriate place for the Law Society to gather information related to its regulation of the profession. There is currently a section in the MAR for reporting CLE activities and this will be revised to reflect the minimum expectation.
20. The Committee has examined a number of reporting forms and has designed a draft section that it considers will obtain required information in a straight-forward manner. The proposed content for the section is set out at Appendix 4 for Convocation's consideration. Once approved the content would be integrated into the MAR for 2003.

### ACCREDITATION OF PROGRAMS

21. In its March 2001 report to Convocation the Committee recommended the introduction of a process by which CLE programs would be accredited, so as to provide guidance to the profession on the competence-enhancing nature of programs offered by CLE providers.
22. In the course of designing the components of the model the Committee has come to be of the view that implementation of certain aspects should be deferred pending implementation of other aspects of the model. In this way the Law Society can monitor the implementation process and ensure that resources are being most effectively used.
23. The Committee has also noted that LPIC has recently introduced a \$100 CLE credit to members who take certain approved CLE courses. The Committee is of the view that the LPIC project can be used to monitor the effectiveness of accreditation or approval and inform the Law Society's next steps in this area.
24. As such, the Committee is recommending that implementation of the accreditation part of the CLE model be deferred indefinitely, so as to allow the more immediately essential components to be introduced.

### COSTS

25. The CLE component of the competence model, described above, consists of,
  - a. communicating the minimum expectations to the profession;
  - b. amending the Members' Annual Form to reflect the changed questions on learning activities; and
  - c. collecting and running the data from the forms on a regular basis.
26. The CLE component, as described above, will not involve new costs for the Law Society. The reporting mechanism proposed fits within current technology and processes already in place at the Law Society since it is included in the MAR. As such it will not add to the cost of preparing the MAR, which, in any event, is amended annually to reflect changes to regulatory provisions.
27. The collection of the data and printing of statistics will not involve additional budgetary considerations as the provision of statistical information from the MAR is a regular function of the Law Society.

28. The minimum expectation will be communicated to the profession through the Ontario Reports, the Law Society web site, the Ontario Lawyers' Gazette, and annually through the explanatory notes of the Members' Annual Report. This type of communication is already part of the regular functions of the Society.

#### REQUEST TO CONVOCAATION

29. Convocation is requested to consider this report and, if appropriate approve it, and in particular approve,
- a. the principles outlined in paragraphs 4-10;
  - b. the minimum expectation and statement of minimum expectations set out in paragraph 11 and 12, 17 and 18 and Appendix 3;
  - c. the eligible activities set out in paragraph 13; and
  - d. the reporting mechanism as set out in paragraphs 19 and 20 and Appendix 4.

#### APPENDIX 1

Excerpt from March 2001 Implementing the Law Society's Competence Mandate: Report and Recommendations (without appendices)

#### IX. CONTINUING LEGAL EDUCATION

- (i) Post-Call Education
107. Professional development is multi-layered and involves self-study, learning through experience, discussion with colleagues, research undertaken on a case-by-case basis, attendance at continuing legal education programs, use of audio, print and electronic materials that accompany or constitute continuing legal education programs, teaching, and a variety of other methodologies. Both the individual lawyer and the profession as a whole have an interest in members of the legal profession keeping current and abreast of new issues and emerging legal requirements, as well as client-servicing techniques.

108. It is noteworthy that in considering the models discussed in the Consultation Document, many lawyers across the province appeared to support one or more forms of mandatory continuing post-call education as part of the continuum of professional development model. While some lawyers in the province supported such a mandatory approach when it was last considered by Convocation, the results of the consultation process suggest growing support for one or more elements of mandatory continuing post-call education.<sup>1</sup>
109. There was little dispute during the consultation process, or indeed in any discussions on the subject, that continuing legal education is a foundational aspect of continuing competence in the legal profession. This statement of principle was recognized by Convocation during its consideration of the 1997 Report of the MCLE Sub-committee, entitled "*Post-Call Learning for Lawyers*" and by Convocation's approval of the Statement of General Principles and Minimum Expectations for Post-Call Education, which formed part of that Report. A copy of that Statement is attached as Appendix 6.
110. As appears from the Statement of General Principles and Minimum Expectations for Post-Call Education, the Law Society has recognized an obligation "*to encourage and monitor professional development and education, and to foster the creation and development of learning supports both in the public and the profession's interest*". In addition, the General Principles accepted by Convocation emphasized that the professional development and education undertaken by members of the profession "*should include both informal education through self-study, reading and research, and more formal education through participation in continuing education programs*".<sup>2</sup>

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<sup>1</sup>In the survey that accompanied the Consultation Document, in response to a question about whether there should be some mandatory requirements related to professional development, a narrow majority (54.3%) responded that there should be mandatory requirements, while 38.3% responded that there should not be such requirements. 67.3% of respondents agreed that there should be mandatory professional development requirements for those "with previously demonstrated competence-related deficiencies." Information Report, Tab 2, pp. 8 and 9.

In addition to the survey, members were canvassed during the regional consultation meetings concerning their views regarding one or more mandatory elements of post-call education. Many participants at these meetings indicated their support for such an approach.

The qualitative survey results support the view that Model One(Continuum of Professional Development) is the most acceptable to members. Seventy percent of respondents to the open-ended questions endorsed the model as the most effective for implementing the Law Society's competence mandate. Of the 940 explanations given in the survey for endorsing the model, only 10% did so because other models were unacceptable:

- a) 46% of the endorsements were associated with the structure of the model;
- b) 36% of the endorsements referred to content or substantive curriculum that could be presented under this model; and
- c) 8% of the endorsements flowed from the sense that this model would receive a positive reception from the public and/or members of the Law Society. (Information Report, Tab 3, pp.4 and 5.)

<sup>2</sup>See Appendix 6.

111. The Committee is not recommending that Convocation re-visit at this time the issue of whether continuing legal education should be mandatory. It is strongly of the view, however, that there should be a minimum expectation of continuing legal education for all lawyers in Ontario beyond case preparation and the reading of law reports.<sup>3</sup>
112. While there can be no legitimate debate, in the view of the Committee, that primary responsibility for maintaining continuing competence through professional development properly rests with the individual lawyer, it is also incumbent upon the Law Society, as regulator of the legal profession, to clearly articulate its expectations concerning continuing legal education and to emphasize the importance that such education plays in assuring competence. For this reason, the Committee recommends the clear articulation of such expectations by the Law Society and, further, that all members should report their educational activities to the Law Society on an annual basis.
113. Coupled with this approach, however, is the imperative that affordable, accessible, and relevant continuing legal education for lawyers be expanded in order that they may satisfy the minimum expectations articulated by the Law Society at an affordable cost and by readily accessible means. While technological advances increasingly are available to address geographic and economic barriers to post-call learning, it is nonetheless essential that greater efforts be made to increase continuing legal education offerings for the profession.
114. It is also critical that continuing post-call legal education,
  1. be relevant to a wide range of practice and work circumstances;
  2. be provided by a broad range of providers who can address the varying needs of the profession;
  3. address both substantive legal issues that are relevant to lawyers in their work as well as client services, practice management and ethical issues that are also fundamental components of quality service; and
  4. afford a range of options to lawyers so as to create a climate that fosters a desire to participate in continuing legal education opportunities.
115. If, as the Committee believes, continuing legal education should constitute an essential component of the competence model, then the Law Society should evaluate whether programs are available that, by their design and content, are competence-enhancing.
116. Although there are strongly held views, as described above, that a need exists for more continuing legal education programming, few participants in the consultation process disputed that there exist at present quality providers of continuing legal education who do deliver educational tools across a wide spectrum of subject areas. Ranging from the larger providers (such as the Law Society, the CBAO, and the professional development programs of the law schools), to more specialized providers (such as The Advocates' Society, the Criminal Lawyers' Association, the Indigenous Bar Association, and many others), to those county law associations that hold continuing legal education programs and informal educational meetings, a rich foundation of current programming exists that is, and will continue to be, essential to the delivery of the continuing legal education component of the competence model.

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<sup>3</sup>It was of considerable interest to the Committee to learn that, in a recent speech delivered to the CBAO 2001 Annual Institute of Continuing Legal Education the Chief Justice of Ontario, the Honourable Roy McMurtry stated, "Lawyers and judges must commit themselves to a lifetime of learning," and pointed out the importance of continuing legal education for the public interest.

117. The Committee is of the view that there should be some mechanism in place for ensuring quality, breadth, and consistency of continuing legal education programs. During the consultation process the Committee learned that a number of bar organizations are interested in exploring opportunities with the Law Society to provide continuing legal education programs on a program accreditation basis in the future. The Committee has received specific proposals from some bar organizations as to the means by which competence-enhancing programs could be afforded to members of the profession on a province-wide delivery basis.
118. Program accreditation has a number of goals, the broadest of which is to ensure consistency, breadth, and quality of continuing legal education programs. It could also be directed to more specific quality improvement or assurance objectives. For example, programs could be accredited for the purpose of meeting specialist designation or requalification requirements. As practice guidelines are developed, accreditation could be used to inform the profession as to which programs address the kinds of practice issues relevant to the competent lawyer. The Law Society would set the standards for what constitutes a competence-enhancing program. Once these standards are set, the entity that carries out accreditation evaluation need not be the Law Society itself. Thus, the identification of the appropriate accreditation process and the development of accreditation standards, are both matters to be addressed during the design of the competence model.
119. The Committee proposes that,
  1. in addition to the 1997 Statement of General Principles and Minimum Expectations for Post-Call Education already approved by Convocation, the Law Society articulate the amount of continuing legal education it expects the competent lawyer to undertake on an annual basis;
  2. members of the Law Society be required to report in their Members' Annual Report (the "MAR") the amount of continuing legal education that they in fact undertake on an annual basis. Under this approach, members would not be required by the Law Society to undertake a stipulated amount of continuing legal education but, rather, would be obliged to report in their MAR whatever continuing legal education they do elect to take, whether accredited or unaccredited. The requirement for accurate reporting would be the same as applies for all other sections of the MAR; and
  3. in the future, continuing legal education programs should be accredited with a view to ensuring the consistency, breadth, and quality of continuing legal education offerings and, in addition, identifying for lawyers those programs that, by their design and content are regarded by the Law Society as competence-enhancing programs.
120. The design process in connection with the formulation of post-call educational expectations would include consideration of, among other issues,
  1. determination of the amount of continuing legal education that the competent lawyer, as defined by the Rules of Professional Conduct, may reasonably be expected to undertake on an annual basis to maintain and enhance competence;
  2. the types of educational activities and programs that would be regarded as offering competence-enhancing opportunities;
  3. additional steps to be undertaken to enhance delivery of continuing legal education programs throughout the province, taking into account the on-going work of the Continuing Legal Education Working Group of the Committee and ongoing efforts to facilitate improved development and delivery of continuing legal education programs;

4. whether a system of incentives and disincentives should be introduced in connection with this component of the proposed competence model;
5. the method of accreditation to be introduced with respect to continuing legal education programs offered by various providers in the future, and the manner in which such accreditation will be designed so as to,
  1. be flexible enough to accommodate a broad range of offerings;
  2. contain reasonable requirements;
  3. evaluate the quality of programs in a meaningful, but reasonable fashion.
6. the type of monitoring and evaluation of continuing legal education programs to be undertaken in the future to support continued accreditation or re-accreditation;
7. the administrative and delivery costs connected with this component of the proposed competence model; and
8. programming by the Law Society under the new competence model.

APPENDIX 2

Professional Development & Competence Committee  
January 24, 2002

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Report of the Working Group  
on CLE Delivery Throughout Ontario

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BACKGROUND

Definition

1. Continuing legal education (CLE) is a term that embraces many modes of delivering professional development, including, but by no means limited to,
  - (a) live lecture programming;
  - (b) small-group seminars and workshops;
  - (c) CLE publications, whether arising from programs or free-standing; and
  - (d) online learning.

Generally speaking, the term CLE is used to refer to public and interactive approaches to learning, as opposed to self-study. It is with the public approach that this report is concerned.

The Working Group

2. The CLE issues working group ("the working group") was established in 2000 by the Professional Development and Competence Committee to assist the Committee with respect to CLE issues and, in particular, to determine how better to deliver CLE locally throughout Ontario. Participants in the group have included,
  - (a) benchers William J. Simpson, Q.C. (Chair), Susan Elliott, Kim Carpenter-Gunn, Judith Potter, and Marilyn Pilkington;

- (b) James F. O'Brien, Q.C., Virginia MacLean, Q.C., Peter Wilson, and Patricia Byrne, representing the Ontario Bar Association ("OBA"); and
  - (c) Law Society staff Diana Miles, Director of Professional Development and Competence, Sophia Spurdakos, Paul Truster, and former Director of Education, Bob Bernhardt.
3. The working group includes representatives from the Law Society and the Ontario Bar Association because these two bodies are the province's largest providers of general CLE on a not-for-profit basis and have been the most actively involved with the issue of delivery of CLE province-wide.

#### Context

4. CLE issues were examined by the Law Society's MCLE Subcommittee in 1994-1996. The Subcommittee considered whether CLE should be mandatory, but also explored the important issues of the availability, accessibility and relevance of CLE generally throughout Ontario. The report, entitled *Post-Call Learning for Lawyers: Report and Recommendations* (December 1996), contained numerous recommendations regarding the enhancement of the delivery of voluntary CLE, including increasing the provision of local CLE.
5. One recommendation provided for the establishment of a group to define planning needs for post-call education. The Enhanced Continuing Legal Education (ECLC) group was set up and reported to the Professional Development and Competence Committee in 1999.
6. Both the MCLE Subcommittee and the ECLC group were of the view that more steps were necessary to ensure that lawyers throughout the province would have access to affordable and relevant CLE.<sup>1</sup>

#### Approaching the Issues

7. The MCLE Subcommittee's work has been subsumed within the work of the various Competence Task Forces and activities connected with implementing the Law Society's competence mandate, including discussions of professional development and its role in maintaining and enhancing competence.
8. The issues the working group has been considering concerning local delivery of CLE are directly relevant to the work the Professional Development and Competence Committee has undertaken with respect to the CLE component of the proposed competence model. The issue of lawyers' ability to access CLE at an affordable price is an important feature of the CLE component.
9. In approaching its task the working group was of the view that,
- (a) regardless of technological developments, CLE will continue to play an important role in lawyers' professional development for the foreseeable future;
  - (b) it was necessary, in view of the ongoing development of CLE in various formats, and lawyers' growing use of computer technology, to have more up-to-date information about what lawyers across Ontario are doing to access CLE and how they wish to meet their professional-development needs; and

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<sup>1</sup> This finding was in part based on the view, expressed by those who attended consultation meetings and substantiated by low attendance figures, that CLE by video replay as opposed to live was not, on the whole, an adequate delivery method.

- (c) an economical, and reasonably reliable means of gathering this information would be to interview representatives of Ontario's County and District Law Associations.
10. The working group contacted all the associations, requesting interviews with the presidents and/or CLE coordinators ("the interviewees"). It provided background materials including detailed descriptions of three delivery methods: traditional live programming; video replays supplemented by live speakers; and publications supplemented by optional links to electronic bulletin boards. However, the materials made clear that these descriptions were provided for purposes of illustration only, and that other modes of delivery were open to discussion.
  11. Forty-five interviews were conducted. The list of participating Associations is set out at the end of this report.
  12. Although the interviews were relatively informal, the topics covered were consistent from county to county and included discussion of:
    - (a) the geography of each county interviewed;
    - (b) the size of the local bar and the scope of areas of law practised;
    - (c) available local resources for,
      - i) live CLE;
      - ii) CLE by video replay; and
      - iii) library resources such as publications, videotapes, CD-ROMs, and QuickLaw;
    - (d) the kinds of programs and topics likely to draw registrants;
    - (e) the degree and level of computer use by the local bar, including the integration of computers into practice in general, and their use for professional development and CLE purposes;
    - (f) the degree of local willingness to travel to centres offering live CLE;
    - (g) the advantages and disadvantages of various delivery modes, including live CLE, video replays, video replays supplemented by live speakers, publications, computer-based resources, teleconferencing and satellite delivery;
    - (h) means by which local CLE delivery might be improved; and
    - (i) practitioner's attitudes towards professional development in general and CLE in particular.
  13. Based on the conclusions of previous reports and the views expressed by other bodies, the working group proceeded on the assumption that it would once again hear that there is insufficient affordable, accessible and relevant CLE outside of the largest centres in Ontario. In fact, the interviewees provided quite different views from those previously heard which, in the working group's view are important to consider.

14. The working group recognizes that there are methodological limitations to the interview approach. Individuals interviewed bring their own perspectives and are a “filter” of information. The approach does not provide statistically valid data or percentages against which to measure reliability. In the working group’s view, however, it is fundamentally important to seek the insights of those most intimately involved with the delivery of local CLE. The CLE liaisons and county presidents understand local context; practice in the cities, towns and region about which they are providing information; often know most of the local bar; understand the realities in which they work; and are users of CLE as well as being administratively involved in the delivery process. Although no one, least of all the working group, would suggest that this report is definitive or that what the interviewees revealed should be the end of the discussion, the working group is of the view that the information obtained provides valuable insight into the issues that should not be ignored.
  
15. The balance of this report,
  - (a) summarizes the comments that emerged on the various delivery approaches, namely,
    - i) live programming;
    - ii) videotape replay;
    - iii) publications, including audiotapes and CD-ROM; and
    - iv) computer-based learning;
  
  - (b) summarizes interviewees’ perceptions about attitudes to CLE; and
  
  - (c) provides some conclusions for consideration.

## THE CLE LANDSCAPE

### Live programming

16. Outside the largest centres, most lawyers belong to their local law association. In some cases the proportion approaches 100%. Few associations undertake joint activities with neighbouring associations or do much in the way of promoting their CLE to lawyers in neighbouring associations. While, in theory, certain associations could become “CLE outreach centres” for surrounding counties and districts, it appears that few such associations have the infrastructure to undertake such an initiative, or the interest in doing so.<sup>2</sup> Even granting that much depends on the determination and energy of the volunteer individual(s) most closely involved in organizing CLE, it would appear from interviewees’ comments that attracting their own association members to CLE events is difficult enough, particularly when cities and towns within a single county and district may be many miles apart.

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<sup>2</sup> Ottawa and Thunder Bay are examples of centres that attract lawyers from neighbouring counties to their live programs. Ottawa programs included those presented by a joint venture involving the County of Carleton Law Association, the Law Society of Upper Canada, the Ontario Bar Association, the University of Ottawa and, occasionally, the Institute of Law Clerks of Ontario.

17. Similarly, while a small number of centres, including Ottawa, Thunder Bay and Hamilton, are active in staging live CLE, many others lack the infrastructure and/or the commitment to do so. Some associations commented that local speakers would not enjoy the credibility that speakers from outside the community have. There is “a feeling that experts come from elsewhere”, that “you don’t want the lawyer up the street telling you how to practice”, and some lawyers would be uncomfortable posing questions to others who are, or might soon be, on the other side of a transaction or file. These comments were, in some cases, offset by others suggesting that some communities do not relish “outsiders coming in and telling us how to practice law”.<sup>3</sup>
18. Of the centres interviewed, a majority report a decline in CLE attendance in the last few years. In some centres programming, even by video replay, is virtually non-existent. Others do half-a-dozen or fewer programs annually. Only a small number, it seems, offer more than that. No single reason for the decline was identified by the interviewees, though a number of possible reasons were identified, including increased time pressures and, in some counties, an aging bar.
19. The smaller centres are realistic about the impracticality of bringing in visiting speakers or recruiting local ones to address audiences of only two to ten people. In such centres, live CLE is generally not a viable option because there are not enough people willing to attend it and not enough members of the local bar are willing to speak and write.

#### Video Replays

20. The staple of CLE in all but the largest centres remains the video replay of a CLE program originally presented in Toronto. Only in those few centres actively sponsoring live CLE do lawyers tend to reject replays.
21. Contrary to the working group’s expectations, which were based on the what the MCLE Subcommittee and the ECLE group had concluded, most interviewees were very supportive of the replay as a mode of CLE delivery, emphasizing its utility and convenience, identifying it as good value for the money and, in some instances, urging that the number of available replays not be decreased for any reason.
22. Support for replays in part reflects pragmatism, since, as noted above, interviewees were very understanding of the financial challenges involved in extending the reach of CLE, and did not expect that live CLE would often find its way into their county.
23. However, the replay is not seen as simply “better than nothing.” It is also valued as a format with a valuable interactive dimension, bringing together a group of lawyers to watch portions of a program and stop the tape periodically to discuss its content. A long program can be split up over two or more evenings. Interviewees also appreciated the economy involved. In the words of one,

The ‘regulars’ appreciate that the videos enable them to get essentially the same program that was available in Toronto but without the time lost in travel and accommodation cost...and you can fast-forward past the duller speakers!

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<sup>3</sup>This is perhaps tied to the occasional complaint that video replays of Toronto programs too often contain speakers who deal with big-city, big-dollar matters not usually relevant to local practice, or, especially in the case of litigation programming, reflect Toronto court practice in a manner irrelevant to local practice.

24. Nonetheless, it seems only a small minority of lawyers in any region attends any video replays. The working group repeatedly heard of replays that drew only two or three people, and while this can represent a reasonable proportion of the bar in the smallest centres, it is telling that even these centres regard the turnout as disappointing. Some lawyers, of course, never attend replays at all. Interviewees were asked whether supplementing videos with live visiting speakers would boost attendance. Answers varied, but the rough consensus was that while in some instances this might work, it was no guarantee of a substantially larger turnout.
25. Based on the interviews, the working group found no evidence that significant numbers of lawyers outside the largest centres expect CLE programs in any form other than replays. Even in so active a CLE centre as Ottawa, where live programming is the most popular format, the working group was told that "it's not possible to meet all the bar's niche needs by live programming exclusively."<sup>4</sup>

Type of programming for which there is most video-replay demand

26. In many counties, family law, in particular, and other "core" areas such as estates, real estate, civil litigation, and criminal law, are of particular educational interest. Corporate-commercial law CLE does not attract many registrants, a fact that is, relatively speaking, true in Toronto as well.
27. Interviewees praised, in particular, programs like the Law Society's *Six-Minute Lawyer* series and OBA's annual *Operation Update*, which quickly identify and provide concise commentary on current issues and developments.
28. Interviewees' comments suggest there has been little or no demand for French-language CLE. In Ottawa, for example, the Francophone bar had expressed interest in it, but when the County of Carleton Law Association offered it, the programs were cancelled because of low registrations.

Cost of Video Replays

29. The interviewees indicated that replays run between \$90 and \$160 per person and that price is not an issue with attendees. As noted above, attendees recognize that this saves them what would otherwise be the much higher costs of travelling to a major centre for live CLE. One interviewee estimated the total cost of attending CLE in Toronto to be \$2,000 per program, once travel, accommodation and lost billable time are factored in.<sup>5</sup> The direct cost or admission price of a Law Society or OBA program in Toronto would typically be between \$175-\$300. In addition to the financial cost involved in travelling to Toronto, "being away from practice, from one's family and community activities, probably underlie[s] the lack of interest in travelling for CLE."

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<sup>4</sup>Satellite programs—that is, live broadcast of a program from one centre to others throughout Ontario—have drawn higher-than-average numbers, probably because they have almost invariably been programs on major new legislation or initiatives of comparable magnitude (e.g. title insurance, electronic registration, the Child Support Guidelines). In any case, the technology has proved unreliable and so expensive as to require heavy subsidization.

<sup>5</sup>Airfare from the Sault to Toronto, for example, may run \$800 or more.

30. Some interviewees regretted the passing of the Errors and Omissions premium levy discount for certain programs attended, but no one said that restoring it would necessarily boost general CLE registration significantly.<sup>6</sup>

#### Computer-based learning

31. The advent of relatively inexpensive personal computers and Internet access has given rise to hopes that the challenge of providing CLE across Ontario can, in large measure, be addressed through technology. Such hopes need to be balanced against the reality that many lawyers remain uncomfortable with computers, or unpersuaded that they can be effective educational tools. To a striking degree, "virtual interactivity" is not seen as equivalent to face-to-face contact. Interviewees noted,

The younger lawyers in our office want to hear what older ones have to say...they want to meet the people they've heard so much about.

Less than half the lawyers in the region would be able to use a computer and many are still using IBM Selectrics. None of the older lawyers have computers and even some of the young ones are surprisingly resistant; [besides,] ...looking at that little screen is really annoying, and education is only 50% information, plus 50% or more live interaction. People who get degrees on-line are probably getting half an education.

Personally I hate the computer and go on-line only when I have to...it's the way of the future, sure, but I don't know that I'll be part of it.

Another said that some lawyers are "pro-actively involved in technology, but most are dinosaurs."

32. Interviewees' estimates of Internet access varied widely, though the largest number placed this in the 30%-50% range. Having access to the Internet and using it regularly to get the most out of the tool weren't seen as synonymous. Even the use of e-mail is far from universal.
33. The working group asked interviewees whether printed publications supplemented by on-line bulletin boards would be appealing, owing to the convenience of being able to access on-line learning from home or office at any time. Some interviewees saw this as an asset, but others doubted most lawyers would make the time to access on-line CLE. In the office it would take some resolve to close the door, ignore the phone and access CLE, while at home, the demands and attractions of family life might prevail. By contrast, however, one interviewee said, having a live or video-replay CLE program on a fixed date in your calendar "tends to solidify your resolve to be educated."

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<sup>6</sup>The CLE Society of British Columbia recently experimented with offering a monetary credit of between \$100 and \$150 against a member's first CLE program of the year, but did not find any significant increase in attendance. LPIC has, however, begun a number of projects to encourage member participation in education. Members have free access to the practicePro program online and receive a \$50 premium credit for completing a minimum of three modules and filing a survey and declaration, prior to a given date in the year. In addition, for the 2003 policy LPIC will pre-approve certain providers' courses such that members who take them will be entitled to a \$50 premium credit per course (to a maximum of \$100) where the courses are taken prior to September 15, 2002.

34. It is important to point out that technology has made inroads in some aspects of professional development. QuickLaw is available in the county law libraries and is frequently used. In an effort to expand on-line learning BAR-eX and Law Society CLE have undertaken a three-month pilot program offering BAR-eX users access to certain videotaped lectures and accompanying papers drawn from the Law Society's *Six-Minute Lawyer* series. The County of Carleton Law Association uses e-mail effectively to promote programs. In general, interviewees found the prospect of downloading papers, precedents and cases much more appealing than watching CLE speakers on a computer screen.
35. It was acknowledged that law association web-sites, already in place, for example in Middlesex, Frontenac and Ottawa, may also come to make an important contribution, though, as one interviewee said, her county "doesn't even have people willing to invest the time in producing a newsletter; they're not likely to maintain a Website." It was also suggested that "push" technologies like e-mail, however annoying to some, are probably more effective than Web pages, which one has to take the initiative to access.
36. From the interviews, it seems clear that there is a place for technology in CLE, but for the foreseeable future, that place will be alongside, not in place of, other modes of delivery.
37. What is difficult to know with any certainty is whether the development of effective on-line education will encourage participation among those who would not otherwise be inclined to use the technology. Like QuickLaw and the virtual law library, there may be a progressive increase in usage if the benefits are clear.

#### Publications and audiotapes

38. In the MCLE Subcommittee's consultations with lawyers across Ontario in 1995, a number of lawyers emphasized the need for more and better written materials. The working group's interviews suggest that publications, including CLE materials, remain a critical component of competence education. "Many get their education reading materials in the library," the working group was told.
39. CLE materials are particularly valued for "current practice-related precedents and [the opportunity materials provide to]...take advantage of other people's experience. If the materials are in the library "that's all most people need," another interviewee said. Having access to the written material was deemed "the most useful part" of CLE, and CLE materials appear to be checked out of the library more often than other circulating resources.
40. It was difficult for many interviewees to judge whether practitioners, if put to the choice, would prefer a well-stocked library or increased access to CLE programs. Some, at least, believe that "materials are perhaps even more helpful than CLE in supporting day-to-day practice." Corporate-commercial lawyers, in particular, appear much more likely "to buy the book" than to attend programs.
41. While there is evidence that QuickLaw is reducing the need for paper law reports, there is continuing demand for other material in conventional printed form. One interviewee said:

There's no way the day will come where we'll say, take away the paper...personally, I'm a paper person and will never change to the day I die.
42. Audiotapes have limited appeal in many smaller centres, according to one interviewee at least, because people "tend to listen to them in cars, and if you can get anywhere in town in five minutes it doesn't leave much scope for listening."

### ATTITUDES

43. The working group was struck by the extent to which interviewees pointed to the existence of considerable lawyer apathy where CLE attendance is concerned. If the comments of interviewees are indicative of attitudes and approaches to CLE, it appears that only a minority of lawyers is engaged in any meaningful way in attending CLE programs, whether live or by video replay. One interviewee estimated that there is a "nucleus of 10% of practitioners actively interested in CLE." Another suggested that in any given year the percentage of lawyers who might attend a replay would run between 5% and 40%, depending on the practice area. Programs dealing with major new legislation, or matters of comparable importance, tend to bring out the highest numbers, but still fail to attract a majority of lawyers in the area affected by the legislation.
44. Interviewees did not suggest that low attendance was connected to inadequacies in program content or delivery. To the extent that program content was discussed, interviewees suggested that those who are dedicated CLE attendees continue to find the content valuable and relevant.
45. Some interviewees suggested that relatively low CLE participation may be attributable in part to time pressures, "a function," as one said, "of practising law. You're selling your time, it's at a premium, and it's tough to give up a day or even an afternoon" for non-billable activity. Others agreed:

It may be that lawyers who are working harder for less money don't feel they have time for CLE.

If you take a day out of the office, it messes you up for the next three.

People are finding it harder and harder to make time for CLE. Many of us barely have time to read our ORs or to attend a seminar when it's obviously necessary to do so in order to keep up.

[Many are] just trying to keep their heads above water, running their practices, making a living, taking care of their clients and their families; next to that, going to a seminar is probably lowest in priority.

46. However, a number of interviewees' comments suggest that, to some extent, lack of time, like lack of money, may be a rationalization for underlying apathy. Examples of such comments included:

Some lawyers just don't regard CLE as important.

CLE tends to attract the lawyers who are already more capable.

The less capable tend to come less or not at all.

Maybe half of the local lawyers don't believe there's a need for formal CLE...instead you can read a book or access QuickLaw for a case or just speak to another practitioner.

The people who most need to take CLE are the ones who don't think they need it.

Even getting five signed up [for a replay] is difficult. People...have to be pushed or reminded and, frankly, many just don't seem to regard continuous learning as important.

The view of many members is that it's difficult to understand why they should update their knowledge. They've worked well in their communities for years without updating their knowledge, at least through CLE.

Some lawyers are struggling, most seem to want just to make their living and get home to their families, and perhaps they just don't see CLE as necessary.

[Many transactions are of a repetitive nature and] are not seen as requiring much ongoing educational support.

There's not much belief that attending CLE will boost one's income, and if given the choice between spending money on CLE, or putting it toward the family vacation, most will put the vacation first.

47. At least one interviewee suggested that a significant number of practitioners may not be keeping up-to-date in *any* way, whether by participation in CLE or by self-study methods. "It's tough to appreciate the need to update if you survive in practice for ten to fifteen years without it...it's like brushing your teeth; until you acquire the habit, its importance isn't obvious." One noted that in his county case law is not argued or cited much in court; with respect to the 'best interests of the child', for example, "we know what's best because the judge will tell us."
48. At the same time, however, it is important to note that a minority of lawyers remains deeply committed to CLE. Most interviewees agreed that "there's a core of CLE enthusiasts one sees again and again" at programs. One "sees the same faces over and over" and knows in advance "exactly who will respond" to CLE advertisements. Interviewees agreed that CLE is a necessary part of lawyers' ongoing development, some even expressing support for compulsory attendance. Their comments on lawyer apathy referred only to others known to them in their communities.

## SUMMARY

### Affordable Accessible, Relevant

49. The working group began its inquiry with a view to considering how to improve delivery of local CLE. Like many others before it, the working group began with the assumption that there was insufficient affordable, relevant, and accessible CLE throughout the province. This has often been used to explain or rationalize why many members appear not to attend any CLE.
50. As illustrated, the interviews suggest a different picture. Overwhelmingly, interviewees ascribe low attendance not to unreasonably high costs, inadequate supply close to home, or irrelevant content, but rather to an unwillingness to attend.<sup>7</sup> As one interviewee said,

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<sup>7</sup>Again, it is important to remember that what is being analyzed here is attendance at public CLE.

A lot of effort has been made to make CLE accessible through replays or otherwise. I'm not sure that I would identify as a cause [of low attendance] any lack of effort either by the Law Society or by other organizations in making [CLE] accessible...a lot of good work has been done that way.

51. This conclusion undermines an assumption that has affected the analysis of CLE issues for years. If the interviewees can be seen as having accurately described the landscape, it is essential to analyze CLE participation in a different manner than has been the case to this point.

#### Apathy

52. The working group was deeply concerned by the degree to which interviewees ascribed low participation rates in CLE to lawyer apathy. Given that the interviewees were describing their own counties, their own local situation and their first-hand knowledge of CLE attendance, their observations are, in the working group's view, noteworthy. Perhaps, the comments that are of the greatest concern are those suggesting that the lack of participation in CLE does not reflect a choice for self-study instead, but rather is tied to a lack of professional development of any kind. Although such comments may be anecdotal, given as they are by those in the communities in question, they should not be ignored.
53. The legal profession and its members must embrace career-long learning as an essential feature of the privilege of self-regulation. The public has the right to trust that lawyers who provide legal services have the appropriate level of knowledge and skill in the areas in which they act. Lack of time or lack of interest can never be a justifiable excuse for lack of professional development. To the extent that the concern expressed by the interviewees reflects a problem, it should be explored further and addressed.
54. The working group is of the view that, in the face of such apathy, it may be difficult to achieve significantly greater participation in CLE programs simply by offering more. While interviewees thought that continued improvements to programs, the ongoing development of diverse delivery formats, and financial or other incentives might encourage some increase in attendance, they did not express the view that such steps would radically boost it. There is nothing in the interviews to suggest, therefore, that simply infusing funds to expand available local CLE would address the underlying problem of apathy.

## CONCLUSION

#### Where Does the Information Lead?

55. From a policy perspective, the issue of CLE participation may require a new analysis. If CLE is, in fact, generally available, accessible, and relevant for those who choose to avail themselves of it, should that be the end of the discussion? Or should ways be sought to increase the number of attendees?
56. The interviews do not point the way towards any particular approach, but the working group discussed what was learned from them, and this discussion is summarized below.
57. In considering what the policy response might be to what has been learned from the interviews, the working group has discussed three possible responses:
- (a) Accepting the *status quo*;
  - (b) Increasing attendance through mandatory requirements;
  - (c) Promoting career-long learning with a view to increasing participation.

58. In discussing each of these possible responses the working group has kept in mind the following:
- (a) It has been stated by the Law Society, as the regulator of the profession, and by many other legal organizations, that CLE is important to continuing competence; and
  - (b) It has been stated repeatedly in a number of reports on CLE, and accepted by Convocation, that too few members attend.

#### Accepting the *Status Quo*

59. As stated above, one way to address CLE issues, in the face of evidence that suggests that those who want to attend CLE are able to do so affordably, is to determine that no further action is warranted. On this view, it is acceptable that regular participation in CLE will probably remain a minority pursuit, though some incremental gains in participation may be realized. The *status quo* is not actually static, but evolutionary; for example, CLE is already available in a diversity of formats that did not exist a decade ago. Since different lawyers have different learning styles, this may foster greater attendance. One interviewee said, "don't mess with the system too much," a sentiment apparently shared by others.
60. Similarly, the gradual expansion of online learning and publications-based tools will facilitate self-study. The knowledge that the minority acquires through CLE will, as always, be communicated gradually to the majority, as lawyers talk with and learn from one another in the course of day-to-day practice.
61. Having said this, the working group is of the view that the *status quo* does little to address the fundamental problem identified by many interviewees, that of lawyer apathy to professional development of any kind and, in particular, CLE.
62. Moreover, the Professional Development & Competence Committee's report on implementing the Law Society's competence mandate includes a CLE component that sets a minimum expectation of CLE for lawyers. This component appears to reflect an attempt to influence more lawyers to participate in CLE programs. The working group is not in a position to assess the extent to which articulating minimum expectations for CLE attendance, or increased reporting requirements on the member's annual reports, may encourage attendance. What is important to point out, however, is that this step, in and of itself, appears to reject the adequacy of the *status quo*.

#### Compulsory Attendance

63. Only a compulsory attendance requirement, whatever its other drawbacks, could be expected to quickly make attendance a majority phenomenon. The Professional Development & Competence Committee's report on implementing the competence mandate, approved by Convocation in March 2001, indicates that it has not revisited the issue of mandatory CLE and its recommendations reflect this.
64. The issue of compulsory post-call education remains a complicated one that is beyond the scope of this working group's mandate to discuss.

#### Promoting Career-Long Learning

65. Although the interviews did not raise this approach, the working group's discussions led it to consider what role greater promotion of career-long learning might have on attendance at CLE programming.

66. Such promotion could include a range of actions including inducements to attend, ongoing communication of the importance of career-long learning to the maintenance of professional competence, improvements to promotional literature, and a greater allocation of members' annual fees to promoting professional development. Such an approach could demonstrate that post-call education has priority equivalent to that which the Law Society assigns to the complaints and discipline process.
67. Such an approach may well be integral to the Law Society's overall competence initiatives, currently in development. To the extent that apathy is a fundamental reason for lack of attendance, efforts to promote professional development would need to address this.
68. It would be important in such an effort to consider, as well, what is done at all levels of legal education and in the profession at large to encourage a spirit of career-long learning. In its report the MCLE Subcommittee stated,

Lawyers must be committed to continuous learning. Specialized knowledge, ethical values, and skills are the foundation of the profession, and their maintenance and enhancement is critical to the ability of members to serve the public effectively and succeed professionally. While ongoing education is not the only factor that plays a role in the attainment and maintenance of competence, it is clearly a critical component that should be integral to the definition of what it is to be a lawyer.

Acceptance of the need for continuous professional development and education should be accompanied by a coherent approach to ensuring that ongoing learning is an essential component of the professional life of lawyers.

69. Although that report was focused on the post-call phase of a lawyer's career, the working group considers that the establishment of a culture of career-long learning must begin with law school, be reinforced through the post-law degree, pre-call phase, and continue to be encouraged thereafter.
70. To some extent, there has been a dearth of leadership in developing a coherent approach to professional development. Traditionally, much attention has been focused on the law school and pre-call phases of legal education, with post-call education developing in a piecemeal manner.
71. The Law Society's recent commitment to an enhanced post-call competence mandate suggests that the potential for its leadership in the area of professional development exists and has greater scope than was previously the case. It is the working group's view that as part of the Professional Development and Competence Department's mandate, there should be an analysis of what this report has revealed and the development of a business plan for integrating professional development more firmly into the fabric of the profession.

County and District Law Associations Interviewed

Algoma Law Association  
Brant Law Association  
Bruce Law Association  
Carleton Law Association  
Cochrane Law Association  
Dufferin Law Association  
Durham Region Law Association  
Elgin Law Association  
Essex Law Association  
Frontenac Law Association  
Grey Law Association  
Haldimand Law Association  
Halton Law Association  
Hamilton Law Association  
Hastings Law Association  
Huron Law Association  
Kenora Law Association  
Kent Law Association  
Lambton Law Association  
Lanark Law Association  
Leeds & Grenville Law Association  
Lennox & Addington Law Association

Manitoulin Law Association  
Metro Toronto Law Association  
Middlesex Law Association  
Muskoka Law Association  
Nipissing Law Association  
Northumberland Law Association  
Parry Sound Law Association  
Peel Law Association  
Perth Law Association  
Peterborough Law Association  
Prescott & Russell Law Association  
Rainy River Law Association  
Renfrew Law Association  
Simcoe Law Association  
Stormont Dundas & Glengarry Law Association  
Sudbury Law Association  
Temiskaming Law Association  
Thunder Bay Law Association  
Victoria Haliburton Law Association  
Waterloo Law Association  
Welland Law Association  
Wellington Law Association  
York Regional Law Association

APPENDIX 3

PROPOSED STATEMENT OF MINIMUM EXPECTATIONS REGARDING PROFESSIONAL DEVELOPMENT

Professional development and education contribute to lawyer competence both for those in private practice and those who work in non-private practice environments. Membership in the legal profession necessitates a conscious and career-long commitment to self-assessment of educational needs and ongoing professional development.

Fulfilment of such a commitment enhances the ability of all members to,

- maintain the standards of the profession, both in private practice or in non-private practice environments;
- meet their obligations to the public to provide effective and competent service;
- adapt to and function in a challenging and changing environment; and
- maintain and enhance their expertise and overall competence.

While members of the profession have individual responsibility for and direction over the conduct of their professional development and education, all members of the profession have a common interest in this responsibility being fulfilled.

Career-long professional development and education includes a combination of self-study approaches, such as reading and conducting both general and case-specific research, as well as participating in CLE programs. The minimum expectation articulated by the Law Society involves both aspects of professional development.

A competent lawyer,

- assesses his or her educational needs on a ongoing basis; and
- undertakes professional development, both through self-directed approaches and participation in CLE to maintain and enhance professional competence and professionalism.

Lawyers' professional development needs vary from lawyer to lawyer, with each area of law practised or work undertaken, and from year to year. The Law Society's professional development expectation is articulated as a minimum: a basic number of hours of self-study and CLE that all lawyers should undertake without difficulty, regardless of their particular work circumstances. Clearly, for many lawyers, the minimum will be significantly lower than the actual number of hours they spend in self-study and in participation in CLE activities.

A reasonable minimum expectation for self-study hours is 50 hours per year. A reasonable minimum expectation for participation in continuing legal education activities is 12 hours per year. The Law Society encourages all members to meet the minimum expectation. Beginning in 2003, all members are required to report on the Member's Annual Report how many self-study and CLE hours they have completed in the previous calendar year.

#### APPENDIX 4

#### REPORTING SECTION FOR PROFESSIONAL DEVELOPMENT ACTIVITIES

1. Self-Study

a) How many hours of your self-study involved use of,

- printed material (journals, statutes, texts, etc...) Hours \_\_\_\_\_
- internet/CD-ROM Hours \_\_\_\_\_
- CLE videotapes Hours \_\_\_\_\_
- CLE audiotapes Hours \_\_\_\_\_

b) How many of those hours related to,

- file-specific research Hours \_\_\_\_\_
- other work-related reading Hours \_\_\_\_\_

2. CLE Activities and Programs

List ALL CLE activities and programs completed for the reporting period.

| Type of Activity (see code) | Title of program, activity or course attended or taught, article written, or specifics of discussion group participation | Provider (see code) | Date | Number of Hours |
|-----------------------------|--|---------------------|------|-----------------|
|                             |  |                     |      |                 |
|                             |  |                     |      |                 |
|                             |  |                     |      |                 |
|                             |  |                     |      |                 |
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|                             |  |                     |      |                 |
|                             |  |                     |      |                 |
|                             |  |                     |      |                 |

Activity Code

- L = live CLE programs, workshops, conferences, in-house programs
- T = telephone CLE
- IO = interactive on-line CLE
- VR = video replay programs in a group setting
- DG = discussion group
- E = participation in post-LLB degree programs;
- PT = preparation for and teaching in CLE, BAC, or law school programs as adjunct faculty;
- W = writing published texts, articles, or CLE materials.

Provider Code

- In-house (eg. law firm) = I-H
- Law School provider = LS
- For-profit provider (eg. Canadian Institute, Insight) = FP
- Legal Organization (LSUC, OBA, Advocates' Society, etc.) = LO
- Other (specify) = O

Draft Explanatory Notes to Accompany the MAR

Since 1997 members have completed a section in the MAR regarding their learning activities. In March 2001 Convocation approved, as one component of a competence model, a statement of minimum expectations for continuing legal education and a requirement that members provide the Law Society with information, annually, on the continuing legal education and self-study they undertake. Through members accurately reporting continuing legal education and self-study activities the Law Society can determine the profession's commitment to career-long learning, and gather information about educational patterns and needs. This will facilitate the further integration of continuing legal education into the Society's competence mandate and assist policy development.

The new section for reporting professional development reflects the Law Society's enhanced focus on professional competence. The minimum expectation of continuing legal education is 50 hours of self-study and 12 hours of CLE activities annually. Members should, however, indicate in the appropriate section the *actual* hours they spent in self-study and CLE programs or activities in the reporting period, whether above or below the minimum expectation. Members who wish to provide additional comments related to the number of hours they spent during the reporting period may do so, but this is not required. For more information on the Statement of Minimum Expectations, which was published in the Ontario Reports on [date], see [www.lsuc.on.ca](http://www.lsuc.on.ca).

Re: CLE Component of Competence Model

Mr. Cherniak accepted the the following amendments made by Mr. Wardlaw:

That on page 6, paragraph 13, subparagraph h. - the words "including Section meetings and meetings at recognized legal organizations" be added after the words "discussion groups"

That at Appendix 4, page 40, paragraph 1 - the words "law reports" be included in the parentheses after the words "printed material"

It was moved by Mr. Cherniak, seconded by Ms. Laskin that the CLE Component of Competence Model, specifically the principles outlined in paragraphs 4 - 10, the minimum expectation and statement of minimum expectations set out in paragraph 11 and 12, 17 and 18 and Appendix 3, the eligible activities set out in paragraph 13 and the reporting mechanism set out in paragraphs 19 and 20 and Appendix 4 as amended be approved.

Carried

An amendment was moved by Ms. Go that the words "government policies" be added to paragraph a. under the heading Self-Study.

Not Put

It was moved by Mr. Bindman, seconded by Ms. Ross that the following amendments be made to Appendix 3:

- (1) In Appendix 3, first paragraph - the words "private practice and non-private practice environments" be deleted and replaced with the words "all lawyers"
- (2) Appendix 3, second paragraph, first bullet - the words "both in private practice or in non-private practice environments" be deleted

- (3) Appendix 3, sixth paragraph - insert the words “in private practice or other practice environments” after the words “...or work undertaken”. This amendment was withdrawn by the mover and seconder.

Lost

An amendment was accepted that the words “all members” in the last paragraph be set out in bold.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. MacKenzie presented the Report of the Professional Regulation Committee for approval by Convocation.

Professional Regulation Committee  
January 10, 2002

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on January 10, 2002. In attendance were:

Gavin MacKenzie (Chair)

Stephen Bindman  
Patrick Furlong  
Avvy Go  
Gary Gottlieb  
Judith Potter

Greg Mulligan

Staff: Josée Bouchard, Lesley Cameron, Margot Devlin, Caterina Galati, Terry Knott, David McKillop, Dulce Mitchell, Lisa Osak, Felecia Smith, Elliot Spears, Richard Tinsley, Jim Varro, Kathleen Waters, Jim Yakimovich.

2. This report contains policy reports on
- proposed amendments to By-Law 19 to accommodate “real time” electronic trust transfer of real estate closing funds
  - publication of the results of discipline proceedings pending appeal of the decision of the Hearing Panel or Appeal Panel
- and information reports on
- a new working group on contingent fees
  - publication of suspended members’ names in the *Ontario Lawyers Gazette*
  - review of “rulings” on professional conduct issues
  - an education program for benchers serving on the Hearing Panel
  - file and caseload management and staffing information in the complaints resolution, investigations and discipline departments.

## I. POLICY

### AMENDMENTS TO BY-LAW 19 (HANDLING OF MONEY AND OTHER PROPERTY) RESPECTING “REAL TIME” ELECTRONIC TRUST TRANSFER OF REAL ESTATE CLOSING FUNDS

#### A. NATURE OF THE ISSUE

3. The Society’s Chief Executive Officer, following information he received on recent discussions between the Lawyers Professional Indemnity Company (“LPIC”) and a Canadian chartered bank (“the Bank”), requested that the Committee review a proposal to permit the "real time" electronic transfer of real estate transaction closing proceeds from a lawyer’s trust account.
4. By-Law 19 (attached at Appendix 1) currently provides for electronic withdrawal of funds from a trust account and the electronic transfer of registration fees and land transfer tax for real estate purchase and sale transactions. The latter provisions were added to accommodate transfer of the specified amounts in the system for electronic registration of title documents, commonly known as "e-reg"<sup>1</sup>. Amendments to the By-Law are required to permit use of the Bank’s electronic transfer applications for real time transfers without incurring large programing costs (from a software perspective).
5. The Committee, in the interests of facilitating real time trust transfers for real estate transactions, is proposing amendments to By-Law 19 to permit such transfers.
6. The Committee was assisted in its review by Kathleen Waters, Vice-President, TitlePLUS (LPIC) and an Ontario Bar Association delegate to the Joint Law Society/Ontario Bar Association Committee Electronic Registration of Title Documents, Michele Strom, President of LPIC, and Caterina Galati, Society Advisory Counsel and the Society’s representative on the Joint Committee.

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<sup>1</sup>“e-reg” and the e-reg logos are trademarks of Teranet Inc.

*B. BACKGROUND*

7. E-reg has become a reality in Ontario in the past year. The e-reg system is mandatory in four counties and optional in four other counties in southern Ontario. By the spring of 2002, 55% of all real estate transactions will be done through the e-reg system.
8. In the e-reg system, lawyers use a document registration agreement to transfer closing proceeds in escrow. Once the vendor's lawyer confirms that funds have been received, he or she electronically releases documents to the purchaser's lawyer for registration. The e-reg system permits registration without personal attendance at the Registry Office, where, in a "paper" system, funds and documents would normally be exchanged.
9. Assumptions were made when e-reg was introduced that financial institutions would devise solutions for the remote "real time" transfer of closing proceeds, as part of the workflow of e-reg. While funds can be transferred electronically, current systems do not undertake the settlement of the funds between financial institutions until night.
10. Notwithstanding past discussions, no solution has been forthcoming from the lending community at large to allow for real time transfer. As a result,
  - to deliver closing proceeds, lawyers must still meet physically, losing much of the convenience of e-reg, or send closing proceeds in escrow by courier, incurring costs for clients; the latter solution is often not an option because of the distances involved between some law firms
  - this type of problem is likely to increase as e-reg expands throughout Ontario, and lawyers undertake conveyance of properties more distant from their offices
  - without real time transfer, the law firm receiving the funds is placed in a difficult situation if the funds must be immediately transferred to another law firm for a purchase transaction or transactions, in "stacked" deals.<sup>2</sup>
11. In response to concerns of real estate lawyers about the lack of a real time funds transfer facility, LPIC took the initiative to discuss with the Bank any solutions it might have to address the issue, and offered its assistance in implementing a solution.

*C. THE PROPOSAL*

12. In determining a short-term solution<sup>3</sup>, the Bank focused on the need for speedy movement of funds over a distance and not to necessarily replace escrow closings or meetings at the Registry Office (or elsewhere) to physically exchange funds, if desired.

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<sup>2</sup>The joint committee estimates that 30% of residential real estate transactions are part of stacked deals, where closing funds must pass through several transactions before coming into the hands of the last vendor's lawyer.

<sup>3</sup> The Bank is interested in integrating more closely with Teranet's e-reg software, such that the occurrence of the actual registration within the e-reg software could send an electronic file to the Bank. That electronic file would initiate the transfer event automatically. The Bank and Teranet representatives have been given the necessary information to make contact.

13. The Bank has software that would facilitate the transfer in real time, assuming that both the sending and receiving accounts are accounts at the Bank.<sup>4</sup> The firm disbursing the money would see, on line, that the money had left its account and the firm receiving the money would see that it had been deposited.

Steps in the Transfer of Funds Process

14. In order to effect the transfer, the sending firm would require details on the receiving firm's bank account, effectively, the account number. The following steps would occur in the transaction:
  - a. Each participating law firm would open a trust account with the Bank and establish electronic access;
  - b. LPIC and the Bank would make arrangements regarding any LPIC services in this regard, to compensate LPIC for facilitating use of the Bank's accounts by real estate lawyers, if any work is required by LPIC. Each law firm will have its own corporate identification, with its employees and/or principals as users. LPIC would require the Bank's assurance that the transfer of "value" is occurring real time, so that the movement of the funds between the various accounts would have the same status as a certified cheque;
  - c. The purchaser's law firm ("PLF") would receive funds from the purchaser and/or the new mortgage lender in a form that the Bank branch receiving the funds would be prepared (in the paper world) to immediately release for certification. The assumption is that, in the vast majority of cases, the funds would take the form of certified cheques or bank drafts from recognized Canadian financial institutions;
  - d. The PLF attends at the Bank branch and deposits the funds into the account with electronic capabilities. Branch staff make the decision that the funds can be deposited into the account without a "hold", in accordance with normal Bank procedures and standards;
  - e. PLF now (or preferably earlier) obtains account details for the vendor's law firm ("VLF");
  - f. PLF logs onto software, confirms that the money is in the account and transfers it to VLF. In the course of making the transfer, the system will ask for additional confirmations (i.e. Yes/No answers) when (i) the name of the recipient appears on the screen, and (ii) the amount to be transferred has been inputted. The system will return an error message if there are insufficient "cleared" funds to complete the transaction;
  - g. When the transaction is completed, the PLF will see a message on the screen confirming the transaction. From a technology perspective, the PLF can print that screen for its records, or make a menu choice and print the "Transfer Summary Report". Any firm on the system can print its own account history for up to 45 days.
  - h. VLF logs onto software, confirms receipt of funds, and releases document for registration by PLF.

Issues Raised by Real Time Transfer

15. The Committee considered a number of issues that arise from the use of real time trust transfers. The following are based on information provided by Ms. Waters after discussions between LPIC and the Bank.

*"Are the funds "good"?"*
16. The assurance that the funds are in fact "good" to transfer would be no different from the current practice regarding certified cheques, assuming the necessary assurances can be obtained from the Bank. If the funds deposited to the lawyer's trust account from the client or mortgagee are certified or bank drafts (in other words, LPIC would impose a requirement that the incoming funds be in a form that are considered "cleared" by the Bank), the Bank would allow the lawyer to immediately re-draw those funds through an electronic transfer.

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<sup>4</sup>Financial institutions have not yet established systems to permit the real time electronic transfer of funds between accounts at different institutions.

At the end of the process, the funds deposited in the selling firm's bank account must also be treated as the equivalent of certified, so that they can immediately be paid out to the client, if desired.

17. The Committee noted that an identifiable, although statistically small, risk is that the funds could be in a law firm's account when the firm becomes bankrupt or insolvent. This could result in a different treatment of the funds than if the law firm was holding a certified cheque to be passed on, at the equivalent moment. However, it appears that this risk can be minimized if the law firm is only allowed to use the account for client funds for real estate transactions where LPIC needs to make the relevant transfer.

*Are there costs associated with an additional bank account?*

18. Additional costs may flow to the law firm to maintain another trust account. However, the Committee noted that law firms incur significant costs for certifying cheques for real estate transactions. These costs are not generally charged to clients as disbursements. If the cost of electronic transfers is kept below that for certifying cheques per deal, the law firm may "net out", or even save costs, by using this method.
19. If the law firm used the Bank for its ERBA<sup>5</sup>, no additional charges beyond those already created by the e-reg system would be incurred. The fees for this service would be automatically debited from a general account (which need not be at the Bank).

*How would mortgages be paid out?*

20. The Committee acknowledged that the proposed scheme raises concerns about the payout of mortgages.
21. In the usual circumstance a purchaser's lawyer provides a cheque payable directly to the holder of the first mortgage which is paid out, as assurance that those funds will actually be used to discharge the mortgage. Under the proposal, it is likely that all the closing proceeds would be paid out to the vendor's lawyer with a direction to pay the funds to the mortgagee. The vendor's lawyer would then be responsible to re-direct the funds to the mortgagee.
22. This is a significant change in practice (although on occasion it can occur, where the purchaser's lawyer wires or deposits funds directly to the vendor's lawyer's trust account). The Committee noted that this practice would not be consistent with the Law Society's 1992 practice guidelines on discharges of mortgages.
23. The Committee determined that in light of these guidelines and ongoing discussions at the Joint Law Society/Ontario Bar Association Committee on Electronic Registration of Title Documents on how mortgage discharge funds should be dealt with, this issue should be revisited at a later date when recommendations on procedures for payout of mortgages are formulated by the Joint Committee and referred to the Society.
24. The Committee's view was that notwithstanding that lawyers may choose to follow the procedures in the guidelines for payout of mortgages until the issue is clarified by the Law Society, the proposed funds transfer scheme is useful as it will facilitate the real time electronic transfer of the cash portion of the closing proceeds.

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<sup>5</sup>Electronic registration bank account, used for the transfer of registration fees and land transfer tax in the e-reg system.

*Are there security issues concerning disclosure of VLF's bank account number?*

25. The VLF would be required to provide the PLF with its bank account number in order for the transfer to occur. While this direct disclosure may be of concern, the Committee noted that such account numbers appears daily on law firm cheques widely circulated in the legal community. The Committee felt that it may in fact be more secure to move the money electronically, since the firm's passwords will remain secret, while paper cheques disclose not only the account number but the authorizing signatures.
26. The Committee was advised by Michele Strom, President of LPIC, that the Bank's security controls over access to the accounts is sufficient for the purposes of the real time transfer scheme, and that LPIC, from an insurance risk perspective, has no concerns.

*D. THE NEED FOR BY-LAW AMENDMENTS*

27. The Committee was advised that the Bank's software for effecting the transfers described above would not meet the Society's current requirements for electronic trust transfers found in section 7 of By-law 19. The relevant provisions are as follows:

When money may be withdrawn

7 (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 member 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 member 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 member.

28. The Bank would like to avoid major software programming costs, but the current requirements may dictate otherwise. The following chart identifies the issues that arise under the current scheme:

| Section of By-Law 19   | Issue  |
|------------------------|--|
| Paragraph 7(2)1.       | Under the By-law, two people with different passwords are currently required to enter separate information into the software. The Bank software only involves one person and one password. |
| Subparagraph 7(2)3.ii. | The confirmation produced by the Bank software only produces the account number and name. However, the system only operates within the one financial institution.                          |
| Subparagraph 7(2)3.v.  | This is not tracked by the Bank's system.  |
| Subparagraph 7(2)3.vi. | Only the date is tracked by the Bank's system.   |

29. The Bank would also request confirmation that the following be considered as compliance with the By-law as currently drafted:

| Section of By-Law 19   | By-Law Requirement   | Need for Approval  |
|------------------------|--|--|
| Paragraph 7(2)2.       | That the system produce confirmation within a specified time period              | Immediately after the transaction is completed a confirmation can be printed by the user, but nothing is produced automatically by the system. |
| Subparagraph 7(2)3.ii. | That the confirmation include the name of the account holder receiving the funds | The name produced by the system may be a shortened version of the name (maximum eight letters).  |

*E. THE COMMITTEE'S PROPOSAL*

30. The Committee concluded that permitting the real time electronic transfer of real estate closing funds would save time and money for both clients and lawyers. Mileage accounts and courier charges for transmission of certified cheques would be eliminated or reduced considerably and transactions will close in less time, permitting clients to take possession of properties sooner.
31. In a broader sense, establishing a scheme for the real time transfer of closing funds through the Society's by-laws will enhance the efficacy of the e-reg system while ensuring that necessary protections are in place.
32. The Committee also determined that although this facility currently is only offered through one financial institution, it is possible that other financial institutions may also provide the same capability as e-reg is implemented province-wide. The Bank's initiative may prompt other financial institutions to accelerate provision of these types of services to law firms.
33. The intention is that this facility with the Bank be provided as a pilot project for at least one year, after which an assessment can be made of its success and issues that arise in use of the facility. Accordingly, the Committee endorses the Bank's proposal.
34. After receiving input from the Society's counsel, Elliot Spears, the Committee proposes that By-Law 19 be amended by adding a new section 7.1 dealing with real time transfer of funds in real estate transactions. This section will immediately follow the current general electronic trust transfer provisions and will be specific to real estate transactions.
35. The proposed amendments to the By-Law appear in the motion in the next section of this report. In brief, the amendments vary, as required, the general electronic trust transfer provisions in section 7 to accommodate the Bank's proposal and the issues identified in paragraphs 28 and 29 above.

*F. DECISION FOR CONVOCAATION*

36. Convocation is asked to make amendments to By-Law 19 to establish the real time electronic transfer of real estate closing funds through lawyers' trust accounts.
37. A motion to effect the amendments appears below.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 19

[HANDLING OF MONEY AND OTHER PROPERTY]

MOTION TO BE MOVED AT THE MEETING OF CONVOCAATION ON JANUARY 24, 2002

MOVED BY

SECONDED BY

THAT By-Law 19 [Handling of Money and other Property] made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, May 28, 1999 and April 26, 2001 be further amended as follows:

1. The By-Law is amended by adding the following:

**Definitions**

7.1 (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 7, 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 member 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 member 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 member is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,
  - i. the member, or

- ii. in exceptional circumstances, a person who is not the member 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 member 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 member 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 member, 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 member 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 19C [Electronic Trust Transfer Requisition: Closing Funds].

Application of subss 8.1 (2) and (4) to (7)

(7) Subsections 8.1 (2), (4), (5), (6) and (7) apply, with necessary modifications, with respect to the doing of any act under this section.

Form 19C

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.)*

PUBLICATION OF THE RESULTS OF DISCIPLINE PROCEEDINGS PENDING APPEAL OF THE  
DECISION OF THE HEARING PANEL OR APPEAL PANEL

A. THE ISSUE

38. The Committee reviewed the issue of whether decisions of the Hearing Panel upon which an appeal has been filed should be published in the *Ontario Lawyers Gazette* ("OLG"). Currently, where an appeal has been filed, the results of a hearing are not published until the Appeal Panel has dealt with the matter.

*B. BACKGROUND*

39. Prior to February 1999, publication of the results of discipline proceedings did not occur until Convocation had completed its review of the findings of the Discipline Committee. In the new regulatory regime following amendments to the *Law Society Act* in February 1999, a member may appeal a decision of the Hearing Panel to the Appeal Panel, and may appeal a decision of the Appeal Panel to the Divisional Court. Generally, all hearings are public. If no appeal is filed, and no non-publication order is made, the results of the proceedings before the Hearing Panel are published in the OLG.
40. The Society's Senior Counsel - Discipline determined that if a member files an appeal, the result of the proceeding should not be published until the appeal had been decided.
41. Communications staff, in considering that policy, raised an issue about the transparency of the process. For example, the disposition of a matter at a hearing may be published outside the Society by a reporter who attends the hearing. If no report of that matter is made by the Society, the suggestion is that questions may be raised about the integrity of the public nature of the Society's hearing process.
42. The Committee determined that a review of the policy to address the above issue was required.

*C. THE COMMITTEE'S VIEWS*

43. Divergent views on the issue were expressed at Committee, including the following:
  - If a member successfully appeals the finding of the Hearing Panel, and the matter has been published, can any damage to the member's reputation resulting from publication be undone?
  - The appeal process can be long and arduous; a matter can take up to a year to come before the Appeal Panel, delaying information about the proceeding for that length of time.
  - Fairness may dictate that the matter not be published until the appeal has been determined.
  - Because the Society's hearing process is public, notwithstanding that an appeal has been filed, publication supports the public nature of the hearing process.
  - If information is disclosed after the Hearing Panel decision, and the member appeals, publication must take place on two separate occasions.
44. After debating the pros and cons, the majority of the Committee concluded that the current policy should be maintained, that is, the Society should not publish the results of discipline hearings until an appeal to the Appeal Panel has been decided. They felt that this was the fairest and simplest method of informing the public of the results of disciplinary proceedings.
45. The Committee, however, agreed that two other options should be reported for Convocation's consideration:
  - a. A member's name should be published in the OLG following determination of the matter by the Hearing Panel, notwithstanding any appeal filed by the member. The publication of the results of the proceeding in such cases should include notice that the member has appealed the decision of the Hearing Panel. The Committee members who supported this option felt that this method of publication was consistent with the public nature of the hearing process and would avoid any criticism that the Society was being less than open about the process;
  - b. In circumstances where the member appeals the decision of the Hearing Panel, the member may apply before the Appeal Panel for an order that the Society not publish the finding of the Hearing Panel. This would permit the member, in exceptional circumstances, to avoid publicity arising from the determination of a matter before the Hearing Panel.

46. The Committee determined that any policy adopted should also apply to an appeal from a decision of the Appeal Panel to the Divisional Court.

*D. DECISION FOR CONVOCATION*

47. Convocation is asked to
- a. approve the following policy:  
That where a member appeals a decision of the Hearing Panel or a decision of the Appeal Panel, publication of the results of proceeding be made in the *Ontario Lawyers Gazette* only after disposition of the matter by the Appeal Panel or the Divisional Court, as applicable,
  - or
  - b. adopt such other policy, including, if appropriate, the options outlined in paragraph 45 a. and b. above, on publication of the results of discipline proceedings before the Hearing Panel as it deems appropriate.

II. INFORMATION

NEW WORKING GROUP ON CONTINGENT FEES

48. Following discussions with the Treasurer, the Committee's chair requested that the Committee approve the formation of a new working group to resume discussion on permitting contingent fee arrangements for Ontario lawyers.
49. The issue was considered most recently at May 2001 Convocation, when the Committee reported on a proposal for a new contingent fee rule, based on Convocation's longstanding position and two recent Ontario cases permitting such arrangements.
50. In May, Convocation decided to await an appeal of one of the cases before deciding whether the rule should be amended. The decision of the Court of Appeal is pending, but in the interests of a proactive approach to the issue, the Committee through its working group is seeking to develop a proposal for the regulation of contingent fees so that the Law Society is prepared to engage the Ontario government in discussions about reform after the Court of Appeal decision is released.
51. The working group will have the benefit of the reports of two special committees who examined the issue in detail in the late 1980s and early 1990s, and more recently, the June 2000 report of the Joint Committee on Contingency Fees (Law Society, Advocates Society and Ontario Bar Association), who proposed a regulatory scheme for contingent fee arrangements.

PUBLICATION OF SUSPENDED MEMBERS' NAMES  
IN THE *ONTARIO LAWYERS GAZETTE* ("OLG")

52. As a result of information received from Greg Mulligan of the OLG's Advisory Board and Terry Knott, Director, Membership Services, the Committee reviewed the current publication protocol for the names of suspended members in the OLG.
53. Currently, publication of the names of members who are suspended for non-payment of the annual fee or the LPIC levy and failure to file the annual filing (Members Annual Report, or "MAR") appears in the OLG following the suspension. MAR suspensions occur on a yearly basis, meaning that a member's name will appear as a new suspension for every year that the member fails to file the MAR.

54. At the date of the suspension, the Courts are notified as required under s. 27.1 of the *Law Society Act*. Publication of the names of suspended members in the OLG is not a requirement, but is done primarily for the information of the profession.
55. A number of concerns were raised about the current practice. The Committee focused on the following:
- a. The OLG is sent to members of the profession only. As the mandate of the Law Society is to govern in the public interest, it may be more effective to make the list of suspended members or members in good standing more accessible to the public, i.e. posted on the Law Society's website.
  - b. As noted above, as a suspension order for failure to file the MAR is specific to a year, a new suspension order is issued for each year that the member fails to file. Consequently, the OLG list repeatedly includes a core group of 1,280 members, for each of the three years since amendments to the *Law Society Act* came into effect. Some members of the group cannot be located and may in fact be deceased. Because the Law Society has no information about the whereabouts of these members, suspension orders continue to be made and the names continue to be published. Some of the members are in excess of 75 years of age.
  - c. The suspension list can take up to six pages in the issue of the OLG in which it is published. This significantly restricts space for other information and articles of interest to the profession.
56. The Committee determined that to alleviate the above concerns while still maintaining the integrity of the information for the public and the profession, the following practice be implemented:
- the names of members suspended in the current year only, including first time MAR suspensions, will be published in the OLG (i.e. notwithstanding that MAR suspensions occur on an annual basis, only the first MAR suspension will be published in the OLG)
  - the suspension list in the OLG will be organized alphabetically by provincial regions, making identification of lawyers in a particular region who have been suspended easier
  - the OLG will refer readers to the Society's web site for a list of all members of the Society in good standing
  - the web site will refer readers to a telephone number in membership services for information on any lawyer's name not appearing in the list of lawyers in good standing.

#### REVIEW OF "RULINGS" ON PROFESSIONAL CONDUCT ISSUES

57. The Committee reviewed an issue referred from Advisory Services on whether the Society should institute a procedure for making "rulings" on professional conduct issues. Advisory Services is increasingly receiving requests from lawyers for written rulings on ethical issues. The Society for a number of years has not provided rulings or formalized advice, as a result of revised committee structures and mandates in 1996.
58. Rulings provided by the former Professional Conduct Committee, pursuant to its mandate, appeared in reports to Convocation from the Committee, under the subtitle "request for advice" and were subject to Convocation's approval. After Convocation's decision on the issue, a letter or other communication was sent to the member who raised the issue, advising of the outcome.
59. The Committee decided that a process for rulings should not be implemented. The Committee felt that it was more desirable to have substantive, detailed *Rules of Professional Conduct* unencumbered by a set of rulings. Concern was expressed that "rulings" may add an unnecessary layer to the guidance now provided, and complicate the application and interpretation of the Rules.

60. Further, the Committee noted that Advisory Services provides informed, timely advice to lawyers on ethical and practice issues. A formalized rulings process, by its nature, could not be designed to provide the quick response to ethical inquiries that many members require.
61. Lastly, the mandate of the Committee includes responsibility for the Rules. When a significant issue relating to interpretation or application of a rule arises as a result of a lawyer's inquiry, the Committee is available to consider the issue and provide guidance to Advisory Services or the profession, as required. This may, in the appropriate case, involve Rule amendments.

#### EDUCATION PROGRAM FOR BENCHERS SERVING ON THE HEARING PANEL

62. The Committee's chair and the chair of the Hearing Panel, Larry Banack, in discussions with staff in the Equity Initiatives, Discipline and Policy Secretariat Departments, have begun planning for a benchers education program on adjudicative roles benchers fulfil on the Hearing Panel.
63. Attached at Appendix 3 is material prepared by Mr. Banack and Josée Bouchard, Education and Training Co-ordinator in the Equity Initiatives Department, which includes an overview of the proposed program and suggested educational topics. Also attached is a survey that has been sent to benchers, to be completed and returned to the Society.
64. Further information about the proposed agenda for the program will be provided as the planning progresses. The projected date for the program is in the late spring of 2002.

#### FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS

65. The Secretary, Richard Tinsley, reported to the Committee on caseload management in the Complaints Resolution, Investigations and Discipline Departments. The reports appear at Appendix 4. These reports are prepared monthly for review by the Committee as part of its monitoring function respecting file management. The Committee receives general information and statistics on file management and caseloads in the departments noted above.<sup>6</sup> The reports in this report cover the period to the end of December 2001.
66. The chair also informed the Committee of the following staff changes:
  - a. Dulce Mitchell joined the Law Society's Legal Affairs office on January 7, 2002. In the position of Counsel, Legal Affairs, Ms. Mitchell will be assisting Senior Counsel, Legal Affairs in providing to Society staff and Benchers legal advice on a variety of issues and providing legislative drafting services.
  - b. Richard Tinsley, the Society's Secretary, has resigned, effective January 31, 2002. For over twenty years, Mr. Tinsley has served in various capacities at the Society, for many of those years and most notably as Secretary. The chair expressed his and the Committee's gratitude for Mr. Tinsley's extraordinary contribution to the Society and the governance of the legal profession.

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<sup>6</sup>The chair, as a member of the Proceedings Authorization Committee, is not a member of the Hearing Panel and accordingly does not and cannot have adjudicative responsibilities. Information received by the Committee, as reflected in the reports appended to this report, does not itemize specific cases.

APPENDIX 1

BY-LAW 19

Made: January 28, 1999

Amended: February 19, 1999  
May 28, 1999  
April 26, 2001

HANDLING OF MONEY AND OTHER PROPERTY

Interpretation

1. (1) In this By-Law,

"client" means a person or group of persons from whom or on whose behalf a member receives money or other property;

"firm of members" means a partnership of members and all members employed by the partnership;

"member" includes a firm of members;

"money" includes current coin, government or bank notes, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

(2) For the purposes of subsections 4 (1), (2) and (3) and section 8, cash, cheques negotiable by the member, cheques drawn by the member on the member's trust account and credit card sales slips in the possession and control of the member shall be deemed from the time the member 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.

Money received in trust for client

2. (1) Subject to section 3, every member 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 member, or in the name of the firm of members of which the member is a partner or by which the member is employed, and designated as a trust account.

Interpretation

(2) For the purposes of subsection (1), a member receives money in trust for a client if the member 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 member on account of fees for services not yet rendered; or
- (e) money that is advanced to the member 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 member 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 4.
2. Money paid to a member that belongs in part to a client and in part to the member where it is not practical to split the payment of the money.

Withdrawal of money from trust account

(4) A member 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 member may keep one or more trust accounts.

Money not to be paid into trust account

3. (1) A member 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 member in writing not to pay the money into a trust account;
  - (b) the member 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 member 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 member shall not pay into a trust account the following money:
1. Money that belongs entirely to the member or to another member of the firm of members of which the member is a partner or by which the member is employed, including an amount received as a general retainer for which the member is not required either to account or to provide services;
  2. Money that is received by the member 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 member on behalf of a client.

Record keeping requirements

(3) A member 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 By-Law 18.

Withdrawal of money from trust account

4. (1) A member 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 member 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 member 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 By-Law 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 member 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 Secretary or, in the absence of the Secretary and all persons authorized to exercise the powers and perform the duties of the Secretary under this By-Law, the Chief Executive Officer.

#### Limit on amount withdrawn from trust account

(3) A member 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

5. A member shall withdraw money from a trust account under paragraph 2 or 3 of subsection 4 (1) only,
- (a) by a cheque drawn in favour of the member;
  - (b) by a transfer to a bank account that is kept in the name of the member and is not a trust account; or
  - (c) by electronic transfer.

#### Withdrawal by cheque

6. 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 member 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 member in all the trust accounts on which signing authority has been delegated to the person.

#### Withdrawal by electronic transfer

7. (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 member 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 member 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 member.

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 member, or
- ii. in exceptional circumstances, a person who is not a member 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 member 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 member who practises law without another member as a partner and without another member or person as an employee, if the member 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 member, 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 member 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 member, the member 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 member, 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 member 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 19A.

Requirement to maintain sufficient balance in trust account

8. Despite any other provision in this By-Law, a member 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

Interpretation: "Teranet"

8.1. (1) In sections 8.2 and 8.3, "Teranet" means Teranet Land Information Services, Inc., a corporation incorporated under the Business Corporations Act, acting as agent for the Ministry of Consumer and Commercial Relations.

Interpretation: time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act under sections 8.2 and 8.3 expires on a holiday, the act may be done on the next day that is not a holiday.

Interpretation: counting days

(3) In subsection 8.3 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 8.3 (1) for more than five days.

Interpretation: "holiday"

- (4) In this section, "holiday" means,
- (a) any Saturday or Sunday;
  - (b) New Year's Day;
  - (c) Good Friday;
  - (d) Easter Monday;
  - (e) Victoria Day;
  - (f) Canada Day;
  - (g) Civic Holiday;

- (h) Labour Day;
- (i) Thanksgiving Day;
- (j) Remembrance Day;
- (k) Christmas Day;
- (l) Boxing Day; and
- (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Same

(5) Where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday.

Same

(6) Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays.

Same

(7) Where Christmas Day falls on a Friday, the following Monday is a holiday.

Authorizing Teranet to withdraw money from trust account

8.2 (1) Subject to subsection (2), a member may authorize Teranet to withdraw from a trust account described in subsection 8.3 (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 member shall not authorize Teranet to withdraw from a trust account described in subsection 8.3 (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 member 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 member not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the member.

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 member.

#### Written record of authorization

(4) A member who authorizes Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, in any, related to a client's real estate transaction shall record the authorization in writing.

#### Same

(5) The written record of the authorization required under subsection (4) shall be in Form 19B and shall be completed by the member before he or she authorizes Teranet to withdraw from a trust account described in subsection 8.3 (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

(6) 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 member, the member shall,

- (a) produce a paper copy of the confirmation, if the confirmation is sent to the member 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 member;
- (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

8.3 (1) The trust account from which Teranet may be authorized by a member 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 member or in the name of the firm of members of which the member is a partner or by which the member is employed, and designated as a trust account; and
- (b) an account into which a member 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 member may keep one or more trust accounts of the kind described in subsection (1).

#### Payment of money into special trust account

(3) A member 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 member 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 member 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 member shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

Application of ss. 4, 6, 7 and 8

8.4 Sections 4, 6, 7 and 8 apply, with necessary modifications, to a trust account described in subsection 8.3 (1).

Commencement

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

Form 19A

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.)*

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Form 19B

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.)*

24th January, 2002

Person authorizing withdrawal: *(Print the person's name.)*

*(Date)*

*(Signature of person authorizing withdrawal)*

APPENDIX 2

PRACTICE STANDARDS FOR MORTGAGE DISCHARGES  
(FROM THE SOCIETY'S "THE ADVISOR - SUPPLEMENT, SEPTEMBER 1992")

APPENDIX 3

INFORMATION ON BENCHER EDUCATION PROGRAM

December 17, 2001

*To: Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones  
Professional Regulation Committee*

*From: Larry Banack, Chair of The Hearing Panel*

*Re.: Education Program for The Hearing Panel*

As you may know, in response to a discussion document prepared by Josée Bouchard of the Equity Initiatives Department and submitted to both Committees for discussion earlier this year, a working group has been set up to develop an appropriate educational program for The Hearing Panel. Members of the working group include Gavin MacKenzie, Janet Minor, Avvy Go and me with staff support provided by Jim Varro, Charles Smith and Josée Bouchard.

There are several reasons why this educational is important at this time. Most all administrative tribunals and judges receive education and training to prepare for their roles as triers of fact and in order to be contemporary with current legal developments in case law. Such programs are also integral to developing and ensuring consistency in the approaches taken by tribunals and the bench. This is something we have not done at the Law Society recently and, while we have several members experienced in these matters, we probably have an equal number who have little or no experience on tribunals. In addition, there are some interesting new developments in case law which deal with procedural and substantive issues which should be discussed by all benchers and considered for incorporation into our processes.

Considering these issues, the working group met on November 30 and directed staff to develop a generic design of the educational program and a survey for benchers to complete. These are attached. The design will be developed further in the near future and, in addition to the individuals noted above, support from Discipline Counsel, Legal Counsel and Bar Admission Office Professional Responsibility section will be added as we complete the final design.

24th January, 2002

I am hoping that the final design will be completed by early spring and the educational program implemented shortly thereafter. To achieve this, I am prepared to bring this matter to Convocation as information in January, 2002.

Your comments on the design and the survey are most welcome. Please fax your survey response to Charles Smith, Equity Advisor, at (416) 947-3983.

Larry Banack

cc.: Treasurer Vern Krishna  
Malcolm Heins, C.E.O.

#### MEMORANDUM

Date: December 13, 2001

Re: Education Program for Hearing Panel Members

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The following is a draft outline of an education program for Hearing Panel members of the Law Society of Upper Canada.

The goal of the education program is to meet the needs of both lay and elected benchers on the Hearing Panel. To facilitate the development of the program, a needs assessment of all Hearing Panel members is being conducted to identify the elements relevant to the design of the program. Consequently, the draft outline is a work in progress and the first step in the design of the education program. For example, the formulation of learning objectives, the content and format, the sequencing of instruction and the choice of faculty will take shape as the planning process evolves.

The Conduct of a Hearing:  
Practical Guidelines and Recent Legal Developments

*Description of the Program*

The education program is designed for all Hearing Panel members, which includes elected benchers and appointed benchers. Although benchers have diverse work experience and educational background, the high level of experience and expertise, legal or otherwise, and of professionalism of Hearing Panel members suggests the design and delivery of a challenging education program. Consequently, the program will address contemporary issues of law and look at strategies for improving panel effectiveness and designing and implementing process changes. The design will provide a forum for less experienced panel members to gain knowledge from more experienced colleagues. It will also provide an opportunity for more experienced members to be informed about contemporary issues in case law and administrative tribunals.

The course will address issues relevant to the effective conduct of hearings, including rules of evidence and their application, managing witnesses and counsel, assessing credibility and decision writing processes and skills. It will also build on the knowledge and skills of all participants enabling common understanding of critical issues and establishment of common approaches to these issues.

The course will include not only presentations from experts but also the use of interactive exercises.

*Educational Objectives*

The educational objectives are to ensure that all Hearing Panel members:

- have the knowledge and skills to adjudicate effectively;
- employ fairness in proceedings and consistency in decision making; and
- acquire the knowledge and the skills to appropriately apply the *Rules of Professional Conduct* and contemporary case law developments, eg. equality guarantees.

*Proposed Agenda*

*Day 1:*

4:45 - 5:00 p.m. *Welcome and Overview*

5:00 - 7:00 p.m. *Visions of the Adjudication Process:*

Panel discussion on the adjudication process from diverse perspectives. The interactive panel discussion will include the perspective of experienced lawyers and non-lawyers, such as a representative of the judiciary, a Hearing Panel member, a lawyer with considerable practical experience as counsel before the Hearing Panel and experts on witnesses' behavioural patterns before administrative proceedings.

7:00 - 9:00 p.m. *Cocktail and Dinner*

*Day 2:*

9:00 - 9:30 a.m.: *Introduction to the Course and Description of Hearing Simulation Exercise*

9:30 - 12:30 a.m.: *Hearing Simulation Exercise*

The Hearing Simulation Exercise will be based on a case scenario relevant to the work of Law Society's Hearing Panel members. The case scenario will allow participants to actively participate in the conduct a hearing of a complaint of professional misconduct or incompetence of a member. The exercise will include a consideration of multiple issues, eg. fraud, breach of confidentiality, equality and ethics.

The exercise will assist in learning how to conduct a hearing, including the following aspects of proceedings:

- opening statements made by the Hearing Panel member
- administering oath
- managing witnesses and counsel
- admissibility of evidence
- weighing evidence
- assessing credibility of witnesses
- the impact of imbalances of power between the parties

- relevance of issues of culture, race, language, marital status, economic background and gender in proceedings and decision writing skills
- orders and costs.

Facilitators: The exercise will be facilitated by one or more practising lawyers with expertise in litigation before administrative tribunals, preferably before disciplinary tribunals. This will allow for an in depth analysis of the issues raised during a hearing.

*1:30 - 2:30 p.m. Group Discussion Based on the Hearing Simulation Exercise*

The participants will rely on the morning's Hearing Simulation Exercise to identify how to effectively conduct a hearing and produce a decision. The group discussion will be facilitated by the practising lawyers involved in the morning exercise.

*2:45 - 4:00 p.m. Workshops*

The participants will select one workshop. The workshops will be chaired by a benchler or an expert.

Workshop 1: Expert Evidence

The workshop will provide an overview of the rules regarding the admissibility of expert evidence. The workshop will also discuss the admissibility of social science facts through expert evidence and will discuss to what extent judicial notice should be taken of social framework evidence.

Workshop 2: Fact Finding and Credibility: the Role of Hearing Panel Members

The workshop will assist members in meeting the challenge of fact-finding and determination of credibility between the parties. The workshop will also consider how unfounded myths and stereotypes should be discounted when assessing credibility. It will include a review of jurisprudence relating to credibility and the admissibility and relevance of similar fact evidence.

Workshop 3: The Experience of Inequality and Decision Making

The workshop will provide a review of recent legal developments on harassment and discrimination, including legislative and jurisprudential analysis. The discussion will provide an appreciation of the context and dynamics of harassment and discrimination, and the relevance of social identity and context to legal analysis.

Workshop 4: Admissibility of Confidential Records

The production of confidential records held by third parties has become a controversial legal and political issue in law. The question of ordering the production of such records raises concerns, particularly in the context of records on allegations of abuse, psychiatric records, medical or therapeutic records, private diaries and social worker activity logs. The workshop will provide an interpretation of the rule regarding third party disclosure of confidential records and recent legal development and the application of the criminal law standard to Hearing Panel proceedings.

4:00 - 5:00 p.m. Group Discussion: in Camera: Moving Forward

Facilitated by the Chair of the Hearing Panel.

Group discussion on future direction of Hearing Panel.

*Materials*

The resource materials provided for the training session will include relevant doctrinal and jurisprudential sources as well as rules of practice and procedures.

*EDUCATION PROGRAM FOR HEARING PANEL MEMBERS  
SURVEY*

The Law Society is in the process of designing an education program for Hearing Panel members on the conduct of a hearing and how to adjudicate effectively. This survey will assist in identifying the elements necessary to the design of the program. We appreciate your contribution to this survey.

1. How many years have you been involved as a decision-maker on Law Society of Upper Canada's disciplinary cases?

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2. In your capacity as decision-maker on Law Society's disciplinary cases, in how many proceedings have you been involved?

- 1 - 10
- 11 - 30
- 31 - 50
- More than 50

3. a. Have you had experience as an adjudicator, other than in your capacity as a decision-maker on Law Society's disciplinary cases?

- Yes
- No  (if no, please skip to question 4.)

b. If yes, how many years of experience do you have? \_\_\_\_\_

c. In what areas of law do you have experience as an adjudicator?

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4. a. Have you had experience as a practising lawyer before administrative tribunals?

- Yes
- No  (if no, please skip to question 5.)

b. If yes, how many years of experience do you have? \_\_\_\_\_

c. In what areas of law do you have experience as a practising lawyer before administrative tribunals?

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5. Which of the following should be addressed in an education program? Please indicate the importance of the following issues.

|   | Not<br>important |   |   |   |   | Very<br>Important |
|---|------------------|---|---|---|---|-------------------|
| Jurisdiction of hearing panel               | 1                | 2 | 3 | 4 | 5 |                   |
| Functions of administrative tribunals       | 1                | 2 | 3 | 4 | 5 |                   |
| Application of natural justice              | 1                | 2 | 3 | 4 | 5 |                   |
| Overview of rules of professional conduct   | 1                | 2 | 3 | 4 | 5 |                   |
| Administering an oath                       | 1                | 2 | 3 | 4 | 5 |                   |
| Preliminary motion rulings                  | 1                | 2 | 3 | 4 | 5 |                   |
| Review of the rules of evidence             | 1                | 2 | 3 | 4 | 5 |                   |
| Application of the rules of evidence        | 1                | 2 | 3 | 4 | 5 |                   |
| Receiving and recording exhibits            | 1                | 2 | 3 | 4 | 5 |                   |
| Managing witnesses and counsel              | 1                | 2 | 3 | 4 | 5 |                   |
| Assessing credibility                       | 1                | 2 | 3 | 4 | 5 |                   |
| Decision writing skills                     | 1                | 2 | 3 | 4 | 5 |                   |
| Expert evidence                             | 1                | 2 | 3 | 4 | 5 |                   |
| Improving panel effectiveness               | 1                | 2 | 3 | 4 | 5 |                   |
| Designing and implementing process change 1 | 2                | 3 | 4 | 5 |   |                   |

Other (specify): \_\_\_\_\_

6. What material should be provided in the training binder:

- |                                  |                          |  |                          |
|----------------------------------|--------------------------|--|--------------------------|
| Rules of Practice and Procedures | <input type="checkbox"/> | Relevant legislation                   | <input type="checkbox"/> |
| Relevant forms                   | <input type="checkbox"/> | Sample decisions                       | <input type="checkbox"/> |
| Sample oath                      | <input type="checkbox"/> | Relevant case law                      | <input type="checkbox"/> |
| Checklists                       | <input type="checkbox"/> | Secondary materials such as articles   | <input type="checkbox"/> |
| Practical exercises              | <input type="checkbox"/> | Statistics, such as demographic trends | <input type="checkbox"/> |
| Bibliography                     | <input type="checkbox"/> |  |                          |

Other (Specify):  
\_\_\_\_\_  
\_\_\_\_\_

7. Please indicate names of individuals who, in your opinion, should be invited to participate as a presenter or a facilitator in this program.

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THANK YOU FOR COMPLETING THIS SURVEY. PLEASE RETURN THE SURVEY *BEFORE JANUARY 25, 2002*  
TO CHARLES SMITH, EQUITY INITIATIVES DEPARTMENT,  
FAX: (416) 947-3983

APPENDIX 4

FILE MANAGEMENT AND CASELOAD STATISTICS FOR  
COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE  
TO DECEMBER 2001

THE LAW SOCIETY OF UPPER CANADA  
COMPLAINTS RESOLUTION

MEMORANDUM

TO: Professional Regulation Committee

FROM: David McKillop  
Manager, Compensation Fund, Resolution and Trustee Services

DATE: January 2, 2002

RE: Management Report - Complaints Resolution

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The purpose of this memorandum is to provide information about matters in the Complaints Resolution department for the month of December 2001.

## Summary of Results for December 2001

|   |      |
|---|------|
| Complaints in Unit as at November 30/01                     | 2147 |
| Complaints Reopened During Month                            | 29   |
| Complaints Resolved/Closed During Month                     | 529  |
| Complaints Transferred to CSC & Investigations During Month | 28   |
| New Complaints Received During Month                        | 192  |
| Complaints in Unit as at December 31, 2001                  | 1811 |
| Average Age of Active Complaints (in days)                  | 267  |

On June 1st 2001, Complaints Resolution assumed responsibility for the screening of new complaints assigned to the unit. This task was formerly handled by the Society's Customer Service Centre (CSC). It is now the responsibility of the CSC to stream new complaints received by the Law Society as requiring the attention of Complaints Resolution or the Investigations Department. It is also the responsibility of the CSC to notify complainants that the matter being complained of is not within the jurisdiction of the Law Society and no further action will be taken.

In the first five months of 2001 (prior to the change in procedure), the unit received 589 new complaints. In the last seven months of the year, the unit received 1844 new complaints and 181 re-opened complaints for a total of 2025. Of the 1844 new complaints, 1272 were assigned to the unit in the month they were received by the Law Society while the balance (572 files) were transferred to the unit due to the changes in in-take procedures as at June 1st 2001. The number of files in the unit peaked at November 30th with 2,147. The significant decrease in December is hopefully a positive sign that the situation is now well under control.

## Number of Active Files as at December 31, 2001 by File Type

| Type of File                                  | Number of Active Files |
|---|------------------------|
| Complaint                                     | 1576                   |
| Bankruptcy                                    | 70                     |
| Discipline Costs, Panel Orders & Undertakings | 60                     |
| Practice Windup                               | 105                    |
| <b>TOTAL ACTIVE</b>                           | <b>1811</b>            |

Complaints Review Statistics

As at December 18, 2001, there were 30 files in the Complaints Review process. Further information on these 30 files is found in the following chart.

|   |    |
|---|----|
| Hearing Held, Further Investigation Ordered | 14 |
| Hearings Pending                            | 10 |
| Hearing Held, Awaiting Decision             | 4  |
| Hearing on Hold at Request of Complainant   | 2  |
| TOTAL                                       | 30 |

The 30 files relate to complaints originally received by the Law Society in the following years:

|       |    |
|-------|----|
| 1996  | 2  |
| 1997  | 4  |
| 1998  | 3  |
| 1999  | 9  |
| 2000  | 5  |
| 2001  | 7  |
| TOTAL | 30 |

Discipline Costs

As at December 31st 2001 outstanding costs awarded totalled \$154,163.40. Of that amount, payment of \$108,176.73 is being actively pursued. The remainder of \$45,986.67 is not currently being pursued as the Members concerned are under suspension. Suspended Members are monitored bi-annually to determine whether there has been a change in their status to that of practising Member and, if so, the cost award is pursued.

The total amount received in December 2001 was \$4,150.00. The total amount collected in 2001 was \$60,050.00.

Investigations Department Management Report

TO: Gavin MacKenzie, Chair, Professional Regulation Committee

COPY: Richard Tinsley, Secretary

FROM: James Yakimovich, Manager, Investigations

DATE: January 3, 2002

RE: Management Report - Investigations Department -December 31, 2001

Summary of Results for the Month:

|   |                                 |
|---|---------------------------------|
| Change in Total Case Numbers ( More than one investigation may be open against a member ) | Net Increase of 10 member cases |
| Number of Members Under Investigation   | 188                             |
| Cases Completed/Closed in December  | 23 ( Oct = 37, Nov = 35 )       |
| Cases Older Than One Year Outstanding   | 30 ( Nov = 31 )                 |
| New Instructions This Month-s.49.3  | 34 ( Oct = 59 , Nov = 52 )      |

At December 31, 2001, the department carries an investigation inventory of 305 member cases and 21 Unauthorized Practice cases, for a total of 326 investigation cases.

Member Case Inventory

(See graph in Convocation file)

Cases Older Than One Year

The number of cases older than one year is thirty ( 30 ) ( Nov = 31 cases ). The following chart provides a summary of action plans associated with the cases:

| Planned Result   | Total |
|--|-------|
| Awaiting PAC Review                                    | 2     |
| Pre-PAC Drafting Agreed Statement of Facts             | 2     |
| Close or Referred to PAC in January                    | 11    |
| Close or Referred to PAC in February                   | 8     |
| Further Investigation Necessary-Target Beyond February | 7     |
| Totals   | 30    |

Unauthorized Practice Investigations

The non-member case investigations for unauthorized practice are in addition to the member investigations reported above. The chart that follows depicts the number of cases open.

Unauthorized Practice Investigations

(See graph in Convocation file)

Planned Case Completions

Background: Each month, the investigation teams identify case investigations that will be completed in the following two months. These plans are often subject to revision because of the necessity to cease investigation activity to dedicate time to support a discipline hearing, or, because existing investigations must be deferred in order to respond to a newly received matter that requires an urgent response.

The projected completions for the next two months are depicted on the graph that follows.

Member Case Completion Projections For Next 2 Months

(See graph in Convocation file)

Outstanding Discipline Department Requests

A monitoring system is in place with respect to requests made of investigators for disclosure materials and for additional investigation work. The following information pertains to December 2001.

|   |
|---|
| Requests Outstanding at End of December = 2 |
|---|

DISCIPLINE DEPARTMENT  
MEMORANDUM

TO: Professional Regulation Committee

FROM: Lesley Cameron  
Senior Counsel - Discipline

DATE: January 3, 2002

RE: *Discipline Department Information*

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The purpose of this memorandum is to provide information about matters in the discipline process for the months of November and December, 2001.

### Total Matters in Discipline Process

Attached as Chart 1 is a list of the number of each type of file carried by the Discipline Department at December 31, 2001. As can be seen from Chart 1:

1. 133 matters are pending hearing or appeal;
2. 37 conduct applications have been authorised for prosecution by the Proceedings Authorisation Committee, but have not yet been issued;
3. 69 conduct applications have been issued and are in the discipline process: 42 are before the Hearings Management Tribunal with no hearing date set; 27 have hearing dates set or the hearing is underway; 4 are adjourned sine die;
4. 4 appeals are pending before the Law Society Appeal Panel;
5. 2 judicial reviews are pending before the Divisional Court.

### Aging of Matters Authorised but not Issued

Of the 37 files authorised for prosecution but in which the conduct application had not yet been issued as of December 31, 2001, 6 were authorised more than 3 months ago.

Attached as Chart 2 is a summary of the age and carriage of these 6 files. As can be seen from Chart 2, of these 6 files:

- i) 4 are between 3 and 6 months old, meaning that between 3 and 6 months has elapsed since authorisation;
- ii) 2 are over 1 year old.

Of the 4 files between 3 and 6 months old: 2 will be returned to the next PAC meeting (January 23, 2002) seeking withdrawal or amendment of particulars; 1 is waiting for the production of additional information promised by a member; and 1 is the subject of further investigation.

Of the 2 files over 1 year old, the first required the Law Society to bring an application for search and seizure under section 49.10 and the Law Society is now waiting for a third party to produce records. The second file has been authorised for non disciplinary resolution but remains on the list pending the successful completion of this resolution.

The Chair of the Professional Regulation Committee and the Secretary have been provided with the names of the files, a description of the nature of the allegations in each file and a brief status report on each file in this category.

### Historical Comparison

Attached as Chart 3 is a summary of the age and carriage of matters which were authorised for prosecution by the Proceedings Authorisation Committee, but in which the conduct application had not yet been issued as of the end of various months beginning in August of 2000. Chart 3 includes the information summarised in Chart 2, but adds figures from previous months for comparison purposes.

Chart 1

| Matters in Discipline Process<br>as of December 31, 2001           |     |
|--|-----|
| Discipline Providing Assistance to Investigations                  | 24  |
| Conduct Applications Authorized<br>But Not Issued                  | 37  |
| Conduct Applications Issued<br>Hearing Date Not Set                | 42  |
| Conduct Applications Issued<br>Hearing Date Set or Hearing Started | 27  |
| Conduct Applications Issued<br>Adjourned Sine Die                  | 4   |
| Non-Compliance Applications Issued<br>Hearing Date Not Set         | 1   |
| Capacity Applications Authorized<br>But Not Issued                 | 0   |
| Capacity Applications Issued<br>Hearing Date Not Set               | 0   |
| Admission Hearings   | 8   |
| Readmission Hearings   | 4   |
| Reinstatement Hearings   | 4   |
| Appeals to Law Society Appeal Panel                                | 4   |
| Appeals/Judicial Reviews Divisional Court                          | 2   |
| Total Matters  | 157 |

Chart 2

| Conduct Applications Authorized For Prosecution<br>but not Issued as Conduct Applications<br>as of December 31, 2001 |                   |                    |                 |
|--|-------------------|--------------------|-----------------|
|  | 3 to 6 Months Old | 6 to 12 Months Old | Over 1 Year Old |
| Law Society Counsel  | 4                 | 0                  | 1               |
| Outside Counsel  | 0                 | 0                  | 1               |
| Total  | 4                 | 0                  | 2               |

Chart 3

| CONDUCT APPLICATIONS AUTHORIZED FOR PROSECUTION<br>BUT NOT ISSUED AS CONDUCT APPLICATIONS |                     |                   |                    |                 |
|---|---------------------|-------------------|--------------------|-----------------|
| Month   | Carriage            | 3 to 6 Months Old | 6 to 12 Months Old | Over 1 Year Old |
| August 31, 2000   | Law Society Counsel | 14                | 5                  | 15              |
|   | Outside Counsel     | 0                 | 0                  | 1               |
|   | Total               | 14                | 5                  | 16              |
| October 31, 2000  | Law Society Counsel | 14                | 3                  | 5               |
|   | Outside Counsel     | 9                 | 1                  | 5               |
|   | Total               | 23                | 4                  | 10              |
| November 30, 2000   | Law Society Counsel | 12                | 2                  | 2               |
|   | Outside Counsel     | 9                 | 1                  | 5               |
|   | Total               | 21                | 3                  | 7               |
| December 15, 2000   | Law Society Counsel | 9                 | 2                  | 2               |
|   | Outside Counsel     | 4                 | 3                  | 4               |
|   | Total               | 13                | 5                  | 6               |
| January 31, 2001  | Law Society Counsel | 11                | 4                  | 1               |
|   | Outside Counsel     | 2                 | 6                  | 4               |
|   | Total               | 13                | 10                 | 5               |

| CONDUCT APPLICATIONS AUTHORISED FOR PROSECUTION<br>BUT NOT ISSUED AS CONDUCT APPLICATIONS |                     |                   |                    |                 |
|---|---------------------|-------------------|--------------------|-----------------|
| Month   | Carriage            | 3 to 6 Months Old | 6 to 12 Months Old | Over 1 Year Old |
| February 28, 2001   | Law Society Counsel | 7                 | 2                  | 1               |
|   | Outside Counsel     | 0                 | 5                  | 4               |
|   | Total               | 7                 | 7                  | 5               |

| CONDUCT APPLICATIONS AUTHORISED FOR PROSECUTION<br>BUT NOT ISSUED AS CONDUCT APPLICATIONS |                     |                   |                    |                 |
|---|---------------------|-------------------|--------------------|-----------------|
| Month   | Carriage            | 3 to 6 Months Old | 6 to 12 Months Old | Over 1 Year Old |
| March 30, 2001  | Law Society Counsel | 6                 | 1                  | 0               |
|   | Outside Counsel     | 0                 | 4                  | 3               |
|   | Total               | 6                 | 5                  | 3               |
| April 24, 2001  | Law Society Counsel | 6                 | 2                  | 0               |
|   | Outside Counsel     | 0                 | 3                  | 3               |
|   | Total               | 6                 | 5                  | 3               |
| May 31, 2001  | Law Society Counsel | 6                 | 3                  | 0               |
|   | Outside Counsel     | 0                 | 1                  | 5               |
|   | Total               | 6                 | 4                  | 5               |
| June 30, 2001   | Law Society Counsel | 5                 | 3                  | 1               |
|   | Outside Counsel     | 0                 | 0                  | 5               |
|   | Total               | 5                 | 3                  | 6               |
| July 31, 2001   | Law Society Counsel | 5                 | 5                  | 1               |
|   | Outside Counsel     | 0                 | 0                  | 3               |
|   | Total               | 5                 | 5                  | 4               |
| August 30, 2001   | Law Society Counsel | 4                 | 5                  | 0               |
|   | Outside Counsel     | 0                 | 0                  | 2               |
|   | Total               | 4                 | 5                  | 2               |
| September 30, 2001  | Law Society Counsel | 6                 | 4                  | 0               |
|   | Outside Counsel     | 0                 | 0                  | 2               |
|   | Total               | 6                 | 4                  | 2               |
| October 26, 2001  | Law Society Counsel | 2                 | 3                  | 1               |
|   | Outside Counsel     | 0                 | 0                  | 2               |
|   | Total               | 2                 | 3                  | 3               |

| CONDUCT APPLICATIONS AUTHORISED FOR PROSECUTION<br>BUT NOT ISSUED AS CONDUCT APPLICATIONS |                     |                   |                    |                 |
|---|---------------------|-------------------|--------------------|-----------------|
| Month   | Carriage            | 3 to 6 Months Old | 6 to 12 Months Old | Over 1 Year Old |
| November 30, 2001   | Law Society Counsel | 5                 | 0                  | 1               |
|   | Outside Counsel     | 0                 | 0                  | 1               |
|   | Total               | 5                 | 0                  | 2               |
| December 31, 2001   | Law Society Counsel | 4                 | 0                  | 1               |
|   | Outside Counsel     | 0                 | 0                  | 1               |
|   | Total               | 4                 | 0                  | 2               |

Re: By-Law 19 Amendment

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the following amendments in both English and French versions of By-Law 19, be approved:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 19

[HANDLING OF MONEY AND OTHER PROPERTY]

THAT By-Law 19 [Handling of Money and other Property] made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, May 28, 1999 and April 26, 2001 be further amended as follows:

1. The By-Law is amended by adding the following:

Definitions

7.1 (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 7, 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 member 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 member 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 member is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,
  - i. the member, or
  - ii. in exceptional circumstances, a person who is not the member 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 member 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 member 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 member, 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 member 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 19C [Electronic Trust Transfer Requisition: Closing Funds].

Application of subss 8.1 (2) and (4) to (7)

(7) Subsections 8.1 (2), (4), (5), (6) and (7) apply, with necessary modifications, with respect to the doing of any act under this section.

Form 19C

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.)*

#### Définitions

7.1 (1) Dans le présent article,

« fonds de clôture » s'entend des fonds nécessaires pour compléter ou clore une opération immobilière;

« opération immobilière » s'entend :

- a) d'une charge qui grève un bien-fonds pour garantir le paiement d'une dette ou l'exécution d'une obligation. S'entend d'une charge au sens de la *Loi sur l'enregistrement des droits immobiliers* et d'une hypothèque, mais non d'une charge portant sur le loyer;
- b) d'un acte translatif de propriété d'un bien-fonds en franche tenure ou en tenure à bail. S'entend en outre d'un acte scellé et d'une cession au sens de la *Loi sur l'enregistrement des droits immobiliers*, mais non d'un bail.

#### Retrait des fonds de clôture par télévirement

(2) Malgré l'article 7, les fonds de clôture peuvent être retirés d'un compte en fiducie par télévirement conformément au présent article.

#### Cas dans lesquels le télévirement est autorisé

(3) Des fonds de clôture ne peuvent être retirés d'un compte en fiducie par télévirement que si les conditions suivantes sont réunies :

1. L'accès au système de télévirement utilisé par les membres est restreint par l'utilisation d'au moins un mot de passe ou code d'accès.
2. Le système de télévirement utilisé par les membres produit une confirmation du télévirement immédiatement après le télévirement des fonds.
3. La confirmation exigée par la disposition 2 comprend les renseignements suivants :

- i. le nom de la personne ou de l'entité au nom de laquelle est gardé le compte duquel les fonds sont retirés,
  - ii. le numéro du compte en fiducie duquel les fonds sont retirés,
  - iii. le nom de la personne ou de l'entité au nom de laquelle est gardé le compte dans lequel les fonds sont virés,
  - iv. le numéro du compte dans lequel les fonds sont virés,
  - v. la date à laquelle le virement est effectué.
4. Avant que les membres accèdent au système de télévirement utilisé pour effectuer le télévirement des fonds, une demande de télévirement de fonds en fiducie est signée, selon le cas :
- i. par les membres;
  - ii. dans des circonstances exceptionnelles, par une personne autre que des membres si elle a reçu l'autorisation de signer à l'égard du compte en fiducie duquel les fonds sont retirés et qu'elle a fourni un cautionnement pour un montant au moins égal au solde maximal des sommes déposées, au cours de l'exercice précédent des membres, dans tous les comptes en fiducie à l'égard desquels cette personne a reçu l'autorisation de signer.
5. Les données relatives au virement qui sont entrées dans le système de télévirement de fonds en fiducie sont identiques à celles qui figurent dans la demande de télévirement de fonds en fiducie.

Obligations additionnelles concernant la confirmation

- (4) Au plus tard à 17 h le lendemain du jour où est effectué le télévirement des fonds, les membres :
- a) produisent une copie imprimée de la confirmation exigée par la disposition 2 du paragraphe (3);
  - b) comparent la copie imprimée de la confirmation à la demande de télévirement de fonds en fiducie signée qui porte sur le virement pour vérifier si les fonds ont été retirés du compte en fiducie conformément à la demande signée;
  - c) inscrivent sur la copie imprimée de la confirmation le nom de la cliente ou du client, l'objet du dossier et tout numéro de dossier à l'égard duquel des fonds ont été retirés du compte en fiducie;
  - d) après s'être conformés aux alinéas a) à c), signent et datent la copie imprimée de la confirmation.

Idem

- (5) Dans des circonstances exceptionnelles, une personne autre que des membres peut exécuter les tâches exigées par le paragraphe (4), si elle a reçu l'autorisation de signer à l'égard du compte en fiducie duquel les fonds sont retirés et qu'elle a fourni un cautionnement pour un montant au moins égal au solde maximal des sommes déposées, au cours de l'exercice précédent des membres, dans tous les comptes en fiducie à l'égard desquels cette personne a reçu l'autorisation de signer.

Demande de télévirement de fonds en fiducie visant des fonds de clôture

(6) La demande de télévirement de fonds en fiducie visée à la disposition 4 du paragraphe (3) est rédigée selon le Formulaire 19C [Demande de télévirement de fonds en fiducie visant des fonds de clôture].

Application des para. 8.1 (2) et (4) à (7)

(7) Les paragraphes 8.1 (2), (4), (5), (6) et (7) s'appliquent, avec les adaptations nécessaires, à l'égard de tout acte accompli en vertu du présent article.

### Formulaire 19C

Demande de télévirement de fonds en fiducie visant des fonds de clôture

Demande n°

Montant du virement : (...\$)

Objet :

*(Nom du client/de la cliente)*

*(Numéro du dossier)*

Raison du versement : (...)

Compte en fiducie à débiter :

Nom de l'établissement financier : (...)

Numéro de compte : (...)

Nom du/de la bénéficiaire : (...)

Compte à créditer :

Nom de l'établissement financier : (...)

Nom et adresse de la succursale bancaire : (...)

Numéro de compte : (...)

Personne demandant le télévirement des fonds en fiducie : *(Nom en caractères d'imprimerie)*

*(Date)*

*(Signature)*

Personne effectuant le télévirement des fonds en fiducie :

Nom : (...)

*(Signature)*

Carried

Re: Publication of Hearing Results when Appeal is Pending

It was moved by Mr. Topp, seconded by Mr. Ruby that the position set out in paragraph 45 (a) be adopted and that the reference to "exceptional circumstances" set out in subparagraph (b) be deleted.

Lost

It was moved by Mr. Bindman, seconded by Mr. Hunter and Ms. Ross that the position set out in paragraph 45. (a) and (b) be adopted, that the member's name be published in the *Ontario Lawyer Gazette* following determination of the matter by the Hearing Panel, notwithstanding any appeal filed by the member and that publication of the results of the proceedings in such cases should include notice that the member has appealed the decision of the Hearing Panel. In addition, in circumstances where the member appeals the decision of the Hearing Panel, the member may apply before the Appeal Panel for an order that the Society not publish the finding of the Hearing Panel.

Carried

ROLL-CALL VOTE

|                |         |
|----------------|---------|
| Aaron          | Against |
| Arnup          | For     |
| Banack         | For     |
| Bindman        | For     |
| Bobesich       | Against |
| Braithwaite    | Against |
| Campion        | Against |
| Carey          | For     |
| Carpenter-Gunn | For     |
| Chahbar        | Against |
| Cherniak       | For     |
| Copeland       | For     |
| Crowe          | For     |
| Diamond        | For     |
| Divinsky       | For     |
| E. Ducharme    | For     |
| T. Ducharme    | For     |
| Epstein        | For     |

|             |         |
|-------------|---------|
| Feinstein   | For     |
| Finkelstein | Against |
| Go          | For     |
| Hunter      | For     |
| Laskin      | For     |
| MacKenzie   | Against |
| Manes       | For     |
| Marrocco    | For     |
| Martin      | Against |
| Minor       | For     |
| Mulligan    | For     |
| Murray      | Against |
| O'Brien     | For     |
| Porter      | For     |
| Potter      | Against |
| Puccini     | For     |
| Robins      | For     |
| Ross        | For     |
| Ruby        | For     |
| Swaye       | For     |
| Topp        | For     |
| White       | For     |
| Wilson      | For     |
| Wright      | For     |

Vote: 32 - For; 10 - Against

It was moved by Mr. MacKenzie, seconded by Ms. Potter that the following policy be approved:

“That where a member appeals a decision of the Hearing Panel or a decision of the Appeal Panel, publication of the results of proceeding be made in the *Ontario Lawyers Gazette* only after disposition of the matter by the Appeal Panel or the Divisional Court, as applicable.”

Not Put

The following items in the Report were for information only:

- New Working Group on Contingent Fees
- Publication of Suspended Members' Names in the Ontario Lawyers Gazette
- Review of “Rulings” on Professional Conduct Issues
- Education Programme for the Hearing Panel
- File and Caseload Management and Staffing Information in the Complaints Resolution, Investigations and Discipline Departments

MOTION - COMMITTEE APPOINTMENT

It was moved by Mr. Feinstein, seconded by Ms. Carpenter-Gunn THAT Joanne St. Lewis be appointed as a member to the Professional Regulation Committee.

Carried

MOTION - DRAFT MINUTES

It was moved by Mr. Feinstein, seconded by Ms. Carpenter-Gunn THAT the Draft Minutes of Convocation of November 22nd, November 30th and December 7th, 2001 be approved.

Carried

MOTION - APPEAL PANEL APPOINTMENTS

It was moved by Mr. Feinstein, seconded by Ms. Carpenter-Gunn THAT in accordance with section 49.29 of the *Law Society Act*, the following benchers be appointed to the Law Society Appeal Panel for a term beginning January 24, 2002 and ending May 21, 2003:

Janet Minor  
John Campion  
Gillian Diamond  
Thomas Carey  
Ross Murray  
Julian Porter  
Frank Marrocco  
Donald White

Carried

The Treasurer welcomed Mr. Armstrong back to Convocation.

HERITAGE COMMITTEE REPORT

Mr. Carey presented the Heritage Committee Report for approval by Convocation.

Report to Convocation

Purpose of Report:        Decision Making

Prepared by the Archives Department

TERMS OF REFERENCE/COMMITTEE PROCESS

1.     The Heritage Committee ("the Committee") met on October 10, 2001, November 7, 2001 and January 9, 2002. On January 9, committee members in attendance were: Thomas Carey (Chair), Pamela Divinsky (Vice-Chair), Patrick Furlong, Allan Lawrence, Greg Mulligan and Helene Puccini (by phone). Staff in attendance were Janine Miller and Elise Brunet.
2.     The Committee is reporting on the following matter:  
  
      Policy - For Decision  
      Adoption of the Committee's mandate.

ADOPTION OF THE COMMITTEE'S MANDATE

Issue

3.     The Committee is proposing to Convocation the Committee's mandate.

Proposed Mandate

4.     The Committee proposes the following mandate:

The Heritage Committee exists to advise, formulate and recommend policies to Convocation on heritage matters within the Law Society and the legal profession in Ontario with a view to:

- encouraging awareness, appreciation, and support of legal-historical activities among the legal profession and the public through activities such as research and exhibitions
- encouraging and supporting heritage initiatives within the legal profession
- the identification, designation, and conservation of heritage resources at the Law Society and within the legal profession, including living heritage, movable property, and real property with special attention to the conservation of Osgoode Hall, its contents and grounds

- encouraging communication, cooperation and coordination among organizations involved in legal history
  
- working with the Law Society Foundation to identify and encourage sources of funding for the development and support of heritage activities

Request to Convocation

5. Convocation is requested to approve the above mandate.

Re: Committee's Mandate

An amendment was accepted by the Chair that the words "print, film and intellectual property" be added to the fourth item under paragraph 4 of the Report.

It was moved by Mr. Carey, seconded by Mr. Mulligan that the Committee's mandate as amended be adopted as follows:

"The Heritage Committee exists to advise, formulate and recommend policies to Convocation on heritage matters within the Law Society and the legal profession in Ontario with a view to:

- encouraging awareness, appreciation and support of legal-historical activities among the legal profession and the public through activities such as research and exhibitions
  
- encouraging and supporting heritage initiatives within the legal profession
  
- the identification, designation, and conservation of heritage resources at the Law Society and within the legal profession, including living heritage, movable property, and real property, print, film and intellectual property with special attention to the conservation of Osgoode Hall, its contents and grounds
  
- encouraging communication, cooperation and coordination among organizations involved in legal history
  
- working with the Law Society Foundation to identify and encourage sources of funding for the development and support of heritage activities."

Carried

.....

IN CAMERA

.....

The public and Staff withdrew and Convocation went in camera.

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

CEO'S REPORT TO CONVOCATION

CEO's Report to Convocation  
January 24, 2002

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Completion of The Law Society of Upper Canada's  
Management Reorganization Plan

Completion of The Law Society of Upper Canada's Management Reorganization Plan

Background

1. April 2001, Convocation approved a reorganization plan for the efficient and effective management of the Law Society of Upper Canada. The plan was driven by my assessment of the Law Society's current operations and how they could be improved.
2. part of that reorganization, the composition of the Senior Management Team was changed to better reflect the core functions of the Law Society, and the Secretary's position was restructured to focus the Secretary's functions within the regulatory process.
3. accomplish the restructuring of the Secretary's position, a number of by-laws were amended. Following those amendments, the Secretary remained responsible for the following functions:
  - a. complaints
  - b. investigations
  - c. discipline
  - d. staff trustee
  - e. unauthorized practice
  - f. compensation fund
  - g. compliance with professional competence orders
  - h. complaints review co-ordination
  - i. unclaimed trust funds
  - j. corporate secretary functions, such as recording the minutes of Convocation, and preparing the notice and agenda for the annual general meeting.
4. In preparation for the recruitment process to fill the position of Secretary, it is necessary to complete the restructuring of the Secretary's position so that an accurate and complete job description can be developed.

5. Once the restructuring of the position is completed, the Secretary's duties will lie solely within the professional regulatory process. All other duties, including those of the corporate secretary, will be assigned to other positions.
6. The amendments to the by-laws proposed in the motion attached, which will be before Convocation on January 24, 2002, will assign the duties listed in paragraph 3 g. to j. above to other positions within the Law Society. What follows is a summary of the amendments.

By-Law 4 - Office of Secretary

7. The corporate secretary functions will be eliminated from the Secretary's position by the deletion of subsection 2(2) of by-law 4. Those functions will be fulfilled by the Director, Policy and Legal Affairs.
8. The elimination of the references to sections 51, 59.6 and 59.9 of the Act and by-laws 20 and 31 will allow the following responsibilities to be assigned to other positions:
  - a. issuing summonses to people to determine claims under the Lawyers Fund for Client Compensation, which will be assigned to the Manager, Compensation Fund, Resolution and Trustee Services;
  - b. permitting the payment of unclaimed trust funds to the Society, and publishing an annual notice in *The Ontario Gazette* of the name and address of every person entitled to money held as unclaimed trust funds by the Society, which will be assigned to the Manager, Compensation Fund, Resolution and Trustee Services; and
  - c. referring a complaint to a Complaints Review Commissioner and further investigating a complaint at the request of a Complaints Review Commissioner.
9. Subsection 3(4) of by-law 4 will be amended to make the Director of Membership Services responsible for informing the local registrar of the Superior Court of Justice of all changes in the membership of the society, and for restoring the membership of any person whose membership has been in abeyance. These two functions were officially the responsibility of the Secretary but were, in fact, fulfilled by the Director of Membership Services.
10. Amending section 3 of the by-law to provide that the Senior Counsel, Legal Affairs may perform the duties of the Secretary under subsection 62(3) of the *Law Society Act* will permit a copy of the by-laws to be available in the office of the Senior Counsel, Legal Affairs, rather than the office of the Secretary.

By-Law 20 - Review of Complaints

11. The amendments to by-law 20 will permit the Chief Executive Officer to assign responsibility for referring a complaint to a Complaints Review Commissioner and further investigating a complaint at the request of a Complaints Review Commissioner.
12. Currently, a complainant is informed about the availability of the Complaints Review Commissioner process in a letter from the Society indicating that the complaint will be closed. The plan is to have the Manager, Compensation Fund, Resolution and Trustee Services responsible for making the referral to the Complaints Review Commissioner if requested to do so by the complainant.
13. Similarly, the Manager, Compensation Fund, Resolution and Trustee Services will be responsible for ensuring that a further investigation is conducted into a complaint as directed by a Complaints Review Commissioner.
14. The Manager, Compensation Fund, Resolution and Trustee Services is the manager currently responsible for administering the operation of the Complaints Review Commissioner.

**By-Law 24 - Professional Competence**

15. The amendments to by-law 24 add responsibility for section 44 of the *Law Society Act* to the Director of Professional Development and Competence's portfolio. This will make the Director responsible for ensuring that the terms and conditions of a competence order are satisfied by a member. This responsibility formerly rested with the Secretary.
16. This amendment will make the Director of Professional Development and Competence responsible for all matters related to competence hearings and orders.

**By-Law 31 - Unclaimed Trust Funds**

17. The amendments to this by-law will authorize the Manager, Compensation Fund, Resolution and Trustee Services to permit the payment of unclaimed trust funds to the Society, and to publish an annual notice in *The Ontario Gazette* of the name and address of every person entitled to money held as unclaimed trust funds by the Society.
18. The Manager, Compensation Fund, Resolution and Trustee Services is the manager currently responsible for administering the unclaimed trust funds program.

**Conclusion**

19. Once these amendments are made, the role of the Secretary will be to direct the operations of the core regulatory functions of the Law Society - complaints, investigations and discipline.
20. Attached are copies of the relevant by-laws amended in the way being proposed.

Re: Motion - By-Laws 4, 20, 24 and 31 Amendments

It was moved by Mr. Feinstein, seconded by Ms. Carpenter-Gunn that the following amendments to By-Laws 4, 20, 24 and 31 be approved:

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER  
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

THAT the by-laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on January 24, 2001 be amended as follows:

BY-LAW 4  
[OFFICE OF SECRETARY]

1. Subsection 2 (2) of By-Law 4 [Office of Secretary] is deleted.
2. Subsection 3 (1) of the By-Law is amended by,
  - (a) deleting the introductory words before clause (a) and substituting the following:

If the Secretary for any reason is unable to do so, an officer or employee of the Society who holds the office of Senior Counsel, Discipline may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

Si le ou la secrétaire est dans l'incapacité de le faire pour une raison quelconque, la personne qui occupe la charge d'avocat principal du service de la discipline peut exercer les pouvoirs et les fonctions que les dispositions suivantes attribuent au ou à la secrétaire, sous réserve des conditions qu'il ou elle impose :

- (b) deleting clause (a) and substituting the following:
  - (a) sections 35, 40, 49.2 and 49.3 of the Act;
  - a) articles 35, 40, 49.2 et 49.3 de la Loi ;
- (c) adding "and" at the end of clause (e); and
- (d) deleting clauses (f) and (g) and substituting the following:
  - (f) the rules of practice and procedure.
  - f) les règles de pratique et de procédure.

3. Subsection 3 (2) of the By-Law is amended by,

- (a) deleting the introductory words before clause (a) and substituting the following:

If the Secretary or the Senior Counsel, Discipline is unable to do so, an officer or employee of the Society who holds the office of Discipline Counsel may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

Si le ou la secrétaire ou la personne qui occupe la charge d'avocat principal du service de la discipline est dans l'incapacité de le faire, la personne qui occupe la charge d'avocat du service de la discipline peut exercer les pouvoirs et les fonctions que les dispositions suivantes attribuent au ou à la secrétaire, sous réserve des conditions que le ou la secrétaire impose :

- (b) deleting clause (a) and substituting the following:
  - (a) sections 35, 40, 49.2 and 49.3 of the Act;
  - a) articles 35, 40, 49.2 et 49.3 de la Loi ;
- (c) adding "and" at the end of clause (e); and
- (d) deleting clauses (f) and (g) and substituting the following:

(f) the rules of practice and procedure.

f) les règles de pratique et de procédure.

4. Subsection 3 (3) of the By-Law is deleted and the following substituted:

Delegation of powers and duties of Secretary: Director, Policy and Legal Affairs

(3) An officer or employee of the Society who holds the office of Director, Policy and Legal Affairs may exercise the powers and perform the duties of the Secretary under By-laws 6, 8, and 10.

Délégation des pouvoirs et fonctions du secrétaire à la direction des politiques et des affaires juridiques

(3) La personne qui occupe la charge de directeur des politiques et des affaires juridiques peut exercer les pouvoirs et les fonctions que les règlements administratifs 6, 8 et 10 attribuent au ou à la secrétaire.

5. Subsection 3 (4) of the By-Law is amended by,

(a) deleting “Client Service Centre”/“du service à la clientèle” and substituting “Membership Services”/“des services aux membres”; and

(b) deleting “sections”/ “les articles” and substituting “subsection 31 (2) and sections 27.1,”/“le paragraphe 31 (2) et les articles 27.1.”.

6. Section 3 of the By-Law is amended by adding the following:

Delegation of powers and duties of Secretary: Manager, Compensation Fund, Resolution and Trustee Services

(6) An officer or employee of the Society who holds the office of Manager, Compensation Fund, Resolution and Trustee Services may exercise the powers and perform the duties of the Secretary under section 51 of the Act.

Délégation des pouvoirs et fonctions du secrétaire au chef, Services fiduciaires, fonds d’indemnisation et résolution

(6) La personne qui occupe la charge de chef, Services fiduciaires, fonds d’indemnisation et résolution peut exercer les pouvoirs et fonctions que l’article 51 de la Loi attribue au ou à la secrétaire.

Delegation of powers and duties of Secretary: Senior Counsel, Legal Affairs

(7) An officer or employee of the Society who holds the office of Senior Counsel, Legal Affairs may perform the duties of the Secretary under subsection 62 (3) of the Act.

Délégation des pouvoirs et fonctions du secrétaire à l’avocat principal des affaires juridiques

(7) La personne qui occupe la charge d’avocat principal des affaires juridiques peut exercer les pouvoirs et fonctions que le paragraphe 62 (3) de la Loi attribue au ou à la secrétaire.

BY-LAW 20

[REVIEW OF COMPLAINTS]

7. Subsection 3 (1) of By-Law 20 [Review of Complaints] is deleted and the following substituted:

Request to review disposition of complaint

(1) A complainant who is dissatisfied with the Society's disposition of his or her complaint against a member may request the Society to refer the disposition of the complaint to a Complaints Review Commissioner for review.

Demande d'examen de la décision prise à l'égard d'une plainte

(1) La personne qui a déposé une plainte et qui n'est pas satisfaite de la décision du Barreau à l'égard de sa plainte contre un membre peut demander au Barreau de renvoyer cette décision à l'un des commissaires au règlement des plaintes pour qu'elle soit examinée.

8. Subsection 3 (2) of the By-Law is amended by

(a) deleting "Secretary or the Chief Executive Officer"/"le ou la secrétaire ou le directeur général ou la directrice générale" and substituting "Society"/"le Barreau"; and

(b) deleting "Society's".

9. Subsection 4 (2) of the By-Law is amended by deleting "Secretary"/"au ou à la secrétaire" wherever it occurs in the subsection and substituting "Society"/"au Barreau".

BY-LAW 24

[PROFESSIONAL COMPETENCE]

10. Subsection 2 (1) of By-Law 24 [Professional Competence] is amended by adding the following:

(a.1) section 44 of the Act;

a.1) article 44 de la Loi ;

11. Subsection 2 (2) of the By-Law is amended by adding the following:

(a.1) section 44 of the Act;

a.1) article 44 de la Loi ;

BY-LAW 31

[UNCLAIMED TRUST FUNDS]

12. By-Law 31 [Unclaimed Trust Funds] is amended by adding the following:

Delegation of powers and duties of Secretary: Manager, Compensation Fund, Resolution and Trustee Services

0.1 An officer or employee of the Society who holds the office of Manager, Compensation Fund, Resolution and Trustee Services may exercise the powers and perform the duties of the Secretary under sections 59.6, 59.8 and 59.9 of the Act and under this By-Law.

Délégation des pouvoirs et fonctions du secrétaire au chef, Services fiduciaires, fonds d'indemnisation et résolution

0.1 La personne qui occupe la charge de chef, Services fiduciaires, fonds d'indemnisation et résolution peut exercer les pouvoirs et fonctions que les articles 59.6, 59.8 et 59.9 de la Loi et le présent règlement administratif attribuent au ou à la secrétaire.

Carried

MOTION - ACTING SECRETARY APPOINTMENT

It was moved by Mr. MacKenzie, seconded by Mr. Ruby THAT Katherine Corrick be appointed Acting Secretary effective January 31st, 2002 pending the hiring of someone to fill the position of Secretary.

Carried

MOTION - JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

It was moved by Mr. Feinstein, seconded by Ms. Carpenter-Gunn THAT effective immediately William Trudell be reappointed to the Judicial Appointments Advisory Committee for a term of 3 years as the Law Society's representative.

Carried

REPORTS FOR INFORMATION ONLY

Equity & Aboriginal Issues Committee Report

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

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Report to Convocation

Purpose of Report: Information

Prepared by the Equity Initiatives Department

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Committee met on Wednesday, January 9, 2002 between 4 and 6 p.m.. The meeting was chaired by Paul Copeland and in attendance were: Helene Puccini (Vice-Chair), Brad Wright, Judith Potter, Tom Carey, Janet Minor, Stephen Bindman

The Committee addressed the following items to bring forward for Convocation's information:

- Model Strategies for the Recruitment and Selection of Articling Students
- Consultations with Stakeholder Groups
- Correspondence Received Concerning the Kew Dock Yip Event

## MODEL STRATEGIES ON RECRUITMENT AND SELECTION OF ARTICLING STUDENTS

1. Prepared by the Equity Initiatives and Education Departments, this document is in response to a request from Articling Coordinators of large law firms and has been reviewed by the Law Society's senior management team as well as the Equity Advisory Group and Articling Coordinators of the various law firms.
2. The document includes specific sections addressing:
  - Recruitment and selection of articling students from groups currently under-represented in the legal profession, including consideration of summer employment and mentoring;
  - Personal supports useful to provide to articling students from communities under-represented in the legal profession, eg., mentoring, professional development opportunities;
  - Activities you can do to engage, retain and support the growth and development of articling students from communities under-represented in the legal profession; and
  - Resources available to support law firms interested in developing recruiting strategies to engage articling students under-represented in the legal profession.
3. The Committee is forwarding this document to the Admissions Committee for its information and the Committee Chair will speak with the Chair of the Admissions Committee to discuss a strategy for meeting with managing partners to discuss this issue and to provide this document for their use.

## CONSULTATIONS WITH STAKEHOLDERS

4. The Committee's will be convening consultations with stakeholder groups to review its accomplishments and receive feedback on its policy agenda and workplan. This session will coincide with the proposed conference on *Equity and Diversity in the Legal Profession: Promoting Dialogue, Creating Change* scheduled for the spring, 2002.
5. The list of stakeholders who will be invited to this consultation is available for the Geneva Yee of the Equity Initiatives Department. Interested benchers are also invited to attend.

## CORRESPONDENCE AND MEDIA ARTICLES

6. The Committee wishes to acknowledge that Mrs. Victoria Yip, wife of Mr. Kew Dock Yip, passed away on December 23, 2001. The Committee also wishes to inform Convocation that it has received correspondence congratulating the Law Society on the success of the event held on November 22, 2001 to celebrate Mr. Yip's contributions to the practice of law and to the Chinese Canadian Community.
7. The Committee has also received correspondence and e-mail communications from several organizations in support for the proposed *Equity and Diversity in the Legal Profession: Promoting Dialogue, Creating Change*, including: the Canadian Association of Provincial Court Judges; the Canadian Bar Association's Standing Committee on Equality, and, Racial Equality Implementation Committee; the Indigenous Bar Association; AJEFO; the National Judicial Institute; the Urban Alliance on Race Relations; the Aboriginal Legal Services of Toronto; the African Canadian Legal Clinic; the Black Law Students Association; the Chinese Canadian National Council; the Chinese Canadian Lawyers Association; the Law Societies of Manitoba and British Columbia and others.

8. Copies of the correspondence can be received from Geneva Yee of the Equity Initiatives Department.

*MODEL EQUITY AND DIVERSITY PROCESS FOR RECRUITMENT/SELECTION OF ARTICLING STUDENTS*

*PREPARED BY  
THE EQUITY INITIATIVES DEPARTMENT  
AND BAR ADMISSION OFFICE*

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*Introduction:*

In September, 2000, the Equity Initiatives Department of the Law Society of Upper Canada presented *Concerns Regarding Discrimination in Attracting Articling Positions*<sup>1</sup> to both the Admissions Committee and the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones. This report identified patterns of discrimination impacting on racialized groups, Aboriginal peoples, persons with disabilities and mature students, demonstrating that law students from these communities may not have equal access to articling positions. The statistical data presented in the report was supported by numerous anecdotal accounts prepared in previous years by the Black Law Students' Association of Canada<sup>2</sup>, presented in submissions to the CBA Working Group on Racial Equality in the Canadian Legal Profession<sup>3</sup>, and recently summarised in Law Society of British Columbia's *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*<sup>4</sup> as well as the CBA report *Racial Equality in the Canadian Legal Profession*<sup>5</sup>.

These reports identify barriers to becoming successful in the practice of law for individuals from communities under-represented in the legal profession<sup>6</sup>, particularly Aboriginal peoples and racial minorities, and sections of these reports directly address challenges individuals from these communities face in attracting articling positions.

This is further complicated by the relatively small number of Aboriginal peoples and racialized groups representing less than 8% and 6% of the total number of lawyers in Ontario and Canada respectively<sup>7</sup>. Such a small number of lawyers provides little opportunity for role modelling, mentoring and recruitment for articling students as lawyers from these communities are not sufficiently numerous, are likely new to the profession and, as such, less established and less able to take on an articling student.

At the same time, the population across Ontario is becoming increasingly diverse<sup>8</sup>. This creates both a challenge and an opportunity. On one hand, it represents change and brings with it all of the stresses associated with change; on the other hand, this diversity also presents many opportunities. For law firms, the changing population presents new legal challenges as well as potential clients and opportunities to access new markets that also may add to a law firm's

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<sup>1</sup> Report to the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, August 29, 2000

<sup>2</sup> A. Elliot Spears and F. N. Weeks, *Survey of Black Law Students, Black Articling Students, and Recently Called Black Lawyers, July - August, 1992*, Law Society of Upper Canada, December 23, 1992

<sup>3</sup> See *Racial Equality in the Canadian Legal Profession*, Canadian Bar Association (2000) at 11 - 12

<sup>4</sup> See Law Society of British Columbia (2000) at 32-37.

<sup>5</sup> *Supra* note 2 at 11.

<sup>6</sup> This, in turn, is a challenge to achieving a diverse legal profession and is particularly evident across North America. For example, see: Jonathan D. Glater *Law Firms Are Slow in Promoting Minority Lawyers to Partner Role*, *New York Times*, Tuesday, August 7, 2001; Linda Bean *Too Many White Lawyers? Recruiting Program Aims for Change*, *DiversityInc.com*, May 18, 2001; Michael St. Patrick Baxter *Black Bay Street Lawyers: Looking Back, Looking Ahead*, *Law Society Gazette* [1994], and, *Black Bay Street Lawyers and Other Oxymora*, *Canadian Business Law Journal*, [Vol. 30 1998]; Jeffrey Graham *Making Diversity Work*, *ABA Journal*, March 2001, at 59-64; Brian Zabcik *Scoring the Best*, *Minority Law Journal*, Summer 2001

<sup>7</sup> See Professor Michael Ornstein *Lawyers in Ontario: Evidence from the 1996 Census*, Equity Initiatives Department, Law Society of Upper Canada.

<sup>8</sup> For example, see: T. John Samuels *Visible Minorities in Canada: A Projection*, Race Relations Advisory Committee on Advertising, Canadian Advertising Foundation, 1992; Tana Turner *The Composition and Implications of Metro Toronto's Ethnic, Racial and Linguistic Populations*, Municipality of Metropolitan Toronto, 1995; Canadian Council on Social Development *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income*, Canadian Race Relations Foundation, 2000.

intellectual capital as the firm takes on work in new areas of law. At the same time, the multicultural dynamic of the new clientele may increase a firm's financial viability at home and abroad.

In addressing any organizational challenge, it is important to attract staff that understand and can enable the organization to successfully address changing realities within and outside its doors<sup>9</sup>. The importance of involving individuals from communities under-represented in any business has been discussed in a variety of settings. For example, in 2001 the Law Society commissioned research to identify programs set-up by law firms to respond to the concerns of Aboriginal, Francophone and equity-seeking groups in the legal profession<sup>10</sup>. Many of these initiatives involved recruiting and retaining individuals from communities under-represented in the profession as a way of diversifying the law firm's staff, its clientele and the areas of law it addressed. These practices have enabled several law firms to successfully pursue new endeavours which are socially responsible and profitable. Articling students from communities under-represented in the legal profession may provide such an opportunity for Ontario law firms. To undertake such initiatives, however, each firm has had to dedicate resources and action to bring about the desired result. While there are clearly challenges that these firms still need to address, they have begun integrating diverse communities at each level of their legal practice<sup>11</sup>.

The following strategies are provided to assist law firms in Ontario to undertake initiatives that will increase the diversity of their articling students and may lead to diversifying the legal team they employ.

The strategies address:

- Recruitment
- Selection
- Professional Development
- Hire-Back
- Actions You Can Take
- Resources Available.

*Recruitment:*

Recruitment of articling students is targeted to a specific group, i.e., students studying law. However, there are a number of preparatory stages to the study of law in which law firms can and do play a significant role. In this context, law firms may wish to consider ways to engage pre-law students in the work of their offices, particularly students involved in mentoring activities, co-operative education programs and summer, seasonal or part-time employment. These students may one day pursue law as a career and may have been inspired to do so by their earlier experiences with a law firm. By engaging individuals from communities under-represented in the legal profession in this way, the law firm may be contributing to increasing the pool of candidates who may later seek articling<sup>12</sup>.

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<sup>9</sup> For example, see *Second Progress Report on Ethno-Racial and Aboriginal Access to Metropolitan Services*, Chief Administrative Officer's Department, Municipality of Metropolitan Toronto. Dr. Phebe-Jane Poole *Diversity: A Business Advantage*, Poole Publishing Company, 1997; Lewis Brown Griggs and Lente-Louise Louw (ed.) *Valuing Diversity: New Tools for a New Reality*, McGraw Hill, 1995; Betsy Kappel and Zubeida Ramji *Awareness to Action: Communication and Public Participation with Ethno-Racial and Aboriginal Communities*, Municipality of Metropolitan Toronto, Chief Administrator's Office, 1996; Christene Taylor *Building a Business Case for Valuing Ethnocultural Diversity*, Ottawa, Conference Board of Canada, 1995.

<sup>10</sup> See Laura Heller (Charles Novogradsky and Associates) *Equity and Diversity for Law Firms: A Literature Review and Bibliographic Essay*, Law Society of Upper Canada Equity Initiatives Department

<sup>11</sup> *Supra* note 6, particularly American Bar Association and Minority Law Journal

<sup>12</sup> *Development of Law Firm Equity and Diversity Mentorship Program for Toronto High Schools and Youth Associations*, Equity Initiatives Department, Law Society of Upper Canada, August 21, 2000

In addition, law firms may wish to ensure equity considerations are put in place in the selection of law school students for summer positions. These students appear to be relied on more often to undertake research work for firms, particularly given the changes in the Bar Admission Course which now offers Phase I And Phase III course work during the months of May until September with articling beginning in September. This change has reduced the availability of articling students for summer employment with law firms and, to address this, many firms are looking to law school students to take on needed research and other activities. Given this transition, it is very possible that the law firms' selection of summer students from law school may eclipse the significance of recruiting articling students. This is particularly likely if the summer students are, in time, offered articling positions based on their experience and knowledge of the law firm they have 'summered' with for a number of years.

In terms of the actual recruitment process for summer employment and articling positions, issues related to communications, outreach as well as selection policies, criteria and procedures require the most consideration by law firms. It is important that a firm indicate its vision on equity and diversity or its equity and diversity policies (eg., discrimination and harassment prevention, accommodations, flexible work arrangements, equal opportunity or employment equity) in all of its communications to prospective articling students. This will serve to confirm that the firm views these policies as a high priority supported by the firm's senior management and provided with the resources required to achieve their stated objectives. This can be done through:

- a) *Visits to law schools.* Each opportunity to meet directly with law school students as well as Career Development Officers can and should be used to convey the firm's position on equity and diversity. These meetings can be done through presentations, career fairs and one-on-one meetings with Career Development Officers and students. Such information should be given to all students with specific mention of the firm's desire to recruit students from communities under-represented in the legal profession and within its own workforce.
- b) *Provision of materials outlining firm's policy.* The firm should ensure its promotional materials provided to prospective articling students include appropriate reference to equity and diversity and that these materials are made available to students at every opportunity, including on website. Such information might also indicate the range of community and social activities the firm is involved in, eg., financial sponsorship of law school student organizations, participation of staff on boards of community-based agencies serving diverse communities or engagement in pro bono work on behalf of these agencies and their community members.
- c) *Types of work the firm is involved in and is interested in.* There may be areas of legal work the firm is either involved in or interested in that could be useful to note in promotional materials to students, eg., immigration or employment/human rights law or Aboriginal land claims<sup>13</sup>. Notifying all students of these interests may encourage those from under-represented communities to apply to the firm. It may also have an impact on the selection process, serving to ensure that students with interests in these areas of law are sought out by those involved in selecting students.

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<sup>13</sup> This approach may not be feasible given the work of firm; nor should it be interpreted that articling students from such communities are solely interested in equity issues.

- d) *Voluntary self-identification of articling students.* This is a tool by which law firms can identify the individuals who have applied, i.e., their personal characteristics, enabling the firm to assess the applicant pool for articling positions and to ensure that it has an opportunity to select students from under-represented communities. Such an approach can be done in conjunction with law schools and the Bar Admission Course, both of which seek data on the personal characteristics of students through voluntary self-identification questionnaires. Further, student profiles can be matched with the firm's own workforce profile which may have identified areas of under-representation and priorities for recruitment in order to achieve a diverse workforce. In undertaking this initiatives, firms should review the Ontario Human Rights Code, particularly Section 14 which allows for the establishment of special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged groups to achieve equal opportunity<sup>14</sup>.
- e) *Identification of firm resources dedicated to equity and diversity.* To assure applicants of the firm's commitment to equity and diversity, it would be beneficial to provide information to all students on the firm's equity policies, programs and resources, eg., dedicated staff and/or diversity/equity committee. It would also be useful to provide applicant students with information on how these resources can be reached for information and advice on the firm in order to consider applying, preparing for interviews and, if appropriate, accepting an offer.

*Selection:*

Following recruitment, it is important to determine whether the firm has received applicants from a diversity of students, particularly those from communities under-represented in the legal profession. The firm will also want to ensure that all applicants are treated with respect and dignity and, further, that those involved in the selection process are aiming to select applicants from diverse communities and have the knowledge and skills to do so.

Issues regarding non-discrimination are discussed in the Articling Guidelines published each year by the Law Society in the Ontario Report. Developing specific knowledge and skills may require orientation, education and training which are discussed later on in these guidelines.

To achieve this, the following steps may be needed:

- (a) *Shortlisting criteria and method of assessment.* Equity and diversity criteria (including required knowledge/skills, valued assets as well as interview questions and weighting) should be included throughout the formal selection process and be clear in the minds of all involved in the selection process. Required knowledge/skills might include such specifics as familiarity with human rights law, constitutional law (eg., the Charter of Rights and Freedoms Equality Sections) or areas of law that may be specific to diverse communities, eg., immigration law, Canadian law as it affects Aboriginal peoples, language rights, international trade, family law as it affects gays and lesbians. Valued assets may include such things as skills in languages other than English, knowledge of organizations and activities in Aboriginal, Francophone and equity-seeking communities. Interview questions should reference these interests, be used uniformly and weighted accordingly. Such questions should also be asked of all candidates<sup>15</sup>.

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<sup>14</sup> Also, see Law Society of Upper Canada *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* which provides useful information on legal obligations related to the various strategies included in this document.

<sup>15</sup> For firms primarily interested in corporate law, it may be useful to assess the understanding of students to how equality law may impact on the legal issues that are part of the firm's business. It may also be useful to address issues of globalization and understanding of corporate law in a multinational context.

- (b) *Knowledge and Skills of Selection Team.* Many firms use a team approach involving many or more than one lawyer in selecting articling students. While such approaches are beneficial, they may need to be coordinated to ensure a common approach to reviewing applications and interviewing candidates. In this context, it may be helpful to provide orientation and/or education and training to these lawyers to both build a team approach and to ensure each understands and has knowledge of equity and diversity issues.
- (c) *Reviewing applications and setting goals.* Each application should be screened to ensure the applicant pool is diverse and inclusive of individuals from communities under-represented in the legal profession. This can only be done if the firm has information on the personal characteristics of the applicants. Such information may be made available through voluntary self-identification discussed above and will confirm whether or not the law firm has attracted the diversity it is seeking<sup>16</sup>. In addition, the firm should have a sense of how it wishes to address the actual number of under-represented communities it will consider selecting. This can be done in a variety of ways, including selecting a percentage based on the number of applicants: received overall and from under-represented communities; of under-represented communities as compared with the law firm's total composition. The former allows for comparison with the pool of articling students applying for positions; the latter compares the applicants with the firm's overall representation. Data for the former is available from the law schools and the Bar Admission Course; data for the latter requires information from the law school/Bar Admission Course and from within the law firm.
- 9) *Assessing merit.* While standard measures will assist in determining this matter (eg., course load, grade point average/lsat scores and law school grades), the firm may wish to employ criteria that speaks to non-academic interests, involvement and measures of commitment and competency, eg., volunteer community experience, ability to manage diverse demands (work, school and family) and leadership capacities through involvement in extra-curricular law school activities. By integrating the latter perspectives into the screening process, the firm will have expanded its shortlisting criteria to include measures of competency that are non-academic but reliable in terms of performance, commitment, expertise, initiative and leadership, eg., problem-solving, social advocacy, life experience. Such criteria may also reduce reliance on quantitative factors which tend to favour those students who are able to spend a greater amount of their time on academic pursuits as a result of their financial position. It also considers skills in terms of interactions that may be useful in transactions, communications, negotiations, alternative dispute resolution and other legal skills that are not as readily quantifiable through academic standing.

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<sup>16</sup> Considerable care needs to be taken for this activity and any firm wishing to undertake such initiatives may wish to consult with the Law Society's Equity Initiatives Department or Ontario Human Rights Commission for support. Further, such information may also be compared to a firm's own workforce profile so that those involved in selecting articling students can assist the firm in developing a diverse workforce that is representative of the community. This approach, however, requires leadership from the managing partner, the management team and throughout the firm with clear communications regarding goals, resource commitments, expectations and desired outcomes.

- 10) *Conducting interviews:* It is essential that the interviews follow a standard format and that all interviewees are treated with dignity and respect. As part of the interview process, it is not unusual for those interviewing to share information regarding their firm's interests and priorities and to allow interviewees an opportunity to ask questions about the firm. This provides an opportunity to introduce and discuss the firm's equity and diversity policies and programs. It may be also helpful to have interview teams with diverse composition (eg., gender balanced, racially and culturally diverse) as a way to give interviewees some evidence of the firm's commitment to equity and diversity. In addition, it may be important to agree on ways to 'break the ice' with the interviewee so that s/he feels as comfortable as possible with the interview. 'Breaking the ice' can be problematic if personal information unrelated to law or the study of law is elicited or shared. In this sense, it may be useful for those interviewing to discuss how they will 'break the ice' and what topics will be used to do so.
  
- 11) *Final selection:* Firms genuinely interested in equity and diversity will undertake to assess each candidate in light of the model approaches outlined above. The final stage of this process obviously entails the final selection of candidates for articling positions within the firm. This provides an opportunity to assess whether or not the firm has been able to achieve its goal of ensuring diversity in the selection of articling students.

*Personal Support, Professional Development and Hire-back:*

Once the articling student from a community under-represented in the legal profession has been retained, it may be helpful to provide this student with internal supports to enable her/him to have a successful articling experience and to successfully compete for call-back. Providing an understanding and sensitive mentor is one way to do this. Such a mentor can provide informal networking and support to enable the student to understand the practice and to interpret/work well within the practice's culture. A mentor may also be helpful as a resource for the student to raise and discuss issues concerning harassment/discrimination or feelings of alienation within the workplace.

In addition, a mentor may be able to provide useful feedback to the student. Such feedback may be of a professional or personal nature and assist the student in dealing with the demands of the work load, the stresses involved and personal challenges that the student may be facing.

It may also be important to ensure that such a student is encouraged to access any professional development opportunities the firm has to offer *or* to ensure that the student is comfortable in suggesting professional development activities that s/he may wish to engage in. The latter is important to ensuring that the student feels confident that the firm may be interested in areas of law that may be unique to the student's sense of self and community.

Selecting articling students from communities under-represented in the legal profession will lead to interests by these students in being called back. In addition to providing the firm with a potentially valued legal resources, the selection of such articling students from communities under-represented in the legal profession can contribute to the firm's efforts to diversify its staff and to attract work from diverse clientele. This is both a short- and long-term effort which, in addition to selecting articling students, may prompt the firm to assess its own organizational policies, practices and culture to ensure that it not only makes its new lawyers feel at home but, equally, is able to attract legal work from diverse communities and ensure that these communities are at home in the firm's offices.

*What You Can Do:*

To move ahead on this matter, there are several things you and your firm can do.

- *Demonstrate commitment.* Use the model strategies outlined above or other approaches based on your own firm's experience to make clear to all articling students that equity and diversity is important to your firm and will inform the selection of articling students. Ensure senior management convey this commitment to all members of your firm, especially those involved in the articling recruitment and selection process.
- *Allocate resources.* Make sure your firm has the appropriate human and financial resources as well as policies and programs in place to successfully attract and retain articling students from communities under-represented in the legal profession.
- *Implement strategies.* Set out to ensure that equity and diversity will be high priorities in your recruitment and selection of articling students and ensure that such strategies are comprehensive and take into consideration the importance the issues noted above. Set clear plans within the designated timeframes and ensure there is a system of accountability for staff responsible for this activity.
- *Meet with law students from under-represented groups.* Approach student organizations representing Aboriginal, Francophone and equity-seeking groups (gays, lesbians, racial minorities, people with disabilities) and speak with them regarding your firm's genuine commitment to equity and diversity and to attracting/selecting articling students from communities under-represented in the legal profession.
- *Mentor a high school student.* Participate in the Law Society's Equity and Diversity Mentorship Program and invite a high school student from an Aboriginal, Francophone and equity-seeking community to spend some time in your office and to learn about the life of a lawyer from one of your professionals.

*Resources Available:*

To undertake some or all of the initiatives identified above, the firm may wish to use its own internal resources (eg. equity and diversity committee, articling coordinator, human resources department) as well as take advantage of those resources available from the Law Society of Upper Canada's Equity Initiatives Department and Articling and Placement Services.

In terms of the latter, the Equity Initiatives Department operates a High School Mentorship Program, an Equity and Diversity Training Program, a pro bono support program as well as organizational and policy development services. The Department also has extensive connections to both research documents on equity and diversity as well as active connections with Aboriginal, Francophone and equity-seeking communities within the legal profession and at large.

Since its establishment in 1999, the Equity Initiatives Department has:

- placed over 50 high school students with various mentors;
- developed model policies on flexible work arrangements, accommodations and how to develop equity and diversity policies;
- provided training to large and small law firms as well as convened seminars and continuing legal education sessions for members of the profession;
- developed a specific support program for Bar Admission Course students accepted through the National Committee on Accreditation of the Federation of Law Societies of Canada;
- provided one-on-one and group support to Aboriginal students in the Bar Admission Course;
- worked with law school student associations representing Aboriginal and equity-seeking groups, eg., Out-in-Law, Black Law Students Association, Lesbian/Gay/Bisexual/Transgendered Caucus;
- reviewed and developed equity and diversity policies and programs for both the Law Society as well as law firms.

In assessing strategies on these matters, you can always call and enlist the support of the Law Society's Equity Initiatives Department by contacting:

Charles Smith  
Equity Advisor  
(416) 947-4052  
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LibraryCo. Inc. Report

LibraryCo. Inc. Update: Advancing the Blended System in 2002  
January 24, 2002

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Report to Convocation

Purpose of Report: For Information

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LibraryCo. Inc.

LibraryCo. Inc. Update:  
Advancing the Blended System in 2002

LibraryCo. has begun an important mission to unite Ontario's 48 County and District law libraries into a single, blended library system. By providing universal access for lawyers in the province, in combination with appropriately resourced law libraries and skills development opportunities LibraryCo. offers lawyers the tools to achieve a high level of excellence in order to better serve the people of Ontario.

With the goal of fostering excellence and aiding in the competence of our legal community, LibraryCo. strives to provide Ontario's lawyers, regardless of geographic location, access to the best possible legal research tools and resources. By making available to all users reliable, relevant, current and historic legal information via technology and with the assistance of knowledgeable staff in the system, each law library will not necessarily have to own this information. The key element is in understanding that access to the information - through capable staff and fully trained lawyers - is more critical than the ownership of the information.

Key Changes for 2002

*A Road Map for Future Changes*

In the coming months, LibraryCo. will finalize its Business Plan. That plan will articulate improvements and opportunities for all Regional, Area and Local County and District law libraries. It will serve as a road map to chart a future path leading to more competent and technology savvy lawyers in the province. These steps along with others presently underway as articulated below, will realize the long view for an integrated County and District law library system for Ontario.

### *Designating Libraries*

An important step towards the fully blended model is taking place in 2002. All libraries will be designated as "Local", "Area" or "Regional". A number of variables such as geographic location, proximity to other law libraries, numbers of lawyers at the local bar and others will factor into the determining the designation.

### *Adding Value By Re-Directing Resources*

Local libraries will see a re-direction of 10 percent of their funding to allow for the recruitment of a professional *Roving Law Librarian*.

During 2002, the *Roving Law Librarian* will:

- assist LibraryCo. to complete the assessment and evaluation of collections, staff and technology requirements in the now designated 22 Local libraries;
- consult with and advise local Law Association Library Committees and law library staff on collection development issues;
- assist law library staff with weeding and other collection management matters;
- conduct and/or facilitate training opportunities for law library staff and lawyers on electronic resources;
- and, act as a general resource person for Local libraries.

### *Developing Standards*

In the first year of operation LibraryCo. has consulted with 30 County and District Law Library staff, Library Committees and Executives on developing standards for the new blended system. Thirty-seven different working visits have been made to law libraries and local Associations.

During 2002, LibraryCo. will complete assessments of the remaining 18 law libraries. Additional consultations with CDLPA Library Committee, OCLA and other interested parties will aid in advancing the development of standards that will afford users the best cost-effective opportunities for legal research training; access to comprehensive law and law-related information sources; access to highly capable library personnel; and access to innovative and creative technology solutions.

Standards will ensure that lawyers may enter any law library in the system and have a reasonable expectation of what services that library will provide. The standards will take into account the size and location of the libraries, as well as their categorization as Regional, Area or Local.

### *Developing a Block Funding Formula*

The new, blended system will allocate future funding to achieve expectations set by the new standards. A *Block Funding Formula* for 2003 will ensure more changes and positively influence service levels across the system. In particular, a minimum standard for the "essential law library" will determine block funding for local libraries in 2003.

Stable, long-term funding will ensure a solid technology platform, allow for planned infrastructure development, and accommodate adjustments to personnel in order to meet service requirements across the law library system.

### *Quarterly Reporting*

Starting in 2002, all County and District Law Libraries will both receive quarterly grants and be required to prepare *Quarterly Financial Reports* which include a *Statement of Revenue and Expenses*, a *Statement of Accumulated Operating Surplus(Deficit)* and where feasible, a *Balance Sheet*. The two, quarterly reporting and quarterly grants, go hand in hand.

At the beginning of each quarter starting in January, on April 1<sup>st</sup>, on July 2<sup>nd</sup>, and on October 1<sup>st</sup> grants will be deposited in the Law Associations' library bank accounts via electronic funds transfer. These deposits are dependent on LibraryCo. receiving the penultimate quarter's Financial Statements. Each deposit will represent an equal 25% portion of the library's total allocation for 2002.

#### Adding Value Throughout the System

Library funding will be augmented by the central coordination of other expenditures and the allocation of Law Foundation of Ontario grants representing on average an additional \$31,000 per Association. These funds will provide added value in electronic information, expanding the variety of electronic products available to all law library users, building on existing infrastructure and creating new possibilities to access more law and law-related information.

#### Focusing on Service, Staff, Competencies and Technology

The changes proposed for 2002 and beyond permit a co-coordinated approach to the utilization of resources and common goals for organizational planning and operation. They allow LibraryCo. to move swiftly to utilize and promote electronic services, to build on technologies and address continuing education, competency and no-cost training matters for law library staff and lawyers.

Making these important changes and improvements provides all County and District Law Libraries the opportunity to maximize technology-based resources, provide training opportunities in those tools and offer access to competent staff to better serve the lawyers of Ontario.

#### CORRESPONDENCE

The following correspondence was included in the Convocation material:

- (1) A.M. Best Affirms Rating for Lawyers' Professional Indemnity
- (2) A letter from The Honourable Frank Iacobucci to the Treasurer dated December 10th, 2001.

TREASURER'S REMARKS

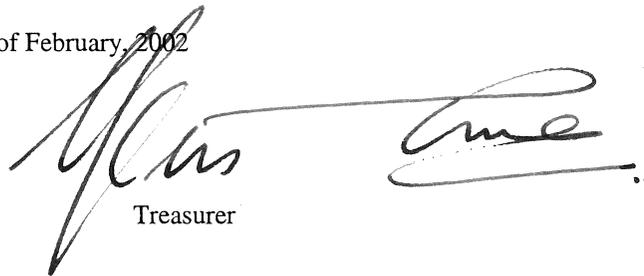
The Treasurer announced that it was with considerable regret that he had accepted the resignation of the Secretary, Mr. Richard Tinsley. He thanked Mr. Tinsley for his loyal service at the Society and remarked that Mr. Tinsley was a source of comfort and support to many Treasurers and Benchers over his 22 years at the Law Society.

The Treasurer and Benchers rose and gave a lengthy round of applause to Mr. Tinsley.

Benchers were reminded of the Farewell Party for Mr. Tinsley in the Barristers Lounge at 4:00 p.m.

CONVOCATION ROSE AT 12:50 P.M.

Confirmed in Convocation this 20th day of February, 2002



Treasurer

The Treasurer and Benchers had as their guests for luncheon The Honourable Lincoln Alexander, The Honourable Stephane Dion, Mr. Herb Wodehouse, Mr. Gordon W. Fuller and Mr. Milf Masters.