

MINUTES OF CONVOCATION

Thursday, 24th September, 2009
9:00 a.m.

PRESENT:

The Treasurer (W. A. Derry Millar), Aaron (by telephone), Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Campion, Caskey, Chahbar, Copeland, Crowe, Daud (by telephone), Dickson, Elliott, Epstein, Eustace, Fleck, Furlong, Go, Gold (by telephone), Hainey, Halajian, Hare (by telephone), Hartman, Heintzman, Henderson, Lawrie, Lewis, MacKenzie, McGrath, Marmur, Minor, Murphy, Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch, Robins, Ross (by telephone), Rothstein, Ruby, Sandler, Schabas, Sikand, Silverstein, Simpson, C. Strosberg, Swaye, Symes and Wright.

.....

Secretary: Katherine Corrick

The Reporter was sworn.

.....

IN PUBLIC

.....

MOTIONS – ELECTION OF BENCHERS

It was moved by Mr. Caskey, seconded by Mr. Swaye, that –

WHEREAS Joanne St. Lewis, who was elected from the Province of Ontario “B” Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors, has resigned; and

WHEREAS the resignation of Joanne St. Lewis has created a vacancy in the office of benchers elected from the Province of Ontario “B” Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors;

THAT under the authority contained in By-Law 3, Carl Fleck, having satisfied the requirements contained in subsections 43 (1) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation to fill the vacancy in the office of benchers elected from the Province of Ontario “B” Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors.

Carried

It was moved by Mr. Caskey, seconded by Mr. Swaye, that –

WHEREAS Melanie Aitken, who was elected from the Province of Ontario “B” Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors, has resigned; and

WHEREAS the resignation of Melanie Aitken has created a vacancy in the office of benchers elected from the Province of Ontario “B” Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors;

THAT under the authority contained in By-Law 3, Lawrence Eustace, having satisfied the requirements contained in subsections 43 (1) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation to fill the vacancy in the office of benchers elected from the Province of Ontario “B” Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors.

Carried

The Treasurer and benchers welcomed Messrs. Fleck and Eustace to Convocation.

TREASURER’S REMARKS

The Treasurer announced that bencher, Melanie Aitken resigned as a result of her appointment as Commissioner of Competition on August 4.

Condolences were extended to the family of former bencher, the Honourable B. Barry Shapiro, Q.C. who passed away on August 19, 2009.

The Treasurer and benchers congratulated the Honourable R. Roy McMurtry who was appointed to the Order of Canada on July 1, 2009 and Jack Rabinovitch who was promoted within the Order.

DRAFT MINUTES OF CONVOCATION

The draft minutes of the Special Convocations on June 15, 17, 18 and 19 and Regular Convocation on June 25, 2009 were confirmed.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with subsection 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on
Thursday, September 24, 2009.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 2009

CANDIDATES FOR CALL TO THE BAR
September 24th, 2009

Eric Jay Adams
Vikki Lynn Andrighetti
Caroline Michele Belhumeur
Jennifer Doreen Bergman
Gordon Geg-Bond Chu
Genna Angela Shadd Evelyn
Jocelyn Marie Facca
Julie Beth Greenspoon
Catherine Marie Hirbour
William Robert Kerr
Jeffrey Dan Landmann
Laura Carmela Liscio
Charlene Michelle Loui-Ying
Vanessa Jo McCarthy
Korinda Dawn McLaine
Nighat Sultana Nabi
Katherine Mary Ramsey
Miguel Joseph Gilles Simard
Renai Elizabeth Williams

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

Carried

MOTION – APPOINTMENTS

It was moved by Mr. Caskey, seconded by Mr. Swaye, –

THAT the following benchers be appointed to the Inter-Jurisdictional Mobility Committee:

Paul Henderson (Chair)
Glenn Hailey (Vice-Chair)
Thomas Conway
Carl Fleck
Susan McGrath

THAT Carl Fleck be appointed to the Access to Justice and Professional Regulation Committees.

THAT Lawrence Eustace be appointed to the Professional Regulation Committee.

THAT Bob Aaron be removed from the Professional Regulation Committee at his own request.

THAT the following people be appointed to the Hearing Panel:

Alan Gold (Chair)
Thomas Conway (Vice-Chair)
Bob Aaron
Andrea Alexander
Raj Anand
Constance Backhouse
Larry Banack
Margot Blight
Marion Boyd
Jack Braithwaite
Christopher Bredt
John Campion
James Caskey
Abdul A. Chahbar
Dan Chilcott
Austin Cooper
Paul Copeland
Marshall Crowe
Aslam Daud
Mary Louise Dickson
Adriana Doyle
Paul Dray
Susan Elliott
Seymour Epstein
Lawrence Eustace
Abraham Feinstein
Neil Finkelstein

Carl Fleck
Patrick Furlong
Avvy Go
Gary Lloyd Gottlieb
Jack Ground
Michelle Haigh
Glenn Hainey
Jennifer Halajian
Susan Hare
Carol Hartman
Thomas Heintzman
Paul Henderson
Vern Krishna
Barbara Laskin
Brian Lawrie
Doug Lewis
Margaret Louter
Gavin MacKenzie
Ronald Manes
Dow Marmur
Susan McGrath
Jacques Ménard
Janet E. Minor
Daniel Murphy
Ross Murray
Stephen Parker
Laurie Pawlitza
Maurice Portelance
Julian Porter
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Sydney Robins
Allan Rock
Heather Ross
Linda Rothstein
Clayton Ruby
Mark Sandler
Arthur Scace
Paul Schabas
Baljit Sikand
Alan Silverstein
William Simpson
Catherine Strosberg
Harvey Strosberg
Gerald Swaye
Beth Symes
Robert Topp
Bonnie Tough

Howard Ungerman
Sarah Walker
James Wardlaw
Bradley Wright
Roger Yachetti

The motion was approved excluding the appointment of Lawrence Eustace to the Professional Regulation Committee.

LAWPRO REPORT

Mr. Caskey presented the Report.

LAWPRO

September 2009

Report to Convocation

September 4, 2009

TO: The Treasurer and Benchers of The Law Society of Upper Canada

RE: Transmittal of 2009 Report to Convocation

It is with mixed feelings that we transmit LAWPRO's proposal for the 2010 mandatory professional liability insurance program for Ontario lawyers.

On the one hand, LAWPRO is firing on all cylinders: Enclosed is a detailed Report to Convocation that addresses all the complicated, difficult issues of our current environment, be they financial, regulatory or practice-related. LAWPRO is currently in its 15th year of providing the Law Society's insurance program as contemplated by *The Law Society Act*. There have been many successes since LAWPRO commenced operations in 1995 and the results of many good years have accrued to the benefit of the bar.

On the other hand, for the past several years we have been sounding warning bells about consistent increases in claims numbers and costs. This year, those bells are ringing more loudly than ever. When combined with other factors in the business and regulatory environment, the program faces an ugly cacophony of challenges.

In previous Reports to Convocation, as well as in our annual reports and in presentations to the profession, we have been warning that a worsening claims picture puts pressure on the whole insurance program, and especially on premium stability. In our most recent *LAWPRO Magazine* (Vol. 8, Issue 2), we showed how claims costs for 2007 to 2009 have increased (or are projected to increase) by \$10 million per year over 2005/06 claims costs, and by \$20 million more than 2003/04 numbers. LAWPRO is currently projecting 2010 claims costs of \$88.4 million. Ten years ago that figure would have been closer to \$60 million.

Not surprisingly, the message about the worsening claims picture has often been lost (or only slightly heard) during exceedingly good times when the economy boomed and, for reasons unrelated to claims experience, LAWPRO was able to keep premiums at near-record low levels. Two mitigating factors enabled LAWPRO to maintain stable premiums (ranging from a high of \$3,150 to a low of \$2,300 over the past nine years) despite a worsening claims picture:

- our ability to tap into the Premium Stabilization Fund (PSF), thus effectively offsetting significant claims cost increases; and
- healthy investment returns over the last five years, and especially in 2007. The exceptional returns of 2007 made it possible to reduce premiums to their lowest levels ever (at least, for LAWPRO premiums) in 2008, and to increase the base premium a modest \$150 in 2009.

The cushion that a buoyant economy provided both LAWPRO (in the form of healthy investment returns) and lawyers (in that clients were less likely to allege malpractice in a rising economy) is no more. In 2008 and 2009 we see a convergence of several adverse trends that have a major effect on the insurance program and our ability to provide premium stability going forward on the same basis as in recent years.

First, the balance in the PSF stood at about \$16 million at the end of 2008. One of its functions is to cover shortfalls in transaction levy premiums needed to finance the insurance program; the continuing decline in premium revenues from transaction levies (a trend exacerbated by the economic slowdown in real estate in late 2008 and 2009) means we have had to draw on the PSF more than originally anticipated for 2009 – leaving even less in the fund that we can access in future years to mitigate continued increases in claims costs. As at June 30, 2009 there was \$7.7 million in the PSF.

Second, investment income for LAWPRO fell sharply in late 2008 and in the first months of 2009, as it has for everyone with equity investments. The \$26 million in investment income in 2007 played a major factor in helping us keep our bottom line in the black during recent years.

But now, in general, interest rates are at an all-time low, and as our existing bonds mature, the new ones available for purchase virtually always have lower interest rates. For the first six months of 2009, LAWPRO's investments produced only \$1.8 million.

Third, we are also coming to grips with the Ontario government's announcement of a harmonized sales tax (HST) regime. The legal costs we pay to lawyers to defend insureds with claims will attract HST (being a financial institution, LAWPRO neither charges GST/HST on our premiums nor are we allowed to deduct GST/HST paid). This will result in an immediate eight per cent increase to our annual legal bill as well as to other operating expenses.

In summary, the increase in 2010 base premium, when compared to 2009, may be broken down as follows:

\$2,950	\$200 claims development
	\$150 decline in investments
	\$150 extra HST cost annually
\$2,450	2009 Base Premium

The good news is that, to date, the claims portfolio continues to be fully backed by our asset-liability matched portfolio of fixed income securities. So there is no shortfall in the money needed to pay claims right now. But if transitional relief for HST implementation is not granted to LAWPRO by the government, LAWPRO will need additional capital in the range of \$10.2 million to fully fund the reported but still unresolved claims files, once the legislation is substantially enacted.

Troubling as these claims trends and economic developments may be, the insurance process is working as it should: Issues are being identified at LAWPRO and appropriate solutions proposed, keeping in mind the mandate given us in the 1994 Insurance Committee Task Force Report.

We thank Convocation for continuing to place confidence in LAWPRO's Board, executive team and staff. Our efforts will be directed towards transforming the din of 2009 into a more pleasant melody for our principal shareholder and all our customers.

Ian Croft
Chair

Kathleen A. Waters
President & CEO
i

TABLE OF CONTENTS

SECTION	PAGE
Background.....	1
2010 Program Summary	2

Part 1 – The Errors & Omissions Insurance Fund	7
Part 2 – Changes to the Insurance Program for 2010	8
Counterfeit Certified Cheques and Counterfeit Bank Drafts.....	8
Protection Against Lawyer Misappropriations During Mobility	14
Mobility with Québec – Special Canadian/Québec Legal Advisors	18
Locums	21
Part 3 – The Professional Liability Insurance Program	23
Program Costs	24
Impact of Proposed HST	26
Risk Rating.....	27
(a) <i>Background</i>	27
(b) <i>Practice Trends</i>	29
(c) <i>Risk Management Initiatives</i>	30
(d) <i>Revalidating Risk Rating</i>	33
Reinsurance and Capital Preservation	37
Revenues.....	39
(a) <i>Investment Income</i>	40
(b) <i>Levy Surcharges</i>	40
(c) <i>Premium Stabilization Fund</i>	42
(d) <i>Base Premiums</i>	43
(e) <i>Other Adjustments</i>	45
Conclusion	48
Appendices	
Appendix A	
Standard Program Summary & Options	51

Appendix B

Distribution of Claims by Geographic Region (graph).....	57
Distribution of Claims by Firm Size (graph)	58
Distribution of Claims by Years Since Date of Call (graph).....	59
Distribution of Litigation Claims by Type of Error (chart).....	60
The 80-20 Rule (graph).....	61

Appendix C

Premium Rating Examples.....	65
------------------------------	----

Appendix D

Communications Concerning Recent Forms of Fraud	69
---	----

Appendix E

Resolution Regarding Compensation Fund Coverage for Mobile Lawyers	101
--	-----

Appendix F

Memorandum Regarding Mobility with Québec	107
---	-----

LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")
REPORT TO CONVOCATION – SEPTEMBER, 2009

BACKGROUND

1. The Law Society of Upper Canada (the "Law Society") governs the legal profession in the public interest. One of the ways it discharges its responsibilities is through the mandatory requirement it places on practising lawyers to obtain professional liability insurance coverage. This coverage is provided by LAWPRO, a provincially licensed insurer that is owned by the Law Society.
2. The coverage that the mandatory LAWPRO program provides is considered to be both in the best interests of the public and in the best interests of Ontario lawyers – in that the public has reasonable assurance that an insurance policy backstops errors committed by lawyers in practice, and lawyers have assurance that they have financial protection that is customized to their practice needs.
3. In recent years, over 3,000 insurance claims have been open at any one time. The gross value of open claims was estimated at \$349 million as at December 31, 2008. Overall, the insurance program manages about 85 per cent of the Law Society's \$623 million in consolidated assets.

4. Each September since 1995, LAWPRO's Board of Directors has reported changes to the Law Society's professional liability insurance program to Convocation for the following calendar year. The timing of this report is necessitated by the logistics of renewing in excess of 22,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.

5. This report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy direction where necessary. Financial information on LAWPRO and the program is provided to Convocation throughout the year.

6. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report (the "Task Force Report"). The mandate and principles of operation were to be as follows:

- that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
- that LAWPRO be operated in a commercially reasonable manner;
- that LAWPRO move to a system where the cost of insurance reflects the risk of claims;
and
- that claims be resolved fairly and expeditiously; however, this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied or coverage was limited.

For 2010, we have conducted our annual review of the program to re-validate the approach and rating structure in relation to these Task Force recommendations.

7. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed program for 2010 continues to operate on these principles. This report deals solely with the mandatory professional liability program. The LAWPRO optional programs, such as TitlePLUS® title insurance and the Excess professional liability insurance program, are operated on an expected break-even or better basis.

2010 PROGRAM SUMMARY

8. The following summarizes the 2010 professional liability insurance program, as provided for in this report.

Premium Pricing for 2010:

(i) The base premium is \$2,950 per lawyer for 2010, an increase of \$500 from the base premium charged in 2009 (paragraph 145[a]).

(ii) The levy on real estate transactions will be increased from \$50 charged in 2009 to \$65 for files opened on or after January 1, 2010. Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at \$24.9 million for the purposes of establishing the base premium for 2010 and other budgetary purposes (paragraph 145[b]).

(iii) The premium discount relating to the early lump sum payment will be reduced from the \$150 provided in 2009 to \$50, while the e-filing discount will be reduced from the \$50 provided in 2009 to \$25 (paragraph 156).

(iv) The premium for the Real Estate Practice Coverage Option will decrease from \$500 charged in 2009 to \$400 in 2010 (paragraph 145[e]).

(v) \$3.5 million (approximately \$150 per insured lawyer) is expected to be drawn from the Premium Stabilization Fund built up in previous years (a \$7.7 million balance is forecast as at December 31, 2009) and applied to the 2010 insurance premium (paragraph 145[c]).

(vi) To the extent that levies (noted in (ii) above) collected in 2010 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the Premium Stabilization Fund (paragraph 145[d]).

(vii) 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2010, subject to limited capital backstop protection provided by the Errors & Omissions Insurance Fund, and reinsurance protecting the program from multiple losses arising out of a common event or nexus (paragraph 122).

(viii) On substantive enactment of the legislation to introduce HST and subject to any transitional relief, a special levy will be charged for the one-time reassessment of existing claims reserve liabilities, currently estimated to be \$10.2 million (or \$450 per practising insured lawyer) (paragraph 86).

Counterfeit Certified Cheques and Counterfeit Bank Drafts:

(ix) Program coverage for 2010 will be extended in the case of the described forms of fraud involving the deposit of counterfeit certified cheques and counterfeit bank drafts into lawyers' trust accounts, to provide to practising insured lawyers with a limited form of related overdraft protection that is funded by the base-rate premiums, where:

- The amount of protection in relation to the overdraft position is subject to a sub-limit of \$500,000 per claim and aggregate per lawyer and across the firm, applicable to indemnity payments, claim expenses and/or costs of repairs, that is inclusive of the insured lawyer's deductible;
- The insured lawyer's deductible for those claims - as well as such other claims involving counterfeit certified cheques and counterfeit bank drafts that do not result in an overdraft position - shall be as indicated in the lawyer's Declarations, unless indicated as being less than \$5,000, then the deductible shall be deemed to be the standard program deductible of \$5,000 applicable to indemnity payments, claim expenses and/or costs of repairs;
- The lawyer and firm have waited eight full business days following the date of deposit of the counterfeit certified cheque or counterfeit bank draft without notice or advice of the possible true nature of the instrument, before funds are drawn;

- In the alternative, the lawyer and firm have waited less than eight full business days following the date of deposit of the counterfeit certified cheque or counterfeit bank draft without notice or advice of the possible true nature of the instrument, and received confirmation from either the lawyer's financial institution or the drawee financial institution of verification by the drawee financial institution that the instrument is valid and that it is safe to withdraw funds, as documented in writing between the lawyer and financial institution, before funds are drawn;
- The counterfeit certified cheque or counterfeit bank draft was received by the lawyer for his or her inspection and deposit, and the institution indicated as having issued the counterfeit instrument is a Canadian financial institution; and
- No protection is afforded in relation to retainer deposits, untransferred fees, or other amounts relating to legal fees, accounts or fee arrangements (paragraph 35).

(x) LAWPRO will continue to work to ensure that lawyers and law firms are aware of new fraud schemes involving counterfeit certified cheques and counterfeit bank drafts, and the types of steps that might be taken to improve related law office practices (paragraph 36).

Protection Against Lawyer Misappropriations During Mobility:

(xi) For professional services provided on or after January 1, 2010, the program policy will provide coverage under the program for misappropriations by practising insured lawyers arising from temporary practise in or with respect to the law of another Canadian jurisdiction in the amount of \$250,000 per claimant/\$2 million in the aggregate per lawyer, as more fully described in the March 19, 2009, resolution of the Federation of Law Societies (paragraph 50).

Mobility with Québec – Special Canadian/Québec Legal Advisors:

(xii) Subject to Law Society by-law changes that would apply to practicing insured lawyers acting as Special Canadian Legal Advisors in Québec, program changes will: afford coverage to such insured lawyers for their services as a Special Canadian Legal Advisor; allow exemption for lawyer members of the Law Society otherwise insured under another law society program policy as home jurisdiction; and provide for such other policy and program refinements, as contemplated in the May 27, 2009, memorandum from law society program insurers and insurance directors (paragraph 61).

Locums:

(xiii) To ensure greater clarity, application materials under the program will be updated to better guide lawyers in the selection of program options in relation to locum work, and the policy wording will be amended to specifically address locum work and the basis on which lawyers are insured for their locum work under the program (paragraph 70).

CLE Premium Credit:

(xiv) The Continuing Legal Education Premium Credit will be continued for the 2011 program, with a \$50 premium credit per program, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and

successfully completed by lawyers between September 16, 2009, and September 15, 2010, for which the lawyer has successfully completed the online CLE Declaration Form (paragraph 100).

(xv) Subject to the changes identified earlier in this report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2009 will remain unchanged for the 2010 insurance program (paragraph 157).

Errors & Omissions Insurance Fund:

(xvi) The investment income of the Errors & Omissions Insurance Fund which is surplus to the obligations of the fund will be made available to the Law Society during 2010 (paragraph 11).

Conclusion:

(xvii) The LAWPRO Board considers the program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this program of insurance for 2010 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2010 insurance program can be implemented by January 1, 2010.

PART 1 – THE ERRORS & OMISSIONS INSURANCE FUND

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

10. As of June 30, 2009, the E&O Fund had outstanding claims liabilities of \$1.6 million. The number of open files for 1994 and prior years stood at 13. Since there are sufficient assets in the E&O Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the E&O Fund is surplus to the needs of the E&O Fund and can be used by the Law Society for its general purposes.

11. Accordingly, the investment income of the Errors & Omissions Insurance Fund which is surplus to the obligations of the fund will be made available to the Law Society during 2010.

PART 2 – CHANGES TO THE INSURANCE PROGRAM FOR 2010

12. The general structure of the current program, as well as policy limits, coverage and available options, appear to generally meet the needs and practice realities of the profession for 2010. However, in developing the details of the 2010 program, LAWPRO has considered the changing environment in which lawyers practise and comments received from the profession during the previous year.

13. Accordingly, relatively few modifications in the structure of the program, and in the form and substance of the policy, are contemplated for 2010, apart from some greater protection for Ontario lawyers in relation to certain types of fraud-related claims and changes to accommodate the mobility of Ontario lawyers within Canada. Some minor refinements in program materials and policy wording are contemplated to better ensure underwriting intention for 2010, particularly in relation to coverage for locum work, as discussed in this report.

Counterfeit Certified Cheques and Counterfeit Bank Drafts

14. The report by the LAWPRO Board to Convocation last year outlined two new forms of fraud scheme that had arisen commencing late in 2007 involving the use of counterfeit certified cheques and bank drafts to defraud lawyers and law firms out of trust funds.

15. In one type of scheme, lawyers are duped into acting for a lender on a commercial loan for a small business, and in the other lawyers are duped into acting for a corporate client in the negotiation and collection of a commercial debt. In both, proceeds of the loan or debt collection are received by certified cheque or bank draft, and trust funds are disbursed based on such instrument being deposited in the lawyer's trust account.

16. Ultimately the cheque or bank draft is found to be counterfeit, with the result that trust funds for legitimate clients have been inadvertently paid out to the fraudsters by the time the true nature of the instrument becomes known. Although generally there happens to have been sufficient funds of other clients available in the trust account to fully cover the amount paid out to the fraudsters, in at least some cases there have been insufficient funds in the account to fully cover the loss and the lawyer has been left in an overdraft position with his or her bank.

17. These fraud attempts have usually been well thought out: Fraudsters play convincing roles over the telephone and in person; certified cheques and bank drafts are near perfect; and sophisticated documentation and evidence is provided in support of the fraud. In some instances, more than a dozen lawyers have been targeted at a time, using similar fact scenarios for each, with transactions usually to close shortly before a long weekend. Sole practitioners and lawyers in small firms are most often targeted, including recently called lawyers.

18. Since last year, variations on these forms of fraud have been seen. One scenario involves the lawyer being retained on behalf of the debtor and guarantor to address the negotiation and payment of a personal debt; a second involves the lawyer being contacted by a fraudster pretending to be a loan officer of a major financial institution, who retains and provides mortgage instructions to the lawyer using a counterfeit bank draft to seemingly fund the mortgage advance.

19. With many other variations in form possible, it is clear that litigators and commercial law lawyers are not the only members of the bar at risk. In fact, all lawyers with trust accounts involving these forms of financial instrument face potential exposure.

20. Thus far, there have been 16 claims reported involving these various forms of fraud scheme. Ten claims in which counterfeit certified cheques or bank drafts were deposited into lawyers' trust accounts were reported about the last week of December, 2007. Another four claims were reported in mid-May of 2008, and two more claims later in the year. With some limited success in halting the transfer of funds to fraudsters, amounts expected to be spent on these files total \$2.6 million.

21. To date in 2009, Ontario lawyers and law firms have been very fortunate in detecting and avoiding these forms of fraud. This includes 18 fraud attempts against different lawyers involving similar fact scenarios that were to close before the May long weekend. Fraud amounts associated with these particular fraud attempts total \$5.5 million, or about \$300,000 each. Although in the past these frauds typically involved amounts of about \$250,000, this year amounts in the order of \$350,000 are not uncommon.

22. Only one claim to date this year has been reported where the counterfeit instrument was deposited and fraudsters appear to have been successful. That case involved a counterfeit uncertified cheque where funds appeared to have been credited regardless.

23. In last year's report, Convocation was advised that LAWPRO would:

- Continue to work to ensure that Ontario lawyers and law firms are aware of the new forms of fraud involving counterfeit financial instruments and the types of steps that might be taken to improve related law office practices; and
- Further consider alternatives that might be made available to lawyers and law firms in relation to the overdraft exposure associated with some of these claims.

24. Clearly, LAWPRO's active communication with the profession and risk management guidance have played a major role in helping lawyers and law firms recognize and avoid these forms of fraud, and keep program costs for this type of claim at a manageable level. Appendix "D" in this report contains some of the LAWPRO communications with the bar since last year's report advising lawyers regarding these forms of fraud.

25. From a practice perspective, the Law Society has been candid in its advice to practitioners since early on, warning lawyers to "Always ensure that you verify with your own bank that funds have actually been deposited and cleared in your account before forwarding them on".¹

26. In the Summer 2008 issue of *LAWPRO Magazine*, LAWPRO revisited the various means of paper and electronic fund transfers available to lawyers, how these transfers are effected, as well as the advantages and disadvantages associated with each. A copy of this article, called "Show me the money", is also attached in Appendix "D" of this report.

27. The article emphasizes the benefits of wire transfers that use the large value fund transfer system ("LVTS") over other forms of funds transfer available to lawyers, including certified cheques and bank drafts, appreciating the final and irrevocable nature of this quickly-processed form of transfer. The article also advises that generally it is not safe to withdraw funds which have been provisionally credited – as with certified cheques and bank drafts – for at least eight to 10 days, and reinforces the Law Society's practice advice that lawyers confirm through their own bank that the drawee bank has satisfied itself that the instrument is valid before the lawyer proceeds to deal with the funds.

28. With regard to insurance coverage for these new forms of fraud, coverage for claims involving counterfeit certified cheques and bank drafts are not specifically insured or excluded from coverage under the 2009 program. In determining whether there is coverage for any claim

¹ May 21, 2008 "Law Society Alert on Fraud Scams" email from The Law Society of Upper Canada to Ontario lawyers. See also the Law Society's January 8, 2008 "Fraud Alert – Counterfeit Certified Cheques" to Ontario lawyers. For a copy, see Appendix "D" of the 2008 LAWPRO Report to Convocation.

under the program, LAWPRO looks to the circumstances of the claim to determine whether the necessary elements are there for coverage to apply, and then ensures that there is nothing that may serve to restrict or exclude coverage.

29. To the extent that trust funds belonging to *bona fide* clients of the lawyer have been taken, coverage has generally been available. However, where there has been a shortfall in funds between the lawyer and his or her bank, no indemnity coverage has been available, in LAWPRO's view, in respect of the lawyer's overdraft position in the absence of any professional service having been provided by the lawyer to his or her bank.

30. As a practical matter, this shortfall is a debt based on contract between the lawyer and his or her bank. It is not the subject of a demand for damages from a client arising in the context of the provision of professional services, and is not based on allegations of professional negligence.

31. To date, subject to private negotiations with their bankers, we believe lawyers have been left in an overdraft position for at least some amount in four claims. The overdraft amounts have varied between \$42,000 and \$225,500 depending on the amount of the fraudulent instrument and client funds actually held in the trust account. Reported overdraft amounts for these four files total \$625,000.

32. In considering what program protection should be made available to insured lawyers in 2010 for this overdraft exposure, consideration has been given to:

- The threat that this exposure represents to the viability of law practices in Ontario;
- The vulnerability of those segments of the bar most targeted in these forms of fraud;
- Other segments of the bar likely to become exposed as further schemes arise;
- Choices in the transfer of funds that avoid or reduce the risk of overdraft exposure;
- Encouraging awareness and active risk management by lawyers and law firms;
- At least some deductible responsibility for lawyers in the event of a claim;
- Maintaining flexibility in practice in the transfer of funds;
- Protection available to lawyers and law firms from commercial markets through more direct forms of insurance, as well as from other professional liability insurers;
- The anticipated cost and affordability of any additional protection; and
- LAWPRO continuing to operate in a commercially reasonable manner and ensuring that risk-rating is maintained.

33. With regard to the above, LAWPRO is advised that no meaningful first-party policy coverage is available for this exposure to lawyers and law firms from commercial markets. As for professional liability insurance, it is understood that the protection afforded under the Law Society program for these types of claims is in keeping with or exceeds that provided under other law society programs in Canada as well as that available to lawyers or law firms from commercial insurers.

34. Although mindful that commercial markets have been well positioned to provide comprehensive protection through other forms of insurance but preferred not to do so, based on the foregoing, the LAWPRO Board is satisfied that a limited form of related overdraft protection can be provided to insured lawyers under the program that is funded by the base-rate premiums, provided best practices are met.

35. Accordingly, program coverage for 2010 will be extended in the case of the described forms of fraud involving the deposit of counterfeit certified cheques and counterfeit bank drafts into lawyers' trust accounts, to provide practising insured lawyers with a limited form of related overdraft protection that is funded by the base-rate premiums, where:

- The amount of protection in relation to the overdraft position is subject to a sub-limit of \$500,000 per claim and aggregate per lawyer and across the firm, applicable to indemnity payments, claim expenses and/or costs of repairs, that is inclusive of the insured lawyer's deductible;
- The insured lawyer's deductible for those claims – as well as such other claims involving counterfeit certified cheques and counterfeit bank drafts that do not result in an overdraft position – shall be as indicated in the lawyer's Declarations, unless indicated as being less than \$5,000, then the deductible shall be deemed to be the standard program deductible of \$5,000 applicable to indemnity payments, claim expenses and/or costs of repairs;
- The lawyer and firm have waited eight full business days following the date of deposit of the counterfeit certified cheque or counterfeit bank draft without notice or advice of the possible true nature of the instrument, before funds are drawn;
- In the alternative, the lawyer and firm have waited less than eight full business days following the date of deposit of the counterfeit certified cheque or counterfeit bank draft without notice or advice of the possible true nature of the instrument, and received confirmation from either the lawyer's financial institution or the drawee financial institution of verification by the drawee financial institution that the instrument is valid and that it is safe to withdraw funds, as documented in writing between the lawyer and financial institution, before funds are drawn;
- The counterfeit certified cheque or counterfeit bank draft was received by the lawyer for his or her inspection and deposit, and the institution indicated as having issued the counterfeit instrument is a Canadian financial institution; and
- No protection is afforded in relation to retainer deposits, untransferred fees, or other amounts relating to legal fees, accounts or fee arrangements.

36. LAWPRO will continue to work to ensure that lawyers and law firms are aware of new fraud schemes involving counterfeit certified cheques and counterfeit bank drafts, and the types of steps that might be taken to improve related law office practices.

Protection Against Lawyer Misappropriations During Mobility

37. As discussed in the report of the LAWPRO Board to Convocation last year², ensuring that the public is provided with general uniformity in protection against misappropriations by lawyers exercising their mobility rights has been a concern since the National Mobility Agreement ("NMA") came into effect on July 1, 2003.

² Ibid, pp. 12-15.

38. Motivated by large defalcations uncovered in several jurisdictions and the prospect of misappropriations by lawyers exercising their mobility rights, the Federation of Law Societies appointed a task force in early 2004 to review the coverages in place across Canada for lawyer misappropriation, and make recommendations on how to achieve better uniformity of coverage for clients suffering damages in the event of lawyer misappropriations.

39. It was determined that efforts should be directed towards developing uniform protection for mobile lawyers only, as this approach addresses the immediate concern of lawyer mobility, and leaves it open in future to address the challenges associated with reconciling all compensation fund programs across the country or developing a single national compensation fund program.

40. Accordingly, a resolution was passed by the Federation of Law Societies on March 19, 2009 (included as Appendix "E" in this report), providing that:

- a) All law societies that are bound by the NMA shall provide coverage for misappropriation by a mobile lawyer arising from his or her temporary practice in or with respect to the law of another Canadian jurisdiction in the amount of \$250,000.00 per claimant, with an aggregate limit per lawyer of \$2,000,000.00, subject to the annual aggregate limit in place in each jurisdiction, and signatories shall amend their policies of insurance or compensation fund payment guidelines, as necessary, to pay out on this basis.
- b) No classes of claimants shall be excluded from coverage.
- c) The compensation fund of the lawyer's home jurisdiction shall respond to a claim made against one of its lawyers arising from the lawyer's temporary practise in or with respect to the law of another Canadian jurisdiction.
- d) Claimants shall deal directly with the home jurisdiction and follow the claims process of the home jurisdiction. The home jurisdiction shall follow its local payment guidelines, rules, policies and procedures, subject to paragraphs a) and b) above.
- e) While the investigation of complaints/claims of misappropriation against mobile lawyers shall be handled by the home jurisdiction:
 - i) the home jurisdiction shall advise the host jurisdiction that a claim has been made, discuss with the host jurisdiction the manner in which the investigation will be handled, and keep the host jurisdiction informed on the progress of the investigation;
 - ii) the home jurisdiction may ask the host jurisdiction to be responsible for assuming conduct of the investigation and if the host jurisdiction agrees, the home and the host jurisdictions shall be responsible for reaching an agreement on how the costs will be paid or co-shared; and
 - iii) in deciding whether to ask a host jurisdiction to assume conduct of the investigation, the primary consideration should be public interest, convenience and cost.
- f) If the identity of the host jurisdiction is not obvious, the host shall be determined by using the closest and most real connection test.

41. The resolution provides that an addendum to the NMA be drafted reflecting these principles, and that where appropriate, the law societies and their insurers agree to work together to draft or amend any current policy language necessary to implement these principles.

42. In the case of misappropriation by a lawyer called and actively practising in more than one jurisdiction, a provision is included which provides that the claim be investigated and paid by the jurisdiction that has the closest and most real connection to the claim, as further described in the resolution.

43. The recommended limit amount is based on an actuarial assessment of the various jurisdictions' compensation fund loss experience over a 10-year period, which was completed with involvement of LAWPRO's internal actuary in 2007.

44. Each law society is to determine how best to provide the agreed-on mobile uniform protection in respect of its own jurisdiction. For Ontario lawyers, it is contemplated that this added protection be afforded by LAWPRO under the insurance program, with coverage to apply in respect of professional services provided on or after January 1, 2010.

45. This protection would form part of the base insurance program and be funded by the base rate premiums, since the costs associated with this added protection are not expected to be particularly significant. This view is based on the following reasons:

- a) The areas of practice that most lend themselves to mobility do not typically present significant misappropriation risks;
- b) Precautions are in place under mobility guidelines with respect to trust accounts;³
- c) Lawyers practising in partnership or association in Ontario already purchase innocent party coverage; and
- d) Sole practitioners, who might not otherwise have this coverage, tend not to exercise a high degree of mobility (given the first two items noted above).

46. As the following chart indicates, the most prevalent areas of practice involving lawyer misappropriations under the Compensation Fund in Ontario are real estate practices and wills and estates practices. Together these two areas of practice account for 70 per cent of claims costs under this fund.

Proportion of Lawyer Misappropriation Claim Costs, 2002-2008
Source: Lawyers' Fund for Client Compensation

(see graph in Convocation Report)

47. As a practical matter though, neither area of practice seems to lend itself to a significant mobility practice. As well, under the NMA a visiting lawyer is not able to open a trust account in the host jurisdiction, but rather must promptly remit trust funds received to the lawyer's home trust account, or deposit the funds into the trust account of a member lawyer in the host jurisdiction.

48. To assess and monitor the exposure associated with any proposed mobile uniform protection, it is also important to understand the degree to which Ontario lawyers are exercising their mobility rights and in respect of what areas of practice. Based on lawyer filings with the

³ A lawyer exercising his or her mobility rights pursuant to the NMA is not permitted to have a trust account outside of the home jurisdiction, as further discussed in this section.

Law Society from 2005 to 2007, 13.0 per cent of Ontario lawyers engage in some form of practice outside Ontario in a year, while only 6.9 per cent of those lawyers in firms of five or fewer lawyers do so. This is particularly relevant, given that more than 98.8 per cent of claims for the period 2000-2006 under the Compensation Fund involve lawyers in firms of up to five lawyers.

49. The exposure is also limited by virtue of mobility restrictions, which limit the amount of time a lawyer may practise in another jurisdiction to 100 days per year. Assuming 250 business days per year, this would restrict a lawyer to practising no more than 40 per cent of the time out-of- province. Thus, for lawyers in firms of five or less, the maximum share of time devoted to out-of- province practice would be 40 per cent of 6.9 per cent, or 2.8 per cent.

50. Accordingly, for professional services provided on or after January 1, 2010, the program policy will provide coverage under the program for misappropriations by practising insured lawyers arising from temporary practise in or with respect to the law of another Canadian jurisdiction in the amount of \$250,000 per claimant/\$2 million in the aggregate per lawyer, as more fully described in the March 19, 2009, resolution of the Federation of Law Societies.

Mobility with Québec – Special Canadian/Québec Legal Advisors

51. Pursuant to regulation enacted last June, the Barreau du Québec (“Barreau”) now has the ability to grant a restricted form of membership to lawyer members of other Canadian law societies.

52. With the Barreau able to offer Ontario and other lawyers this form of membership, work has begun on a reciprocal arrangement to allow similar mobility for Québec lawyers who wish to practice elsewhere within Canada.

53. In this regard, the Barreau is now authorized to grant Special Canadian Legal Advisor (“CLA”) permits to members of other Canadian law societies, as full members of the Barreau with restricted practice status.

54. As a CLA, the lawyer must be a member in good standing of the bar in another Canadian jurisdiction and must maintain that membership. As described in regulation, CLAs are permitted to:

- 9 (1) give legal advice and consultations on legal matters involving the law of the Canadian province or territory where he is legally authorized to practise law or involving matters under federal jurisdiction;
- (2) prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the courts, but only with respect to matters under federal jurisdiction;
- (3) give legal advice and consultations on legal matters involving public international law;⁴ and

⁴ In this context, the term “public international law” is intended to refer to that body of principles and practices which states or intergovernmental organizations follow in their relations with one another which are recognized as having the force of law, both in relation to international law (i.e. between countries) and inter-jurisdictional law (i.e. between provinces and territories).

- (4) plead or act before any tribunal, but only with respect to matters under federal jurisdiction;

55. The regulation is the result of the Barreau's efforts to have the necessary legislative changes enacted to permit implementation of the NMA. While recognizing the reality of the difference in legal systems, this change permits lawyers from other Canadian jurisdictions to become members of the Barreau and practice law in Québec.

56. A reciprocal arrangement is now contemplated for Québec lawyers seeking to practise elsewhere in Canada. They would be known as Special Québec Legal Advisors ("QLA"). With strong support from provincial law societies for this form of reciprocal arrangement, law society program insurers and insurance directors ("Program Insurers") have offered comment and direction regarding insurance-related issues by memorandum dated May 27, 2009, attached to this report as Appendix "F".

57. In summary, recommendations of the Program Insurers provided that:

- The law society program policy of the lawyer's "home" jurisdiction should respond, where that jurisdiction is the one within Canada in which the lawyer is called as a regular member of the law society, not as a member with a special permit;
- If the lawyer is called as a regular member of a law society in more than one jurisdiction within Canada, the "home" jurisdiction would be that jurisdiction in which the lawyer is resident (as described in the *Income Tax Act*), and if not resident in any such jurisdiction, then the jurisdiction in which the lawyer was first called and is still a regular member of the law society;
- The lawyer be eligible to claim exemption under other law society insurance programs within Canada, provided the lawyer is purchasing insurance from the home jurisdiction that meets the necessary policy limit and coverage criteria;
- Policy limits of \$1 million per claim/\$2 million aggregate be required and provided to CLAs/QLAs. In accordance with Québec law, policy limits would apply to indemnity payments only, and not investigation or defence costs;⁵
- The prescribed form of "other insurance" clause, included in program policies pursuant to the NMA to avoid the stacking of law society program policy limits, would similarly apply in relation to CLAs/QLAs;
- The "inter-jurisdictional considerations" clause, included in program policies pursuant to the NMA, would similarly apply in relation to CLAs/QLAs. This clause ensures that the program policy of the home jurisdiction provides the same scope of protection as the reciprocating jurisdiction's program policy would in respect of a claim, where (a) coverage under the reciprocating jurisdiction's policy is broader, and (b) the closest and most real connection to the claim is with the reciprocating jurisdiction; and
- The practice of public international law would be excluded from coverage (to the extent that this term is intended to include the practice of non-Canadian law).

58. These recommendations anticipate certain regulatory and insurance program changes in Québec in relation to CLAs, including:

⁵ It is recognized that Québec law may affect other policy rights and obligations, including for example, certain types of deductible, cooperation in claims handling and rights of subrogation.

- Provision for exemption from the need to subscribe for insurance with the Barreau;
- Acceptance of an aggregate policy limit of \$2 million per policy period; and
- Exemption from the requirement that law firms operating as a limited liability partnership, joint-stock company or multidisciplinary firm carry at least \$1 million per claim more in limit protection beyond that required of individual lawyer members.

59. Given the need to implement the proposed reciprocal arrangement in a timely way, recommendation is made not to cover the practice of public international law to the extent that this term is intended to include the practice of non-Canadian law. Currently, only the programs in British Columbia and Québec generally insure the practise of non-Canadian law. Accepting an undertaking not to practise foreign law from CLAs or purchase of separate commercial insurance for that exposure are offered as possible forms of assurance in relation to this exposure.

60. Current discussions anticipate a January 1, 2010, implementation date for this mobility initiative, with insurance as provided for in the May 27, 2009, memorandum.

61. Accordingly, subject to Law Society by-law changes that would apply to practicing insured lawyers acting as Special Canadian Legal Advisors in Québec, program changes will: afford coverage to such insured lawyers for their services as a Special Canadian Legal Advisor; allow exemption for lawyer members of the Law Society otherwise insured under another law society program policy as home jurisdiction; and provide for such other policy and program refinements, as contemplated in the May 27, 2009, memorandum from law society program insurers and insurance directors.

Locums

62. Effective May 1, 2009, the Law Society launched a locum registry for lawyers,⁶ as a five year pilot project recommended by the Retention of Women in Private Practice Working Group, to help women address challenges faced in finding competent and available lawyers to maintain their practice during leaves of absence, and as a tool for all lawyers to be able to maintain better work-life balance.⁷

63. “Locum”, short for the Latin phrase *locum tenens*, is a person who temporarily fulfils the duties of another. For the purpose of the locum registry, a locum is a lawyer who stands in for another lawyer (“Contracting Firm/Lawyer”) to run his or her practice, either for a specified period of time or under some other arrangement, while the Contracting Firm/Lawyer is away on vacation or on an extended leave – whether for parental, health or other reason.

64. Typically, the locum will be retained to work in the Contracting Firm/Lawyer’s office and deal with every type of file handled by the practice. The locum may also be brought in to handle specific matters though, and may work on either a full-time or part-time basis.

⁶ The registry is located on-line at: <http://rc.lsuc.on.ca/jsp/locum/index.jsp?language=en>

⁷ See pages 102-105 of the *Final Report – Retention of Women in Private Practice Working Group* dated May 22, 2008 at http://www.lsuc.on.ca/media/convmay08_retention_of_women_consultation.pdf

65. The Law Society recommends that all clients be informed that the locum will be covering the Contracting Firm/Lawyer's practice for the period in question and therefore may be working on their files. As well, retainer agreements may also provide for potential locum involvement. As such, locums can expect to be considered by clients and others as part of the Contracting Firm/Lawyer's office for the purposes of their locum work.

66. Under the program, it is the locum's responsibility to ensure that his or her insurance coverage properly accommodates the locum work, as well as any law practice the locum lawyer may also be conducting on his or her own.

67. In particular, this includes ensuring that locum work is appropriately reflected in insurance options like the real estate practice coverage, part-time practice, restricted area of practice and innocent party coverage options.

68. Since the locum is considered to be a member of the Contracting Firm/Lawyer's office for the purposes of locum work, it is also important that the Contracting Firm/Lawyer ensure that the locum maintains program protection and coverage options consistent with the locum work and at least equivalent coverage to that maintained by the firm lawyers.

69. Under the program policy, it is the intention that the locum be considered a member of the Contracting Firm/Lawyer's office for the purposes of locum work. Accordingly, limit protection for a claim made against the locum in respect of locum work is not increased by virtue of the program coverage maintained by other lawyers in the Contracting Firm/Lawyer's office (meaning only one policy limit would be available in respect of a claim). As well, partners in the Contracting Firm/Lawyer's office can also be held responsible for payment of the program deductible in respect of locum work.

70. To ensure greater clarity, application materials under the program will be updated to better guide lawyers in the selection of program options in relation to locum work, and the policy wording will be amended to specifically address locum work and the basis on which lawyers are insured for their locum work under the program.

PART 3 — THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

71. The emergence and persistence of adverse claims trends, coupled with growing uncertainty regarding investment income, transaction levies and Premium Stabilization Fund contributions, have put pressure on the program.

72. As LAWPRO works through these challenging times, the company's prudent and conservative approach to the issues of the day has stood it in good stead. For example, LAWPRO has received a consistent "A" (Excellent) rating from A.M. Best Co. for each of the last nine years. In addition, LAWPRO has experienced a number of years' growth in its capital base; its minimum capital test ("MCT") as of June, 2009, was 222 per cent, whereas the regulator requires a minimum of 150 per cent and the LAWPRO preferred target is 175 per cent. The tough proposals outlined in the following pages are designed to address the present challenges in a prudent fashion and maintain the company's ability to meet the needs of the bar in the years to come.

73. To establish the recommended program for 2010, the LAWPRO Board considered several factors, such as:

- the cumulative effect of the recent underwriting and investment results, and the economic environment, on the program;
- factors affecting expected future loss costs;
- the revenue sources which are expected to supplement the base levies; and
- the inherent uncertainties associated in predicting the results of the program each year.

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

75. As part of its ongoing planning process, LAWPRO looked at a three-year time horizon. The forecast is reviewed and revised periodically based on new information as it emerges. In addition, the forecast reflects the trends detailed in this report, and takes a conservative approach to projecting the frequency and cost of claims under the program. This prudent approach is dictated by uncertainties associated with predicting (a) general economic and inflationary trends, and (b) claims associated with recommended or recent program changes.

Program Costs

76. LAWPRO's revenue requirements for the 2010 insurance program are based on the anticipated cost of claims for the year, as well as the cost of applicable taxes and program administration.

77. Loss experience has trended up noticeably in terms of frequency since 2004 with more claims reported than in the recent prior years. While it is too early to form a final view on the development of the most recent fund years' claims, such as 2007 through 2009, recent statistics indicate an increase in the number of claims involving \$100,000 or more (as seen below) and a resulting overall increase in claims severity (cost per claim). As well, the number of real estate claims reported, and costs attributed to these claims, has increased noticeably.

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

(see graph in Convocation Report)

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

(see graph in Convocation Report)

78. For 2010, LAWPRO expects claims costs alone to be \$88.4 million (see chart below). LAWPRO estimates total program funds required for 2010 to be \$111.7 million. This estimate is higher than the current forecast of total program funds for 2009, which is approximately \$103.6 million. The anticipated increase in 2010 is mainly due to general upward claim trends and the prospective impact of the proposed PST-GST harmonization.

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

(see graph in Convocation Report)

* Figure excludes potential one-time revaluation of claim reserves due to PST-GST harmonization (see paragraph 85)

Impact of Proposed HST

79. As part of its 2009 Budget, the Ontario government announced plans to harmonize its provincial sales tax ("PST") with the federal government's goods and services tax ("GST").⁸ Based on the current proposed plans, the resulting harmonized sales tax ("HST") will place an extra 8 per cent sales tax burden on expenditures such as corporate rent, certain utilities, certain new home purchases, and most importantly for LAWPRO, services.

80. Because insurance is considered a financial service and therefore an "exempt supply" under the *Excise Tax Act*, LAWPRO does not charge GST on its premiums, but also does not get to recover GST paid while conducting its business. Therefore, the additional 8 per cent sales tax that LAWPRO will face as a result of the harmonization will represent a permanent cost to the company.

81. Given the anticipated costs of rent, utilities and services (such as legal, audit and other consulting work), LAWPRO has estimated that HST will increase its annual program administration expenses by approximately \$250,000.

82. Of even greater concern, however, is the expected impact of the HST on LAWPRO's claims costs. Resolving claims on behalf of the legal profession involves incurring significant defense costs, and legal fees in particular. In addition, claimants' legal and other consulting costs often factor into indemnity payments made by LAWPRO. Given the current estimates of future claims costs, the company expects the annual burden of HST on claims costs to be \$3.2 million (or \$150 per lawyer). This expected cost has been factored into the total claims costs presented in the chart in paragraph 78, and is included in the base premium recommended for the 2010 program (see paragraph 145[a]).

83. The introduction of HST confers a retrospective tax on many industries, such as insurance. In addition to the HST impact on the claims costs associated with future policies issued by LAWPRO, the company will have to revalue its loss provisions for claims currently on the books that will be resolved in the time period after the proposed July 1, 2010, implementation of the HST regime.

⁸ Note that the Ontario government's current position is that the 8 per cent provincial sales tax on insurance premiums will survive the harmonization process, and will continue to be collected on most non-auto insurance premiums.

84. Given the complexity of claims and the nature of the litigation process, many claims take years to be resolved. Of the \$364.5 million of unpaid claims liability LAWPRO held on its balance sheet as at June 30, 2009, a certain amount will be resolved and paid out by June 30, 2010. However, the majority likely will be resolved some time after the July 1, 2010, HST implementation date. The extra 8 per cent tax will generally apply to defense costs incurred with respect to these existing claims after June 30, 2010.

85. LAWPRO estimates that the one-time reassessment of its existing claims liabilities due to the introduction of HST will increase those existing liabilities by \$10.2 million (or \$450 per lawyer). Given the draft nature of the Ontario government's transitional relief provisions, and LAWPRO's on-going lobbying efforts for transitional relief on the retrospective elements of the harmonization proposal, LAWPRO has not factored this expected \$10.2 million cost into the total claims costs presented in the chart in paragraph 78. As well, this amount has not been included in the calculation of the base premium recommended for the 2010 program (see paragraph 145[a]).

86. On substantive enactment of the legislation to introduce HST and subject to any transitional relief, a special levy will be charged for the one-time reassessment of existing claims reserve liabilities, currently estimated to be \$10.2 million (or \$450 per practising insured lawyer).

Risk Rating

a) Background:

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

88. Specifically the Task Force Report indicated that "... as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."⁹

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

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

91. Risk rating, however, is not static. Because the relationship between the cost of claims and different areas of practice may change, LAWPRO must continue to monitor the program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are

⁹ 1994 Task Force Report, at page 17.

reevaluated each year, and the factors used to assess risk and determine premium under the program are re-evaluated for degree of relevance. The factors currently used to match risk to premium include: area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

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

93. Subject to the changes addressed specifically in this report, this review reaffirmed the validity and magnitude of the rating structure currently in place. The results of the customary reevaluation of the earlier risk analyses are addressed in this report at paragraphs 101 to 116.

b) Practice Trends:

94. LAWPRO's present risk analysis reaffirms the results of its last report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with real estate currently equalling or leading the practice of civil litigation as the area of practice with the greatest relative exposure for losses. In particular, the analysis indicates that overall, the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice. These two areas of practice represented 62 per cent of the claims reported and 55 per cent of the claims costs under the program in 2008.

However:

- a) Real estate claims costs have trended upwards consistently in the 2000 to 2007 period with real estate accounting for 31 per cent or more of costs consistently over this time. Since 2004, costs in this area of practice have increased more than 65 per cent;
- b) In 2008, the exposure relating to the practice of civil litigation was again substantially more than that traditionally seen, with civil litigation accounting for 32 per cent of the claims reported and 25 per cent of the claims costs under the program (well above the traditional levels of 27 per cent and 18 per cent seen in the 1989-94 period);
- c) In 2008, the nature of claims against civil litigators was also reaffirmed, with general conduct or handling of the matter accounting for 71 per cent of litigation claims compared to missed limitation period claims which accounted for only 29 per cent of these claims; and
- d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior ten years were over 3 times more likely to report a claim during the past year than those with no claims in the prior ten years.

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

c) Risk Management Initiatives:

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

- TitlePLUS®: In 2009, LAWPRO continued with its consumer education program which involves a media campaign highlighting the role of lawyers in real estate transactions and TitlePLUS insurance. This initiative includes a consumer-oriented, online "Real Simple Real Estate Guide" which helps educate consumers about what to expect in real estate transactions and the role a lawyer plays in the transaction. TitlePLUS insurance is a competitive product that has made a positive difference in the Ontario real estate market. It expands the choice offered to consumers and lawyers. It influences the behaviour of other title insurers. It educates consumers and has expanded policy coverages available to them. It also provides education on title insurance and real estate trends to lawyers.

In the past year, the TitlePLUS Department has hosted a series of events in which staff spoke to lawyers and support staff about risk mitigation strategies and best practices. The Department also hosted sessions focused on fraud prevention measures affecting real estate and the LAWPRO E&O program. TitlePLUS staff have given presentations to lawyers covering topics such as:

1. fraud detection and prevention;
2. the legal effect of fraudulent registrations under the Land Titles system;
3. the new provisions of the Law Society Rules of Professional Conduct regarding conflicts of interest (e.g., not acting for vendor and purchaser except in limited circumstances); and
4. the new Law Society client identification and verification requirements, implementing the model rule of the Federation of Law Societies of Canada.

They have also provided education to articling students on LAWPRO errors and omissions insurance coverage and practice tips to avoid claims, and given lectures at law schools on title insurance and fraud prevention measures in real estate transactions. These presentations are designed to provide the legal profession with the tools they need to manage risk and avoid claims under both the errors and omissions and TitlePLUS programs. In addition, TitlePLUS EXPRESS, the Department's news bulletin, is sent to subscribing lawyers across Canada, providing legal and underwriting updates on current national real estate issues.

- practicePRO®: Now in its eleventh year, LAWPRO's successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources, both inside and outside of Ontario. This year, practicePRO helped lawyers avoid malpractice claims through articles in LAWPRO Magazine and other law-related publications, information on the practicePRO website, and live presentations and/or an exhibitor presence at CLE programs and other law-related events. practicePRO has a significant presence in the legal community by maintaining relationships and actively working with its various constituents, including the Law Society, the Ontario and Canadian Bar Associations, local law associations, legal goods and service providers, the legal press and others.

- New practicePRO website: In 2008, practicePRO launched a new website which included a wealth of new content and improved the look and accessibility of the existing materials. A major planned addition to the site will be a section that gives a detailed breakdown of claims data for each area of law, so practitioners in each area will be able to refer to charts and analyses outlining where the claims dangers are for them.
- LAWPRO Magazine: With its strong risk management focus, LAWPRO's flagship publication continues to play an important role in helping lawyers avoid malpractice claims. The winter 2008/2009 edition provided insights for lawyers on how to "survive the slide" (in other words, how to ride out the economic storm). The summer 2009 issue addressed how and why lawyers need to rethink what they do and how they do it, given the changing legal landscape. A special issue on the LAWPRO claims experience is scheduled for release in September, 2009.
- Fraud: In terms of count and cost, fraud-related claims are an important concern for LAWPRO. LAWPRO continues to take steps to combat fraud through measures within its own operations, its relationship with the legal profession, and by working with law enforcement, land registry, banking, insurance and other organizations and industries also affected by fraud. The Winter 2008/2009 and Summer 2009 issues of LAWPRO Magazine contained articles that highlighted for lawyers the recent fraud schemes that have taken place outside the real estate sphere, including frauds related to employees, debt collection schemes and certified cheques. The articles also contained information to help lawyers recognize and avoid handling fraudulent matters. practicePRO created a webinar on how lawyers can avoid being victimized by fraud. It is available as a free download to all Ontario lawyers. Also, a new fraud information brochure was released in 2009.
- Conflicts of Interest Toolkit: practicePRO actively worked with the CBA Conflicts of Interest Taskforce to create a collection of retainers and checklists that provide practical guidelines and direction on avoiding conflicts issues for lawyers facing conflicts or potential conflicts.
- practicePRO Lending Library: To help lawyers improve their practices, this library makes 120 of the best books on law practice and risk management topics available on loan for free to all Ontario lawyers. To date in 2009, 66 books went out on loan to 42 lawyers.

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

98. The premium credit was broadened in the following year to provide a \$50 credit (to a maximum of \$100 per lawyer per year) for designated law-related CLE courses and programs completed by the lawyer. These courses are offered by the Law Society, Ontario Bar Association, The Advocates' Society and other non-for-profit CLE providers, and must include a substantial risk management component. In keeping with the most frequent causes of loss, the risk management content of these programs deals with the "soft" skills of lawyering, such as lawyer/client communication, documenting a file, and time management, rather than substantive law.

99. For a credit on premiums for 2010, lawyers must have participated in LAWPRO-approved CLE programs between September 16, 2008, and September 15, 2009. In addition to the Online Coaching Centre, and the Law Society's Skills Self-Assessment tool, 177 programs qualified for the credit during this period, with an estimated 15,500 lawyers eligible for a premium credit. Prior to the implementation of the CLE credit, most CLE programs focused solely on substantive law. Due to the CLE credit, the content of a significant number of Ontario CLE programs has been broadened to include risk management and claims prevention content.

100. Accordingly, the Continuing Legal Education Premium Credit will be continued for the 2011 program, with a \$50 premium credit per program, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and successfully completed by lawyers between September 16, 2009, and September 15, 2010, for which the lawyer has successfully completed the online CLE Declaration Form.

d) Revalidating Risk Rating:

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

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

(see graph in Convocation Report)

102. Apparent from this chart are the significant and growing claims costs in many practice areas and the fact that real estate and litigation continue to be higher risk.

103. The fact that few lawyers practise exclusively in one area provides a compelling reason to group together common or related areas of practice. However, to ensure that risk rating is being achieved, the program's anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program in 2008 and the first six months of 2009), the following chart compares the anticipated losses distributed by area of law to the proposed base premiums by primary area of practice. The premiums in this chart include the proposed base premiums with real estate practice coverage, innocent party and base premium adjustments, but exclude transaction levies and claims history surcharges.

Comparison of Projected 2010 Premium by Lawyer's Primary Area of
Practice to Claims and Expenses by Claim's Area of Law

(see graph in Convocation Report)

104. The shortfall between the anticipated claims costs and expenses to base premiums is particularly significant for the area of real estate law.

105. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, the 2010 base premium would be \$7,350 for those whose primary area of practice is real estate.

106. Past Reports to Convocation have discussed the importance of using the transaction and claims history surcharge levies as premium, to avoid any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.¹⁰

107. By including the transaction and claims history surcharge levies as in past years without an adjustment to the real estate transaction levy, a large shortfall between anticipated claims costs and expenses to total insurance levies will exist for the area of real estate law. By adjusting the real estate transaction levy from \$50 to \$65 effective for transactions on or after January 1, 2010, as proposed below, the shortfall for real estate claims costs is largely overcome.

108. In April 2008, LAWPRO introduced a real estate practice coverage option ("REPCO"). Although no REPCO claims have arisen as of June 30, 2009, LAWPRO is maintaining an actuarial loss reserve for potential incidents that have occurred but have not yet been reported to the company. (Since the essence of REPCO coverage is to compensate for an act of fraud by the insured lawyer, it is unlikely that there will be an immediate report by the lawyer involved; therefore, LAWPRO is making a conservative assumption that there will often be delays in reporting under this coverage.) Despite the early good results, REPCO is far too new to make any major change to the related premium. However, to acknowledge the promising results to date, the price of the REPCO coverage will decrease by a prudent \$100, from \$500 to \$400 for the 2010 program.

109. The following chart compares the anticipated premiums sorted by the lawyer's primary area of practice (plus the claims history surcharge and transaction levies as revised), to the anticipated claims costs and expenses for each area of law.

Comparison of Projected 2010 Premium by Lawyer's Primary Area of
Practice + Allocated Levies to Claims and Expenses by
Claim's Area of Law

(see graph in Convocation Report)

110. This comparison indicates that, with the benefit of the transaction and claims history surcharge levies, and including the adjustments to the real estate transaction levy and the REPCO premium, there is a substantial correlation between revenues and claims for the major practice areas.

111. The graph does indicate some subsidy by area of practice. This subsidy changes somewhat over time and may vary considerably from year to year for the smaller practice areas.

112. Appreciating the foregoing variables and possibilities of comparison by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year given the changes described above. Although some subsidy may exist for certain areas of practice, when taking into account

¹⁰ 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-37; and 1996 LAWPRO Report to Convocation, pp. 32-36.

operating costs and commercial realities, the cost of insurance under the program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "...no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."¹¹

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

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

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

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

Reinsurance and Capital Preservation

117. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.

118. In its early years, LAWPRO purchased program-wide quota share reinsurance. A stronger financial position and more stable claims experience enabled the company to cease reinsuring the program with quota share reinsurance starting in 2003. In addition to relying on LAWPRO's own capital, resources of the E&O Fund up to a \$15 million cap were effectively relied upon starting in 2003. An enhanced retrospective premium endorsement provided that for certain years actual loss experience above a certain threshold would be borne by the E&O Fund through additional premiums. On the other hand,, actual loss experience below a certain threshold would trigger a refund of premiums to the E&O Fund. The E&O Fund has used its Premium Stabilization Fund ("PSF") money as the mechanism to fulfill its potential obligation for additional premiums and as a place to hold premiums refunded.

119. Given the current uncertain environment for future claims, transaction levies and investment income, LAWPRO would achieve greater program stability by retaining in the company any future favourable claims development. As a result, the refund aspect of the retrospective premium endorsement will not be continued in 2010.

120. Furthermore, given the current balance of the PSF of \$7.7 million at June 30, 2009 (see paragraph 141), the E&O Fund's ability to use its PSF money to pay additional premium under the retrospective premium program has diminished over time. But under the endorsement as drafted in past years, annual funding obligations would continue to be a distinct possibility for

¹¹ 1994 Insurance Committee Task Force Report, at page 17.

some of the past insurance fund years. Accordingly, recognizing the decreased size of the PSF and not wanting to place undue pressure on the E&O Fund as a whole, the threshold for the additional premium aspect of the retrospective premium endorsement will increase in 2010. There will continue to be a \$15 million dollar cap on the E&O Fund's exposure to provide additional premium to LAWPRO. The \$15 million amount will be available over a new multi-year underwriting period where the net loss ratio exceeds the anticipated loss ratio for the year by an absolute 10 per cent. The lower likelihood of a payout by the E&O Fund in this new regime would make the protection more akin to a catastrophic coverage, providing payout only in the remote scenario whereby the insurance fund year experienced significant deterioration from its initial expectations.

121. Therefore, in reliance on LAWPRO's own resources and the \$15 million backstop as described above from the E&O Fund, LAWPRO will not pursue the expensive course of purchasing reinsurance on a program-wide basis. For 2010, LAWPRO will again consider purchasing reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005. This protection against aggregated losses extends across both the professional liability and TitlePLUS programs, and offers some measure of protection against a series of claims such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in title affecting an entire condominium project.

122. Accordingly, 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2010, subject to limited capital backstop protection provided by the Errors & Omissions Insurance Fund, and reinsurance protecting the program from multiple losses arising out of a common event or nexus.

Revenues

123. To meet the total expected program obligations for 2010, LAWPRO first evaluates its likely investment income, then considers premium sources. As in past years, premium revenues to meet fiscal requirements for 2010 will come from three principal sources: the base premiums, levy surcharges, and the PSF.

124. The projected premium revenues from these three sources are as follows:

Premium Revenues, by Source (\$000s)

(see graph in Convocation Report)

125. Premium revenue includes an expected \$2.8 million in REPCO premiums (based on a \$400 per lawyer REPCO premium for 2010 as described above in paragraph 108).

a) Investment Income:

126. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs, by investing any available funds into a well diversified portfolio of fixed income and equity securities. LAWPRO uses the resulting investment income to help pay operating and claim expenses, thereby reducing the amount of funds that must come from premium sources.

127. LAWPRO provides further stability to the program by segregating into a separate portfolio (the liability-matched portfolio) sufficient money to pay anticipated future claim costs, with any surplus capital held in a different portfolio. The securities in the liability-matched portfolio consist of high quality government and corporate fixed income securities, with the future cash inflows to the company arranged to coincide with the expected payout patterns of the future claim costs. The surplus portfolio consists of a prudent mix of fixed income and equity securities.

128. During recent years investment returns have weakened as the worldwide credit crunch resulted in depressed equity and some fixed income prices. In addition, with central banks such as the Bank of Canada lowering their overnight interest rates to rock-bottom levels, the rates of return on fixed income securities have also dropped significantly. In particular, the downward pressure on LAWPRO's returns is exacerbated as fixed income securities mature and need to be reinvested at these low rates.

129. LAWPRO's prudent investing philosophy helped protect its portfolios (both liability matched and surplus as described above). However, as a result of continued market uncertainty, the company has lowered its expected return on investments to 4 per cent from 5 per cent (or higher) in previous years.

b) Levy Surcharges:

130. The Ontario real estate market has declined significantly in recent months. Statistics published by Canada Mortgage and Housing Corporation (CMHC) indicate that in both the first and second quarters of 2009, the number of resales decreased by approximately 9 per cent while new housing starts plunged by 42 per cent compared to 2008. CMHC forecasts (June 2009) that Ontario resales are expected to decline 20 per cent for 2009, then increase 4 per cent in 2010, while Ontario new housing starts are expected to decline sharply by 32 per cent for 2009, then begin to moderate with a 2 per cent increase in 2010.

131. At present, the levy surcharges include a \$50 transaction levy paid by lawyers for each prescribed real estate and civil litigation transaction in which they are involved, as well as a claims history levy surcharge ("CHS")¹². Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

132. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the number of real estate transaction levies have declined close to 30 per cent since 1999, despite an increase in residential real estate activity of 30 per cent at points during the same period.

133. The increased use of title insurance is considered to be largely responsible for the reduction in real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers.

¹² The claims history levy surcharge ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice, to \$25,000 for a lawyer with five claims paid in the last five years in practice (an additional \$10,000 is levied for each additional claim paid in excess of five).

134. It is estimated that well over 90 per cent of residential real estate transactions in Ontario are title-insured.¹³ In recent years, the amount of real estate transaction levies collected has moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

135. More recently, the number of transaction levies has been affected by the on-going decline in Ontario real estate sales: As of June 2009, transaction levy revenues are more than \$2 million under budget.

136. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges for 2010.

137. As described above in this report, the use of transaction levies ensures an element of risk rating in the insurance program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995. Based on the risk rating results for real estate (see paragraphs 102 to 107), the levy on real estate transactions will be increased from \$50 charged in 2009 to \$65 effective January 1, 2010.

138. For 2010, reflecting the rate increase noted above, LAWPRO estimates transaction and claims history levy surcharge revenues at \$24.9 million, which exceeds the forecast for 2009 only because of the proposed rate increase.

c) Premium Stabilization Fund:

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

140. As well, through the use of a refund of premium provision in the policy (as described in paragraphs 118 to 120), any surplus in funds resulting from claims costs being lower than budgeted have been similarly transferred to the PSF portion of the E&O Fund for future insurance purposes. This refund of premium provision, which has been in place since the 2000 policy period and considers premiums and claims costs under the program since the 1995 policy year, has generated a total of \$33.9 million in refund premium payments to the PSF.

¹³ LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy filings.

141. At June 30, 2009, the PSF balance was \$7.7 million. The balance is not projected to change in the second half of 2009. With the PSF balance at such low levels, the remaining PSF is only able to provide stability against transaction levy shortfalls and limited support to the base rate premium in the short term. Consequently, \$3.5 million (about \$150 per insured lawyer) will be drawn from that surplus and applied towards the 2010 program.

d) Base Premiums:

142. Based on the previous discussion of program costs and sources of revenue, the base premium will be set at \$2,950 per member to account for a deterioration in claims experience and the likelihood of continuing economic uncertainty. In summary, the 2010 proposed base premium is based on the following key assumptions:

- 22,440 practising insured lawyers (full-time equivalents);
- \$88.4 million in anticipated total claims costs (paragraph 78);
- \$24.9 million in budgeted transaction and claims history levy revenues (paragraph 138);
- \$3.5 million drawn from the Premium Stabilization Fund (paragraph 141); and
- 4 per cent return on investment (paragraph 129).

Base Premium, by Fund Year

(see graph in Convocation Report)

143. At this time, the Board is satisfied that this increase in base rate appropriately recognizes the uncertainties in emerging claims experience and economic conditions, and allows the program to continue to operate on a self-sustaining basis while protecting the company's overall financial position. The increase is consistent with information provided in 2007 and 2008 Reports to Convocation. It was noted that the historically low base premium may not be sustainable in future years, as higher claims costs had already been identified. In particular, the beneficial 2008 base premium level was a method of giving the benefit to the bar during 2008 of some superior 2007 investment results and favourable claim reserve development for earlier fund years. As noted earlier, investment returns in the current market are lower than in 2007 and 2008, and claims experience in terms of frequency and severity has deteriorated. Also, the future impact on the program of Ontario's adoption of the HST was not previously evaluated and factored into the premium calculations.

144. In setting a base rate for 2010, LAWPRO tested its three-year planning horizon under various scenarios. Assuming a modest level of subsidization from the PSF in the three years, overall company results modestly exceed break-even, which would put growing pressure on our capital position. Many factors influence this forecast, most significantly interest rates and claims experience. The results of this forecast cannot be considered definitive in nature and that further base rate increases may not be required in future years.

145. Accordingly:

- a) The base premium is \$2,950 per lawyer for 2010, an increase of \$500 from the base premium charged in 2009.

- b) The levy on real estate transactions will be increased from \$50 to \$65 for files opened on or after January 1, 2010. Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at \$24.9 million for the purposes of establishing the base premium for 2010 and other budgetary purposes.
- c) \$3.5 million (approximately \$150 per insured lawyer) is expected to be drawn from the Premium Stabilization Fund built up in previous years (a \$7.7 million balance is forecast as at December 31, 2009) and applied to the 2010 insurance premium.
- d) To the extent that levies (noted in (b) above) collected in 2010 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the Premium Stabilization Fund.
- e) The premium for the Real Estate Practice Coverage Option will decrease from \$500 charged in 2009 to \$400 in 2010

e) Other Adjustments:

146. With the exception of the changes specifically described in this report, all aspects of the insurance program for 2010 will remain unchanged from that now in place.

147. As detailed in Appendix "A", subject to the noted changes, the current insurance program for lawyers in private practice encompasses the following:

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

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

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a surcharge in the event that no application is filed.

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

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

150. LAWPRO benefits from lawyers paying their full annual premiums at the outset of the year as it can either invest these funds sooner than if received on a monthly or quarterly instalment basis, or avoid having to liquidate existing securities to pay upcoming operating or claims costs. Historically, LAWPRO has passed the majority of this benefit back to lawyers receiving the \$150 early lump sum payment discount.

151. Given the very low fixed income security returns in the market today, the financial benefit of receiving the premiums early is greatly diminished and, as a result, the company can no longer justify a \$150 premium discount. To better reflect the current benefit that accrues to LAWPRO, the lump sum payment discount will be lowered to \$50 for the 2010 program.

152. Since the 1999 policy year, LAWPRO has provided a \$50 premium discount to qualifying lawyers who electronically filed their annual insurance application. This initiative supports the company's green policy and helps reduce administrative efforts relating to the annual renewal. In recent years, 95 per cent or more of lawyers took advantage of this e-filing discount. To reflect both the benefit of the initiative to the company and the difficult choices required during an economic downturn, the e-filing premium discount will be reduced from \$50 to \$25 for the 2010 program.

153. In this regard, lawyers renewing their insurance applications online this fall will benefit from a more streamlined interface so they can find what they want more quickly, as well as a redesigned "My LAWPRO" section of the LAWPRO website, with more personalized options and information to encourage lawyers to complete all of their LAWPRO business online. They will also be able to access 2010 policy invoices and documentation through this secure section of the LAWPRO website.

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

155. Lawyers will be able to opt for hard copies of these materials, but will be encouraged to instead file and review materials online.

156. The premium discount relating to the early lump sum payment will be reduced from the \$150 provided in 2009 to \$50, while the e-filing discount will be reduced from the \$50 provided in 2009 to \$25.

157. Subject to the changes identified earlier in this report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2009 will remain unchanged for the 2010 insurance program.

CONCLUSION

158. The LAWPRO Board considers the program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this program of insurance for 2010 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2010 insurance program can be implemented by January 1, 2010.

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

September, 2009

Ian D. Croft
Chair of the Board
Lawyers' Professional Indemnity Company

James R. Caskey, Q.C.
Vice-Chair of the Board
Lawyers' Professional Indemnity Company

APPENDIX A

- Standard Program Summary & Options 51

Appendix "A"

The Standard Insurance Program Coverage for 2010
--

Eligibility

- Required of all sole practitioners, lawyers practising in association or partnership, and lawyers practising in a Law Corporation, who are providing services in private practice.
- Required of all other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who do not fully meet the program exemption criteria.
- Available to lawyers who do meet the exemption criteria but opt to purchase the insurance coverage.

Coverage limit

- \$1 million per CLAIM/\$2 million aggregate (i.e. for all claims reported in 2010), applicable to CLAIM expenses, indemnity payments and/or cost of repairs together

Standard DEDUCTIBLE

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

Standard base premium

- \$2,950 per insured lawyer

Transaction Premium Levy

- \$65 per real estate transaction and \$50 per civil litigation transaction
- No real estate transaction levy generally payable by transferee's lawyer if title-insured
- *Premium reductions for new lawyers*
- Premium for lawyers with less than 4 full years of practice (private and public):
 - ◊ less than 1 full year in practice: premium discount equal to 40 per cent of base premium;
 - ◊ less than 2 full years in practice: premium discount equal to 30 per cent of base premium;
 - ◊ less than 3 full years in practice: premium discount equal to 20 per cent of base premium;
 - ◊ less than 4 full years in practice: premium discount equal to 10 per cent of base premium.

Mandatory Innocent Party Coverage

Eligibility

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

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

Premium

\$250 per insured lawyer

2009 Program Options

1. Deductible option

\$Nil deductible

- Increase in premium equal to 15 per cent of base premium (\$442.50 increase).

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

- Increase in premium equal to 7.5 per cent of base premium (\$221.25 increase).

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

- Increase in premium equal to 12.5 per cent of base premium (\$368.75 increase).

Standard insurance program: \$5,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Base premium of \$2,950 per insured lawyer.

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

- Increase in premium equal to 10 per cent of base premium (\$295.00 increase).

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

- Decrease in premium equal to 7.5 per cent of base premium (\$221.25 decrease).

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

- Increase in premium equal to 7.5 per cent of base premium (\$221.25 increase).

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

- Decrease in premium equal to 12.5 per cent of base premium (\$368.75 decrease).

2. Innocent Party Sublimit Coverage Options

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

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

Increase coverage sublimit to:	Additional annual premium:
\$500,000 per CLAIM/aggregate	\$150 per insured lawyer
\$1 million per CLAIM/aggregate	\$249 per insured lawyer

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

Coverage limits

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

3. Practice Options

Restricted Area of Practice Option

Eligibility

Available only to lawyers who agree to restrict their practice to criminal¹⁴ and/or immigration law¹⁵ throughout 2010.

¹⁴ Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

¹⁵ Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining in this report, including admissions, removals, enforcement, refugee determination,

Premium

Eligible for discount equal to 40 per cent of base premium, to a maximum of \$1,180.¹⁶

*Part-Time Practice Option**Eligibility*

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

Premium

Eligible for discount equal to 40 per cent of base premium, to a maximum of \$1,180.

*Real Estate Practice Coverage Option**Eligibility*

All lawyers who intend to practice REAL ESTATE LAW in Ontario in 2010 must be ELIGIBLE for and apply for this coverage option.

“ELIGIBLE” means eligible to practice REAL ESTATE LAW in Ontario in accordance with the *Law Society Act*, R.S.O. 1990, c. L.8. Categories of lawyers who would not be ELIGIBLE to practice REAL ESTATE LAW in Ontario, include:

- Those who are in bankruptcy;
- those who have been convicted or disciplined in connection with a real estate fraud;
- those under investigation, where the Law Society obtains: an interlocutory suspension order or a restriction on the lawyer’s practice prohibiting the lawyer from practicing real estate; or an undertaking not to practise real estate.

Premium

\$400 per insured lawyer

4. Premium Payment Options

Instalment Options:

- Lump sum payment by cheque or pre-authorized bank account debit: eligible for \$50 discount.
- Lump sum payment by credit card
- Quarterly instalments
- Monthly instalments

citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

¹⁶ The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Practitioners’ discount combined cannot exceed 40 per cent of the base premium.

5. E-filing Discount

- \$25 per insured lawyer (if filed by November 2, 2009)

6. Continuing Legal Education (Risk Management) Premium Credit

- \$50 per course, subject to a \$100 per insured lawyer maximum discount, will be applied under the 2011 insurance program.
- For pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2009, and September 15, 2010, where the lawyer completes and files the required LAWPRO CLE electronic declaration by September 15, 2010.
- LAWPRO'S Online Coaching Centre is included as a pre-approved course, where the insured lawyer completes at least three modules between September 16, 2009, and September 15, 2010.

APPENDIX B

- Distribution of Claims by Geographic Region (graph) 57 (see Convocation Report)
- Distribution of Claims by Firm Size (graph) 58 (see Convocation Report)
- Distribution of Claims by Years Since Date of Call (graph) 59 (see Convocation Report)
- Distribution of Litigation Claims by Type of Error (chart) 60 (see Convocation Report)
- The 80-20 Rule (graph) 61 (see Convocation Report)

APPENDIX C, D, E and F (see Convocation Report)

It was moved by Mr. Caskey, seconded by Mr. Wright, that Convocation approve the 2010 program of insurance offered by LAWPRO set out in the Report.

Carried

ROLL-CALL VOTE

Aaron	For	Krishna	For
Anand	For	Lawrie	Abstain
Backhouse	For	Lewis	For
Banack	For	MacKenzie	For
Boyd	For	McGrath	For
Braithwaite	For	Marmur	For
Bredt	For	Minor	For
Campion	For	Pawlitza	For
Caskey	For	Porter	For

Chahbar	For	Potter	For
Crowe	For	Pustina	For
Daud	For	Rabinovitch	For
Dickson	For	Robins	For
Elliott	For	Ross	For
Epstein	Abstain	Rothstein	For
Eustace	For	Ruby	For
Fleck	For	Sandler	For
Go	For	Schabas	For
Gold	For	Sikand	For
Hainey	For	Silverstein	Abstain
Halajian	Against	Simpson	For
Hare	For	C. Strosberg	For
Hartman	For	Swaye	For
Heintzman	For	Symes	For
Henderson	For	Wright	For

Vote: 46 For; 1 Against; 3 Abstentions

PARALEGAL STANDING COMMITTEE REPORT

Ms. McGrath presented the Report.

Report to Convocation
September 24th, 2009

Paralegal Standing Committee

Committee Members
Paul Dray, Chair
Susan McGrath, Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Glenn Hainey
Paul Henderson
Brian Lawrie
Douglas Lewis
Margaret Louter
Stephen Parker
Cathy Strosberg

Purpose of Report: Decision
Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

TABLE OF CONTENTS

For Decision

By-law 3 Amendments re: Paralegal Election.....TAB A

For Information.....TAB B

Paralegal Annual Report for 2009

Expansion of Summary Hearing Process

Information from first Paralegal Annual Report

Response to the Code/LeSage Report

COMMITTEE PROCESS

1. The Committee met on September 10th, 2009. Committee members present were Paul Dray (Chair), Susan McGrath (Vice-chair), Marion Boyd, James Caskey, Michelle Haigh, Glenn Hainey, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter and Stephen Parker. The Chair of the Professional Development & Competence Committee, Laurie Pawlitz, joined the meeting for a discussion of Continuing Professional Development. Staff members in attendance were Terry Knott, Zeynep Onen, Diana Miles, Elliot Spears, Roy Thomas, Sheena Weir, Arwen Tillman, Sophie Galipeau and Julia Bass. Katherine Corrick joined the meeting by telephone. Jennifer Cubbon and Andrea Hamberger joined the meeting for the item on the Paralegal Annual Report.

FOR DECISION

AMENDMENTS TO BY-LAW 3 RE PARALEGAL ELECTION

Motion

2. That Convocation approve the amendments to By-law 3 at Appendix 1.

Background

3. In June, Convocation approved the Committee's recommendations for the procedure to be followed for the first election of the paralegal members of the Paralegal Standing Committee and the paralegal benchers.
4. A draft of the necessary amendments to By-law 3 has now been prepared and is attached at Appendix 1 for Convocation's consideration.

5. Two new sections will be added to the by-law. Part VII.1, commencing at page 5, deals with the election of the paralegal members of the Paralegal Standing Committee. The draft of this Part is annotated to show the comparable by-law sections governing the current benchers election. Part I.1, commencing at page 19, deals with the election of the paralegal benchers.

The Committee's Deliberations

6. The Paralegal Standing Committee reviewed the draft and recommends it to Convocation for approval.

APPENDIX 1

aes-v5
Annotated

BY-LAW 3

...

PART VII.1

ELECTION TO THE PARALEGAL STANDING COMMITTEE OF PERSONS LICENSED TO PROVIDE LEGAL SERVICES

GENERAL

Definitions

s. 1

136.1. In this Part,

“Committee” means the Paralegal Standing Committee;

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

“election of paralegal members” means an election to the Committee of five persons licensed to provide legal services in Ontario;

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

“holiday” means,

- (a) any Saturday or Sunday;
- (b) Family Day;

(c) Good Friday; and

(d) Easter Monday.

Interpretation: reference to a day

- s. 2 136.2. (1) In this Part, except where otherwise stated, a reference to a day, month or time shall be a reference to a day, month or time in an election year.

Interpretation: commencement, etc. of event

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

ELECTION DAY

Election day

- s. 3 136.3. There shall be an election of paralegal members in 2010 and in every fourth year thereafter on the last day in March that is not a holiday.

ELECTION OFFICERS

Treasurer to preside over election

- s. 4 136.4. (1) An election of paralegal members shall be presided over by the Treasurer.

Appointment of assistant

(2) The Treasurer may appoint a licensee to assist her or him in exercising the powers and performing the duties of the Treasurer under this Part.

Appointment of licensee to act in absence of Treasurer

(3) The Treasurer shall appoint a licensee to exercise the powers and perform the duties of the Treasurer under this Part whenever the Treasurer is unable to act.

Appointment of person licensed to provide legal services in Ontario

(4) If under subsection (2) or (3) the Treasurer wishes to appoint a person licensed to provide legal services in Ontario, the Treasurer shall appoint a licensee who is not a candidate in the election of paralegal members.

Elections Officer to conduct election

- s. 5 136.5. (1) An election of paralegal members shall be conducted by the Elections Officer.

Elections Officer to establish procedures, *etc.*

- (2) The Elections Officer shall,
 - (a) by November 30 of the year immediately preceding an election year,
 - (i) establish all procedures, requirements and specifications required to be established with respect to the nomination of candidates for the election, and
 - (ii) establish the procedures by which a poll in an election of paralegal members will be conducted; and
 - (b) by December 31 of the year immediately preceding the election year, publish all procedures, requirements and specifications established in respect of the election.

CANDIDATES

Who may be candidate

- s. 7 136.6. Every person who is licensed to provide legal services in Ontario may be a candidate in an election of paralegal members if,
- (a) the person is nominated as a candidate in accordance with section 136.7; and
 - (b) at the time of signing a nomination form containing her or his nomination as a candidate,
 - (i) the person's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the person's licence to provide legal services in Ontario is not suspended.

Nomination and consent

- s. 8(2)
and (3) 136.7. (1) Every candidate in an election of paralegal members must,
- (a) be nominated by at least five persons licensed to provide legal services in Ontario whose licences are not suspended at the time of signing the nomination form; and
 - (b) consent to the nomination.

Nomination form

- s. 8(4) (2) The nomination of a person as a candidate in an election of paralegal members and the person's consent to the nomination shall be contained in a nomination form provided by the Society.

Signatures

- s. 8(5) (3) The nomination form must be signed by the person being nominated as a candidate and the five persons licensed to provide legal services in Ontario who are nominating the person as a candidate.

Close of nominations

- s. 8(1) (4) The nomination form must be received in the office of the Elections Officer at Osgoode Hall by the date and time specified by the Elections Officer.

Unlike s. 8, the date for the close of nominations is not specified. This provides maximum flexibility for the purpose of conducting the first election.

Acceptance and rejection of nominations: examination of nomination form

- s. 9(2) 136.8. (1) As soon as practicable after receiving a nomination form, the Elections Officer shall examine the form and,
- (a) if he or she is satisfied that the requirements specified in sections 136.6 and 136.7 have been complied with, he or she shall accept the nomination; or
 - (b) if he or she is not satisfied that the requirements specified in sections 136.6 and 136.7 have been complied with, he or she shall reject the nomination.

Results of examination of nomination form

- s. 9(3) (2) The Elections Officer shall communicate the results of her or his examination of a nomination form to the person whose nomination is contained therein.

Section 9(3)(b)(ii) could be interpreted to suggest that a candidate may be permitted to submit a valid nomination form after the date for the close of nominations. This is incorrect and for clarity the section should be deleted in s. 9 and not included in this Part.

Nomination form: optional accompanying material

- s. 10 136.9. (1) A person being nominated as a candidate in an election of paralegal members may submit the following items along with her or his nomination form:
- 1. A photograph of the person that meets all specifications established by the Elections Officer.

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

Requiring the optional material to meet specifications established by the Elections Officer will allow the Society to require the material in electronic format.

Deadline for receipt of accompanying material

(2) The items mentioned in subsection (1) must be received in the office of the Elections Officer at Osgoode Hall before the time for the close of nominations mentioned in subsection 136.7 (4).

Withdrawal of candidates

- s. 11 136.10. A candidate may withdraw from an election of paralegal members by giving the Elections Officer written notice of her or his withdrawal within seven days after the time for the close of nominations mentioned in subsection 136.7 (4).

ELIGIBILITY FOR ELECTION

Who may not be elected

- s. 12 136.11. No candidate shall be elected to the Committee if, at the time of her or his election,
- (a) the candidate's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is outside Ontario;
 - (b) the candidate is no longer licensed to provide legal services in Ontario or the candidate's licence is suspended;
 - (c) the candidate is not eighteen or more years of age;
 - (d) the candidate is an undischarged bankrupt; or
 - (e) the candidate does not consent to her or his election.

Benchers are already required to be at least 18 years of age, and cannot be an undischarged bankrupt. The same rules should apply to the committee members given that they will all be eligible for election as paralegal benchers.

ACCLAMATION

Election by acclamation

- s. 13 136.12. (1) If after the acceptance of all valid nominations after the time mentioned for the close of nominations in subsection 136.7 (4) the number of candidates eligible to be elected to the Committee is not more than five, the Elections Officer shall declare the candidates to have been elected to the Committee.

Taking office

- (2) The candidates who are elected to the Committee under subsection (1) shall take office on the day on which the Committee has its first regular meeting after the candidates are declared to have been elected to the Committee.

POLL

Poll

- s. 14 136.13. (1) If after the acceptance of all valid nominations after the time mentioned for the close of nominations in subsection 136.7 (4), the number of candidates eligible to be elected to the Committee is more than five, a poll shall be conducted to elect five candidates to the Committee.

Procedures for conducting poll

- (2) The procedures for conducting a poll may provide for the use of electronic means for voting and for tabulating results.

Anonymity of elector and secrecy of votes

- (3) The procedures for conducting a poll shall be such that the anonymity of an elector and secrecy of the elector's votes are preserved.

QUALIFICATION OF ELECTORS

Qualification of electors

- s. 16 136.14. (1) A person who is licensed to provide legal services and whose licence is not suspended, on the fourth Friday in February, is entitled to vote in an election of paralegal members.

Electors' list

- s. 18 (2) On or shortly after the first Monday after the date mentioned in subsection (1) the Elections Officer shall prepare a list of all persons who are entitled to vote in an election of paralegal members.

PROCEDURES BEFORE POLL

Candidate information: preparation

- s. 19 136.15. (1) For the purposes of and prior to conducting the poll mentioned in section 136.13, the Elections Officer shall publish in electronic medium information about the candidates in the election of paralegal members, including the names of the candidates and, if available, the photograph, biography and, subject to subsection (3), election statement of each candidate.

Electronic election equivalent of s. 19

All election statements included

- s. 19(3) (2) Subject to subsection (3), the Elections Officer shall publish all election statements that he or she received under section 136.9.

Certain election statements not be included unless approved

- s. 19(4) (3) The Elections Officer shall not publish any election statement that in her or his opinion may be libelous, may be in breach of the rules of professional conduct or is in bad taste unless the election statement has been approved in accordance with section 136.16.

Appointment of persons to approve election statements

- s. 20 136.16. (1) If necessary, the Treasurer shall appoint two or more lay benchers to approve election statements.

Equivalent provision to s. 20, except that committee to be composed of only lay benchers
--

Referral of election statements

- (2) The Elections Officer shall refer to the lay benchers appointed under subsection (1) all election statements that in her or his opinion may be libelous, may be in breach of the rules of professional conduct or are in bad taste.

Consideration of election statements

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

- (a) approve the election statement; or
- (b) if the lay benchers are of the opinion that the election statement may be libelous, may be in breach of the rules of professional conduct or is in bad taste,
 - (i) return the election statement to the candidate who submitted it,

- (ii) provide the candidate with a written explanation of the objections to the election statement, and
- (iii) specify the time by which the candidate may submit to the Elections Officer a redrafted election statement.

Consideration of redrafted election statements

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

- (a) approve the redrafted election statement; or
- (b) if the lay benchers are of the opinion that the redrafted election statement may be libelous, may be in breach of the rules of professional conduct or is in bad taste,
 - (i) return the redrafted election statement to the candidate who submitted it,
 - (ii) provide the candidate with a written explanation of the objections to the redrafted election statement, and
 - (iii) advise the candidate that no election statement shall be published under her or his name.

Decision final

- (5) A decision made under subsection (4) is final.

Election information: publication

- s. 21 136.17. As soon as practicable after the Elections Officer has prepared the electors' list and prepared for publication information about the candidates in the election of paralegal members, the Elections Officer shall,
- (a) cause to be published in the *Ontario Reports* and on the Society's website a notice with respect to the election of paralegal members that includes details on when and how an elector may access available information about the candidates in the election of paralegal members and when and how an elector may vote in the election of paralegal members; and
 - (b) email the notice mentioned in clause (a) to every elector, to her or his business email address, or where the elector has no business email address, home email address, as indicated on the records of the Society.

Electronic election equivalent of s. 21

POLL: VOTING

Voting for candidates

ss. 22
and 23

- 136.18. In a poll conducted in an election of paralegal members, an elector,
- (a) may vote for up to five candidates; and
 - (b) shall cast her or his votes in accordance with the procedures established by the Elections Officer.

COUNTING THE VOTES

Elections Officer to cause counting of votes

s. 24(1)

- 136.19. (1) The Elections Officer shall cause the votes for each candidate to be counted in accordance with this section.

Disqualified votes

s. 25(2)

- (2) If an elector votes for more than five candidates, none of the elector's votes for those candidates shall be counted.

DECLARATION OF RESULTS

Declaration of results

s.29(2)

- 136.20. (1) After the deadline for casting votes on election day has passed, immediately after the count of votes has been completed, the Elections Officer shall declare to have been elected to the Committee the five candidates eligible to be elected to the Committee who have the five largest numbers of votes.

Same numbers of votes

s. 26(1)

- (2) If two or more candidates have the same numbers of votes, but the number of persons remaining to be elected to the Committee is fewer than the number of candidates having the same numbers of votes, the Elections Officer shall, in the presence of the Treasurer, randomly select, from the candidates having the same numbers of votes, the necessary number of candidates to be elected to the Committee.

Publication of results

- (3) The Elections Officer shall publish the election results on the Society's website, and those results shall include the names of the candidates and the number of votes cast for each candidate.

Although not required to do this by the by-law, it has always been done for lawyer benchers elections.

RECOUNT

This section replaces sections 34-40 dealing with petitions. A similar replacement section for the lawyer benchers election will be recommended to Convocation. The petition procedure currently in place has never been invoked and is out of step with the process other regulated professions and other organizations have. A recount process is the standard process.

Request for recount

136.21. (1) If fewer than 15 votes separate an elected candidate from another candidate, the Elections Officer shall, on the written request of the other candidate, promptly cause the votes cast for all candidates to be recounted, in accordance with section 136.19, and provide the results of the recount to all candidates.

Time for making request

(2) No request for a recount shall be made after fifteen days after the declaration of results under section 136.20.

Results of recount

(3) Where from the recount it appears to the Elections Officer that a wrong candidate was declared elected, the Elections Officer shall correct the election results, declare the correct candidate as elected and publish the corrected election results on the Society's website.

TAKING OFFICE

Taking office

- s. 30 136.22. (1) The candidates who are elected to the Committee as a result of a poll shall take office on the day on which the Committee has its first regular meeting following the election day.

Term of office

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

RETENTION OF ELECTION RESULTS

How long to be retained

136.23. The Elections Officer shall retain the results from the election of paralegal members until the next election of paralegal members.

Retention of the results is necessary to fill vacancies that arise during the term of office.

VACANCIES DURING TERM OF OFFICE

Filling vacancy: election of candidate from previous election of paralegal members

- s. 43 136.24. (1) If a member of the Committee who was elected to the Committee in an election of paralegal members or was deemed to have been elected to the Committee under this section resigns from office, is removed from office or for any other reason is unable to continue in office, the candidate in the most recent election of paralegal members who meets the following criteria shall be deemed to have been elected to the Committee to fill the resulting vacancy in office:
1. The candidate was not elected to the Committee in the most recent election of paralegal members.
 2. From among the candidates not elected to the Committee in the most recent election of paralegal members, the candidate had the largest number of votes.
 3. On the date of the deemed election, the candidate's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within Ontario.
 4. On the date of the deemed election, the candidate is licensed to provide legal services in Ontario and her or his licence is not suspended.
 5. On the date of the deemed election, the candidate is eighteen or more years of age.
 6. On the date of the deemed election, the candidate is not bankrupt.
 7. The candidate consents to the election.

This section provides that the candidate who finishes sixth in the election fills the vacancy as long as the candidate meets all the criteria, eg. is not suspended or bankrupt.

Interpretation: paragraph 1 of subsection (1)

- (2) A candidate does not meet the criterion set out in paragraph 1 of subsection (1) if,
 - (a) in the most recent election of paralegal members, the candidate was ineligible to be elected to the Committee only because he or she did not consent to the election; or
 - (b) the candidate was previously not deemed to have been elected to the Committee under subsection (1) only because he or she did not consent to the election.

This section prevents a candidate from passing on the election and waiting for the next vacancy.

Interpretation: paragraph 2 of subsection (1)

(3) A candidate who does not meet the criterion set out in paragraph 1 of subsection (1) shall not be included among the candidates considered under paragraph 2 of subsection (1).

Same numbers of votes: paragraph 2 of subsection (1)

(4) For the purposes of paragraph 2 of subsection (1), if two or more candidates have the same largest number of votes, the Elections Officer shall, in the presence of the Treasurer, randomly select one candidate from among the candidates having the same largest number of votes and that one candidate shall be the candidate with the largest number of votes.

Taking office and term of office

(5) A candidate who is deemed to have been elected to the Committee under subsection (1) shall take office immediately thereafter and, subject to any by-law that provides for the removal of members from the Committee, shall remain in office until her or his successor takes office.

FOR INFORMATION

2009 PARALEGAL ANNUAL REPORT

7. The Committee approved the form for the Paralegal Annual Report for the year 2009, to be submitted in 2010, prepared by the Client Services department of the Law Society. The form is attached at Appendix 2.
8. The form includes a number of changes from the previous form, including the questionnaire on demographic information previously approved by Convocation. The changes are summarized in the list at Appendix 3.

EXPANSION OF SUMMARY HEARING PROCESS

9. The Committee approved the proposal for the addition of further types of cases to the summary hearing process, to be submitted to Convocation by the Professional Regulation Committee.

INFORMATION FROM THE FIRST PARALEGAL ANNUAL REPORT

10. Information from the first Paralegal Annual Report to the Law Society, showing the geographic distribution of paralegal licensees by practice area, is shown at Appendix 4.

RESPONSE TO THE CODE/LESAGE REPORT

11. The Committee was briefed on the development of the protocols in response to the Code/LeSage Report, attached to the Report from the Professional Regulation Committee. The Paralegal Standing Committee has established a Working Group to advise on an appropriate approach to mentoring for paralegals under the protocols.

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

- (1) A copy of the amendments to By-law 3 – Parts I and I.1.
(Appendix 1, pages 19 – 24)
- (2) A copy of the Paralegal Annual Report for the year 2009.
(Appendix 2, pages 26 – 33A)
- (3) A copy of a table – Explanation of Changes, 2009 Paralegal Annual Report.
(Appendix 3, page 34)
- (4) A copy of information showing the geographic distribution of paralegal licensees by practice area.
(Appendix 4, page 35)

Re: By-Law 3 Amendments – Paralegal Election

It was moved by Ms. McGrath, seconded by Mr. Lewis, that Convocation approve the amendments to By-Law 3 (Bilingual version) which were distributed under separate cover.

Carried

BY-LAW 3 [BENCHERS, CONVOCATION AND COMMITTEES]

THAT By-Law 3 [Benchers, Convocation and Committees], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, September 20, 2007, November 22, 2007, June 26, 2008 and April 30, 2009, be further amended as follows:

1. The English version of the By-Law is amended by adding the following after section 46 and before Part II:

PART I.1

ELECTION OF BENCHERS LICENSED TO PROVIDE LEGAL SERVICES

GENERAL

Definitions

46.1. (1) In this Part,

“Committee” means the Paralegal Standing Committee;

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

“election of benchers” means an election of benchers licensed to provide legal services in Ontario;

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

Interpretation: “bencher”

(2) In this Part, except where a contrary intention appears, “bencher” means a bencher licensed to provide legal services in Ontario.

ELECTION DAY

Election day

46.2. (1) There shall be an election of benchers in 2010 and in every fourth year thereafter on the day on which the Committee has its first regular meeting following the election to the Committee in that year of five persons licensed to provide legal services in Ontario under Part VII.1 of this By-Law.

First matter of business

(2) The election of benchers shall be the first matter of business at the meeting of the Committee on election day.

Elections Officer to conduct election

(3) The election of benchers shall be conducted by the Elections Officer.

CANDIDATES

Candidates

46.2. Every person who was elected to the Committee under Part VII.1 of this By-Law and took office as a member of the Committee on election day is a candidate in the election of benchers.

ELIGIBILITY FOR ELECTION

Who may not be elected

46.3. No candidate shall be elected as bencher if, at the time of her or his election,

- (a) the candidate is no longer licensed to provide legal services in Ontario or the candidate's licence is suspended;
- (b) the candidate is not eighteen or more years of age;
- (c) the candidate is an undischarged bankrupt; or
- (d) the candidate does not consent to her or his election.

POLL

Poll

46.4. (1) A poll shall be conducted to elect two candidates as benchers.

Secret ballot

- (2) A poll to elect benchers shall be conducted by secret ballot.

VOTING

Right to vote

46.5. (1) The following members of the Committee are entitled to vote in the election of benchers:

- 1. Persons who are licensed to provide legal services in Ontario.
- 2. Lay benchers.

Ballots

(2) On election day, each elector who is in attendance in person at the meeting of the Committee shall receive a ballot listing the names of all candidates.

Marking ballot

(3) An elector shall vote for two candidates only on the ballot and shall indicate the candidates of her or his choice by placing a mark beside the name of the candidate.

Ballot box

(4) After an elector has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Elections Officer, put the ballot into a ballot box.

COUNTING THE VOTES

Counting votes

46.6. On election day, after all electors in attendance in person at the meeting of the Committee on that day have put a ballot into the ballot box, the Elections Officer shall, in the absence of all persons but in the presence of the vice-chair of the Committee, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.

DECLARATION OF RESULTS

Declaration of results

46.7. (1) Immediately after the count of votes under section 46.6 has been completed, the Elections Officer shall declare to have been elected as benchers the two candidates eligible to be elected as benchers who have the two largest numbers of votes.

Same numbers of votes

(2) If two or more candidates have the same numbers of votes, but the number of persons remaining to be elected as benchers is fewer than the number of candidates having the same numbers of votes, the Elections Officer shall, in the absence of all persons but in the presence of the vice-chair of the Committee, randomly select, from the candidates having the same numbers of votes, the necessary number of candidates to be elected as benchers.

Report and publication of results

(3) The Elections Officer shall report the election results to the Committee and to Convocation and shall publish the election results on the Society's website.

TAKING OFFICE

Taking office

46.8. (1) The candidates who are elected as benchers shall take office on the day on which Convocation has its first regular meeting following the declaration of results under section 46.7.

Term of office

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

DISPOSITION OF ELECTION MATERIALS

How long to be retained

46.9. (1) The Elections Officer shall retain all election materials and other documents relating to the election of benchers for at least thirty days after the declaration of results under section 46.7.

Destruction

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

VACANCIES DURING TERM OF OFFICE

By-election

46.10. (1) If a bencher resigns from office, is removed from office or for any other reason is unable to continue in office, a by-election shall be held to elect a person as a bencher to fill the resulting vacancy.

Day of by-election

(2) The by-election shall be held on the day on which the Committee has its first regular meeting following the day on which the candidate, who is deemed to have been elected to the Committee to fill the vacancy in the Committee resulting from the bencher's resignation from, removal from or inability to continue in office, takes office.

Elections Officer to conduct by-election

(3) The by-election shall be conducted by the Elections Officer.

Candidates

46.11. Every person, who is not a bencher, who was elected or deemed to have been elected to the Committee under Part VII.1 of this By-Law and who took office as a member of the Committee on or before the day of the by-election is a candidate in the by-election.

Application of sections

46.12. Sections 46.3 to 46.9 apply, with necessary modifications, to the by-election held under section 46.10.

2. The French version of the By-Law is amended by adding the following after section 46 and before Part II:

PARTIE I.1

ÉLECTION DES CONSEILLERS POURVUS D'UN PERMIS LES AUTORISANT À FOURNIR DES SERVICES JURIDIQUES

DISPOSITIONS GÉNÉRALES

Définitions

46.1. (1) Les définitions qui suivent s'appliquent à la présente partie.

« Comité » Le Comité permanent des parajuristes.

« électeur, électrice » Personne qui a le droit, aux termes de la présente partie, de voter lors de l'élection des conseillers et des conseillères.

« élection des conseillers » L'élection des conseillers et des conseillères pourvus d'un permis les autorisant à fournir des services juridiques en Ontario.

« responsable des élections » La personne que le directeur général ou la directrice générale charge d'appliquer la présente partie.

Interprétation du terme « conseiller »

(2) Sauf intention contraire manifeste, le terme de conseiller ou de conseillère s'entend, dans la présente partie, d'un conseiller ou d'une conseillère pourvu d'un permis l'autorisant à fournir des services juridiques en Ontario.

JOUR DE L'ÉLECTION

Jour de l'élection

46.2. (1) L'élection des conseillers et des conseillères se tient, en 2010 et tous les quatre ans par la suite, le jour de la première réunion ordinaire du Comité qui suit l'élection au même Comité, cette année-là, de cinq personnes pourvues d'un permis les autorisant à fournir des

services juridiques en Ontario en application de la partie VII.1 du présent règlement administratif.

Premier point à l'ordre du jour

(2) L'élection des conseillers et des conseillères constitue le premier article à l'ordre des travaux de la réunion du Comité tenue le jour de l'élection.

Administration de l'élection par le responsable des élections

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

CANDIDATS

Candidats

46.2. Toute personne élue au Comité en application de la partie VII.1 du présent règlement administratif qui prend ses fonctions de membre du Comité le jour de l'élection est candidate à l'élection des conseillers et des conseillères.

ÉLIGIBILITÉ

Critères d'inéligibilité

46.3. Ne peuvent être élues conseillers ou conseillères les personnes qui, au moment de l'élection, remplissent l'une ou l'autre des conditions suivantes :

- a) elles ne sont plus titulaires d'un permis les autorisant à fournir des services juridiques en Ontario ou leur permis est suspendu;
- b) elles sont âgées de moins de 18 ans;
- c) elles sont un failli qui n'a pas été libéré;
- d) elles ne donnent pas leur consentement à leur élection.

SCRUTIN

Scrutin

46.4. (1) Il est tenu un scrutin pour élire deux candidats ou candidates comme conseillers ou conseillères.

Scrutin secret

- (2) Les conseillers ou les conseillères sont élus au scrutin secret.

VOTE

Droit de vote

46.5. (1) Les membres suivants du Comité ont droit de vote lors de l'élection des conseillers et des conseillères :

1. Les personnes pourvues d'un permis les autorisant à fournir des services juridiques en Ontario.
2. Les conseillers non juristes.

Bulletins de vote

(2) Le jour de l'élection, chaque électrice et électeur présent à la réunion du Comité reçoit un bulletin de vote où figure le nom de tous les candidats et candidates.

Inscriptions sur les bulletins de vote

(3) Les électeurs et les électrices ne votent que pour deux candidats au moyen de leur bulletin de vote et indiquent les candidats et les candidates de leur choix en faisant une coche à côté de leur nom.

Boîte de scrutin

(4) Les électeurs et les électrices plient leurs bulletins de vote, une fois remplis, de façon à ce que les noms des candidats et des candidates ne soient pas visibles et, en présence du ou de la responsable des élections, les dépose dans la boîte de scrutin.

DÉPOUILLEMENT DU SCRUTIN

Dépouillement du scrutin

46.6. Le jour de l'élection, après que toutes les électrices et tous les électeurs présents à la réunion du Comité tenue ce jour-là ont déposé leurs bulletins de vote dans la boîte de scrutin, le ou la responsable des élections, en l'absence de toutes les personnes sauf du vice-président ou de la vice-présidente du Comité, ouvre la boîte de scrutin, en retire tous les bulletins, les ouvre et procède au décompte des voix exprimées par candidat ou candidate.

DÉCLARATION DES RÉSULTATS

Déclaration des résultats

46.7. (1) Immédiatement après le décompte des voix effectué conformément à l'article 46.6, le ou la responsable des élections déclare élus au poste de conseiller les deux candidats éligibles qui ont recueilli le nombre le plus élevé de voix.

Partage des voix

(2) Si deux candidats ou candidates ou plus ont recueilli le même nombre de voix, mais que le nombre de sièges à pourvoir est inférieur à celui de ces candidats et candidates, le ou la responsable des élections choisit au hasard parmi eux, en l'absence de toutes les personnes sauf du vice-président ou de la vice-présidente du Comité, le nombre nécessaire de candidats et de candidates à élire au poste de conseiller.

Communication et publication des résultats

(3) Le ou la responsable des élections rend compte des résultats de l'élection au Comité et au Conseil et les publie sur le site web du Barreau.

ENTRÉE EN FONCTION

Entrée en fonction

46.8. (1) Les candidats et les candidates élus au poste de conseiller entrent en fonction le jour de la première réunion ordinaire du Conseil qui suit la déclaration des résultats prévue à l'article 46.7.

Mandat

(2) Sous réserve des règlements qui prévoient leur destitution, les conseillers et les conseillères qui entrent en fonction aux termes du paragraphe (1) occupent leur charge jusqu'à l'entrée en fonction de leurs successeurs.

DESTRUCTION DE LA TROUSSE ÉLECTORALE

Durée de conservation

46.9. (1) Le ou la responsable des élections conserve la trousse électorale et les autres documents relatifs à l'élection pendant au moins trente jours après la déclaration des résultats prévue à l'article 46.7.

Destruction

(2) Le ou la responsable des élections peut détruire la trousse électorale et les autres documents relatifs à l'élection après l'expiration du délai de conservation prévu au paragraphe (1).

VACANCES

Élection partielle

46.10. (1) En cas de démission, de destitution ou d'empêchement d'une conseillère ou d'un conseiller, il est pourvu à la vacance qui en résulte par voie d'élection partielle.

Jour de l'élection partielle

(2) L'élection partielle se tient le jour de la première réunion ordinaire du Comité qui suit le jour de l'entrée en fonction de la candidate ou du candidat qui est réputé avoir été élu au Comité pour pourvoir à la vacance qui résulte de la démission, de la destitution ou de l'empêchement du conseiller ou de la conseillère.

Administration de l'élection partielle par le responsable des élections

(3) Le ou la responsable des élections administre l'élection partielle.

Candidats

46.11. Quiconque n'est pas un conseiller ou une conseillère, est élu ou est réputé élu au Comité en application de la partie VII.1 du présent règlement administratif et est entré en fonction en tant que membre du Comité au plus tard le jour de l'élection partielle est candidat lors de celle-ci.

Application d'articles

46.12. Les articles 46.3 à 46.9 s'appliquent, avec les adaptations nécessaires, à l'élection partielle tenue en application de l'article 46.10.

3. The English version of the By-Law is further amended by adding the following after section 136 and before Part VIII:

PART VII.1

ELECTION TO THE PARALEGAL STANDING COMMITTEE OF PERSONS LICENSED TO PROVIDE LEGAL SERVICES

GENERAL

Definitions

136.1. In this Part,

"Committee" means the Paralegal Standing Committee;

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

"election of paralegal members" means an election to the Committee of five persons licensed to provide legal services in Ontario;

"elector" means a person who is entitled under this Part to vote in an election of paralegal members;

“holiday” means,

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

Interpretation: reference to a day

136.2. (1) In this Part, except where otherwise stated, a reference to a day, month or time shall be a reference to a day, month or time in an election year.

Interpretation: commencement, *etc.* of event

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

ELECTION DAY

Election day

136.3. There shall be an election of paralegal members in 2010 and in every fourth year thereafter on the last day in March that is not a holiday.

ELECTION OFFICERS

Treasurer to preside over election

136.4. (1) An election of paralegal members shall be presided over by the Treasurer.

Appointment of assistant

(2) The Treasurer may appoint a licensee to assist her or him in exercising the powers and performing the duties of the Treasurer under this Part.

Appointment of licensee to act in absence of Treasurer

(3) The Treasurer shall appoint a licensee to exercise the powers and perform the duties of the Treasurer under this Part whenever the Treasurer is unable to act.

Appointment of person licensed to provide legal services in Ontario

(4) If under subsection (2) or (3) the Treasurer wishes to appoint a person licensed to provide legal services in Ontario, the Treasurer shall appoint a licensee who is not a candidate in the election of paralegal members.

Elections Officer to conduct election

136.5. (1) An election of paralegal members shall be conducted by the Elections Officer.

Elections Officer to establish procedures, *etc.*

- (2) The Elections Officer shall,
 - (a) by November 30 of the year immediately preceding an election year,
 - (i) establish all procedures, requirements and specifications required to be established with respect to the nomination of candidates for the election, and
 - (ii) establish the procedures by which a poll in an election of paralegal members will be conducted; and
 - (b) by December 31 of the year immediately preceding the election year, publish all procedures, requirements and specifications established in respect of the election.

CANDIDATES

Who may be candidate

136.6. Every person who is licensed to provide legal services in Ontario may be a candidate in an election of paralegal members if,

- (a) the person is nominated as a candidate in accordance with section 136.7; and
- (b) at the time of signing a nomination form containing her or his nomination as a candidate,
 - (i) the person's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within Ontario, and
 - (ii) the person's licence to provide legal services in Ontario is not suspended.

Nomination and consent

- 136.7. (1) Every candidate in an election of paralegal members must,
- (a) be nominated by at least five persons licensed to provide legal services in Ontario whose licences are not suspended at the time of signing the nomination form; and
 - (b) consent to the nomination.

Nomination form

(2) The nomination of a person as a candidate in an election of paralegal members and the person's consent to the nomination shall be contained in a nomination form provided by the Society.

Signatures

(3) The nomination form must be signed by the person being nominated as a candidate and the five persons licensed to provide legal services in Ontario who are nominating the person as a candidate.

Close of nominations

(4) The nomination form must be received in the office of the Elections Officer at Osgoode Hall by the date and time specified by the Elections Officer.

Acceptance and rejection of nominations: examination of nomination form

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

- (a) if he or she is satisfied that the requirements specified in sections 136.6 and 136.7 have been complied with, he or she shall accept the nomination; or
- (b) if he or she is not satisfied that the requirements specified in sections 136.6 and 136.7 have been complied with, he or she shall reject the nomination.

Results of examination of nomination form

(2) The Elections Officer shall communicate the results of her or his examination of a nomination form to the person whose nomination is contained therein.

Nomination form: optional accompanying material

136.9. (1) A person being nominated as a candidate in an election of paralegal members may submit the following items along with her or his nomination form:

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

Deadline for receipt of accompanying material

(2) The items mentioned in subsection (1) must be received in the office of the Elections Officer at Osgoode Hall before the time for the close of nominations mentioned in subsection 136.7 (4).

Withdrawal of candidates

136.10. A candidate may withdraw from an election of paralegal members by giving the Elections Officer written notice of her or his withdrawal within seven days after the time for the close of nominations mentioned in subsection 136.7 (4).

ELIGIBILITY FOR ELECTION

Who may not be elected

136.11. No candidate shall be elected to the Committee if, at the time of her or his election,

- (a) the candidate's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is outside Ontario;
- (b) the candidate is no longer licensed to provide legal services in Ontario or the candidate's licence is suspended;
- (c) the candidate is not eighteen or more years of age;
- (d) the candidate is an undischarged bankrupt; or
- (e) the candidate does not consent to her or his election.

ACCLAMATION

Election by acclamation

136.12. (1) If after the acceptance of all valid nominations after the time mentioned for the close of nominations in subsection 136.7 (4) the number of candidates eligible to be elected to the Committee is not more than five, the Elections Officer shall declare the candidates to have been elected to the Committee.

Taking office

(2) The candidates who are elected to the Committee under subsection (1) shall take office on the day on which the Committee has its first regular meeting after the candidates are declared to have been elected to the Committee.

POLL

Poll

136.13. (1) If after the acceptance of all valid nominations after the time mentioned for the close of nominations in subsection 136.7 (4), the number of candidates eligible to be elected to the Committee is more than five, a poll shall be conducted to elect five candidates to the Committee.

Procedures for conducting poll

(2) The procedures for conducting a poll may provide for the use of electronic means for voting and for tabulating results.

Anonymity of elector and secrecy of votes

(3) The procedures for conducting a poll shall be such that the anonymity of an elector and secrecy of the elector's votes are preserved.

QUALIFICATION OF ELECTORS

Qualification of electors

136.14. (1) A person who is licensed to provide legal services and whose licence is not suspended on the fourth Friday in February is entitled to vote in an election of paralegal members.

Electors' list

(2) On or shortly after the first Monday after the date mentioned in subsection (1), the Elections Officer shall prepare a list of all persons who are entitled to vote in an election of paralegal members.

PROCEDURES BEFORE POLL

Candidate information: preparation

136.15. (1) For the purposes of and prior to conducting the poll mentioned in section 136.13, the Elections Officer shall publish in electronic medium information about the candidates in the election of paralegal members, including the names of the candidates and, if available, the photograph, biography and, subject to subsection (3), election statement of each candidate.

All election statements included

(2) Subject to subsection (3), the Elections Officer shall publish all election statements that he or she received under section 136.9.

Certain election statements not be included unless approved

(3) The Elections Officer shall not publish any election statement that in her or his opinion may be libelous, may be in breach of the rules of professional conduct or is in bad taste unless the election statement has been approved in accordance with section 136.16.

Appointment of persons to approve election statements

136.16. (1) If necessary, the Treasurer shall appoint two or more lay benchers to approve election statements.

Referral of election statements

(2) The Elections Officer shall refer to the lay benchers appointed under subsection (1) all election statements that in her or his opinion may be libelous, may be in breach of the rules of professional conduct or are in bad taste.

Consideration of election statements

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

- (a) approve the election statement; or
- (b) if the lay benchers are of the opinion that the election statement may be libelous, may be in breach of the rules of professional conduct or is in bad taste,
 - (i) return the election statement to the candidate who submitted it,
 - (ii) provide the candidate with a written explanation of the objections to the election statement, and
 - (iii) specify the time by which the candidate may submit to the Elections Officer a redrafted election statement.

Consideration of redrafted election statements

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

- (a) approve the redrafted election statement; or
- (b) if the lay benchers are of the opinion that the redrafted election statement may be libelous, may be in breach of the rules of professional conduct or is in bad taste,
 - (i) return the redrafted election statement to the candidate who submitted it,
 - (ii) provide the candidate with a written explanation of the objections to the redrafted election statement, and

- (iii) advise the candidate that no election statement shall be published under her or his name.

Decision final

- (5) A decision made under subsection (4) is final.

Election information: publication

136.17. As soon as practicable after the Elections Officer has prepared the electors' list and prepared for publication information about the candidates in the election of paralegal members, the Elections Officer shall,

- (a) cause to be published in the *Ontario Reports* and on the Society's website a notice with respect to the election of paralegal members that includes details on when and how an elector may access available information about the candidates in the election of paralegal members and when and how an elector may vote in the election of paralegal members; and
- (b) email the notice mentioned in clause (a) to every elector, to her or his business email address, or where the elector has no business email address, home email address, as indicated on the records of the Society.

POLL: VOTING

Voting for candidates

136.18. In a poll conducted in an election of paralegal members, an elector,

- (a) may vote for up to five candidates; and
- (b) shall cast her or his votes in accordance with the procedures established by the Elections Officer.

COUNTING THE VOTES

Elections Officer to cause counting of votes

136.19. (1) The Elections Officer shall cause the votes for each candidate to be counted in accordance with this section.

Disqualified votes

(2) If an elector votes for more than five candidates, none of the elector's votes for those candidates shall be counted.

DECLARATION OF RESULTS

Declaration of results

136.20. (1) After the deadline for casting votes on election day has passed, immediately after the count of votes has been completed, the Elections Officer shall declare to have been elected to the Committee the five candidates eligible to be elected to the Committee who have the five largest numbers of votes.

Same numbers of votes

(2) If two or more candidates have the same numbers of votes, but the number of persons remaining to be elected to the Committee is fewer than the number of candidates having the same numbers of votes, the Elections Officer shall, in the presence of the Treasurer, randomly select, from the candidates having the same numbers of votes, the necessary number of candidates to be elected to the Committee.

Publication of results

(3) The Elections Officer shall publish the election results on the Society's website, and those results shall include the names of the candidates and the number of votes cast for each candidate.

RECOUNT

Request for recount

136.21. (1) If fewer than 15 votes separate an elected candidate from another candidate, the Elections Officer shall, on the written request of the other candidate, promptly cause the votes cast for all candidates to be recounted, in accordance with section 136.19, and provide the results of the recount to all candidates.

Time for making request

(2) No request for a recount shall be made after fifteen days after the declaration of results under section 136.20.

Results of recount

(3) Where from the recount it appears to the Elections Officer that a wrong candidate was declared elected, the Elections Officer shall correct the election results, declare the correct candidate as elected and publish the corrected election results on the Society's website.

TAKING OFFICE

Taking office

136.22. (1) The candidates who are elected to the Committee as a result of a poll shall take office on the day on which the Committee has its first regular meeting following the election day.

Term of office

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

RETENTION OF ELECTION RESULTS

How long to be retained

136.23. The Elections Officer shall retain the results from the election of paralegal members until the next election of paralegal members.

VACANCIES DURING TERM OF OFFICE

Filling vacancy: election of candidate from previous election of paralegal members

136.24. (1) If a member of the Committee who was elected to the Committee in an election of paralegal members or was deemed to have been elected to the Committee under this section resigns from office, is removed from office or for any other reason is unable to continue in office, the candidate in the most recent election of paralegal members who meets the following criteria shall be deemed to have been elected to the Committee to fill the resulting vacancy in office:

1. The candidate was not elected to the Committee in the most recent election of paralegal members.
2. From among the candidates not elected to the Committee in the most recent election of paralegal members, the candidate had the largest number of votes.
3. On the date of the deemed election, the candidate's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within Ontario.
4. On the date of the deemed election, the candidate is licensed to provide legal services in Ontario and her or his licence is not suspended.
5. On the date of the deemed election, the candidate is eighteen or more years of age.

6. On the date of the deemed election, the candidate is not bankrupt.

7. The candidate consents to the election.

Interpretation: paragraph 1 of subsection (1)

(2) A candidate does not meet the criterion set out in paragraph 1 of subsection (1) if,

- (a) in the most recent election of paralegal members, the candidate was ineligible to be elected to the Committee only because he or she did not consent to the election; or
- (b) the candidate was previously not deemed to have been elected to the Committee under subsection (1) only because he or she did not consent to the election.

Interpretation: paragraph 2 of subsection (1)

(3) A candidate who does not meet the criterion set out in paragraph 1 of subsection (1) shall not be included among the candidates considered under paragraph 2 of subsection (1).

Same numbers of votes: paragraph 2 of subsection (1)

(4) For the purposes of paragraph 2 of subsection (1), if two or more candidates have the same largest number of votes, the Elections Officer shall, in the presence of the Treasurer, randomly select one candidate from among the candidates having the same largest number of votes and that one candidate shall be the candidate with the largest number of votes.

Taking office and term of office

(5) A candidate who is deemed to have been elected to the Committee under subsection (1) shall take office immediately thereafter and, subject to any by-law that provides for the removal of members from the Committee, shall remain in office until her or his successor takes office.

4. The French version of the By-Law is further amended by adding the following immediately after section 136:

PARTIE VII.1

ÉLECTION AU COMITÉ PERMANENT DES PARAJURISTES DE PERSONNES POURVUES D'UN PERMIS LES AUTORISANT À FOURNIR DES SERVICES JURIDIQUES

DISPOSITIONS GÉNÉRALES

Définitions

136.1. Les définitions qui suivent s'appliquent à la présente partie.

« Comité » Le Comité permanent des parajuristes.

« électeur, électrice » Personne qui a le droit, aux termes de la présente partie, de voter lors de l'élection des membres parajuristes.

« élection des membres parajuristes » L'élection au Comité de cinq personnes pourvues d'un permis les autorisant à fournir des services juridiques en Ontario.

« jour férié » Chacun des jours suivants :

- a) le samedi ou le dimanche;
- b) le jour de la Famille;
- c) le Vendredi Saint;
- d) le Lundi de Pâques.

« responsable des élections » La personne que le directeur général ou la directrice générale charge d'appliquer la présente partie.

Interprétation : mention d'un jour

136.2. (1) Sauf disposition contraire, la mention dans la présente partie d'un jour, d'un mois ou d'une heure est la mention du jour, du mois ou de l'heure qui tombe dans une année d'élection.

Interprétation : début et fin d'un événement

(2) Dans la présente partie, sauf intention contraire manifeste, l'événement qui a lieu, commence ou se termine un jour férié est réputé avoir lieu, commencer ou se terminer le jour non férié suivant.

JOUR DE L'ÉLECTION

Jour de l'élection

136.3. L'élection des membres parajuristes se tient, en 2010 et tous les quatre ans par la suite, le dernier jour de mars qui n'est pas férié.

PERSONNEL ÉLECTORAL

Présidence de l'élection

136.4. (1) Le trésorier ou la trésorière préside l'élection des membres parajuristes.

Nomination d'un assistant

(2) Le trésorier ou la trésorière peut charger un titulaire de permis de l'assister dans l'exercice des pouvoirs et des fonctions que lui confère la présente partie.

Nomination d'un titulaire de permis en cas d'empêchement du trésorier

(3) Le trésorier ou la trésorière charge un titulaire de permis d'exercer les pouvoirs et les fonctions que lui confère la présente partie en cas d'empêchement de sa part.

Nomination d'une personne pourvue d'un permis l'autorisant à fournir des services juridiques en Ontario

(4) Le ou la titulaire de permis choisi par le trésorier ou la trésorière dans le cadre du paragraphe (2) ou (3) ne doit pas être candidat ou candidate lors de l'élection des membres parajuristes si son permis l'autorise à fournir des services juridiques en Ontario.

Administration de l'élection par le responsable des élections

136.5. (1) Le ou la responsable des élections administre l'élection des membres parajuristes.

Définition des paramètres par le responsable des élections

- (2) Le ou la responsable des élections se charge de ce qui suit :
 - a) avant le 30 novembre de l'année qui précède une année d'élection :
 - (i) définir les procédures, les exigences et tout autre paramètre imposés en l'espèce relativement à la mise en candidature des candidats et des candidates à l'élection,
 - (ii) préciser les modalités du scrutin aux fins de l'élection des membres parajuristes;
 - b) avant le 31 décembre de l'année qui précède une année d'élection, publier l'ensemble des procédures, des exigences et des paramètres propres à l'élection.

CANDIDATS

Qualités requises des candidats

136.6. Peuvent se porter candidats et candidates à l'élection des membres parajuristes toutes les personnes pourvues d'un permis les autorisant à fournir des services juridiques en Ontario qui remplissent les conditions suivantes :

- a) leur candidature est proposée conformément à l'article 136.7;

- b) au moment de la signature de leur formule de mise en candidature :
 - (i) d'une part, leur adresse professionnelle ou, à défaut, leur adresse domiciliaire, telle qu'elle figure dans les registres du Barreau, est située en Ontario,
 - (ii) d'autre part, leur permis n'est pas suspendu.

Mise en candidature et consentement

- 136.7. (1) Chaque candidat et chaque candidate à l'élection des membres parajuristes :
- a) doit être proposé par au moins cinq personnes pourvues d'un permis les autorisant à fournir des services juridiques en Ontario dont le permis n'est pas suspendu au moment de la signature de la formule de mise en candidature;
 - b) consent à la mise en candidature.

Formule de mise en candidature

- (2) La mise en candidature du candidat ou de la candidate et son consentement à la mise en candidature figurent sur la formule de mise en candidature fournie par le Barreau.

Signatures

- (3) La formule de mise en candidature porte la signature du candidat ou de la candidate et des cinq personnes pourvues d'un permis les autorisant à fournir des services juridiques en Ontario qui proposent sa candidature.

Clôture des mises en candidature

- (4) Les formules de mise en candidature doivent parvenir aux bureaux du ou de la responsable des élections, à Osgoode Hall, avant la date et l'heure qu'il ou elle précise.

Acceptation ou rejet des mises en candidature : examen des formules de mise en candidature

- 136.8. (1) Le plus tôt possible après la réception de la formule de mise en candidature, le ou la responsable des élections l'examine et, selon le cas :
- a) l'accepte s'il est convaincu ou si elle est convaincue qu'il est satisfait aux exigences précisées aux articles 136.6 et 136.7;
 - b) la rejette s'il n'est pas convaincu ou si elle n'est pas convaincue qu'il est satisfait aux exigences précisées aux articles 136.6 et 136.7.

Résultats de l'examen des formules de mise en candidatures

- (2) Le ou la responsable des élections communique le résultat de son examen de la formule de mise en candidature à la candidate ou au candidat concerné.

Documents facultatifs à joindre à la formule de mise en candidature

136.9. (1) Le candidat ou la candidate à l'élection des membres parajuristes peut joindre les documents suivants à sa formule de mise en candidature :

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

Délai de réception des documents joints

(2) Le ou la responsable des élections reçoit les documents visés au paragraphe (1) à ses bureaux, à Osgoode Hall, avant la clôture des mises en candidature précisée au paragraphe 136.7 (4).

Retrait de candidature

136.10. Le candidat ou la candidate peut retirer sa candidature à l'élection des membres parajuristes en avisant par écrit le ou la responsable des élections dans les sept jours de la clôture des mises en candidature précisée au paragraphe 136.7 (4).

ÉLIGIBILITÉ

Inéligibilité

136.11. Ne peuvent être élus au Comité les candidats et les candidates qui, au moment de l'élection, remplissent l'une ou l'autre des conditions suivantes :

- a) leur adresse professionnelle ou, à défaut, leur adresse domiciliaire, telle qu'elle figure dans les registres du Barreau, est située hors de l'Ontario;
- b) ils ne sont plus titulaires d'un permis les autorisant à fournir des services juridiques en Ontario ou leur permis est suspendu;
- c) ils sont âgés de moins de 18 ans;
- d) ils sont un failli qui n'a pas été libéré;
- e) ils ne donnent pas leur consentement à leur élection.

ÉLECTION SANS CONCURRENT

Élection sans concurrent

136.12. (1) Si, après l'acceptation de toutes les mises en candidature valides après la clôture des mises en candidature précisée au paragraphe 136.7 (4), le nombre des candidates ou des candidates éligibles au Comité n'est pas supérieur à cinq, le ou la responsable des élections déclare les candidats ou les candidates élus.

Entrée en fonction

(2) Les candidats et les candidates élus au Comité en application du paragraphe (1) entrent en fonction le jour de la première réunion ordinaire du Comité qui suit la déclaration de leur élection.

SCRUTIN

Scrutin

136.13. (1) Si, après l'acceptation de toutes les mises en candidature valides après la clôture des mises en candidature précisée au paragraphe 136.7 (4), le nombre des candidates ou des candidates éligibles au Comité est supérieur à cinq, il est tenu un scrutin pour élire cinq candidats ou candidates au Comité.

Mode de scrutin

(2) Le mode de scrutin peut prévoir le vote et la compilation des résultats par voie électronique.

Anonymat des électeurs et secret du vote

(3) Le mode de scrutin permet de protéger l'anonymat des électeurs et des électrices ainsi que le secret de leur vote.

QUALITÉS REQUISES DES ÉLECTEURS

Qualités requises des électeurs

136.14. (1) Aux fins de l'élection des membres parajuristes, ont droit de vote les personnes pourvues d'un permis les autorisant à fournir des services juridiques dont le permis n'est pas suspendu le quatrième vendredi de février.

Liste des électeurs

(2) Le lundi qui suit immédiatement la date précisée au paragraphe (1) ou tôt par la suite, le ou la responsable des élections dresse la liste des personnes qui ont droit de vote lors de l'élection des membres parajuristes.

AVANT LE SCRUTIN

Préparation des renseignements sur les candidats

136.15. (1) Aux fins de la tenue du scrutin prévu à l'article 136.13 et avant celle-ci, le ou la responsable des élections publie par voie électronique des renseignements sur les candidats et les candidates à l'élection des membres parajuristes, notamment leur nom et, le cas échéant, leur photographie, leur notice biographique et, sous réserve du paragraphe (3), leur déclaration électorale.

Inclusions de toutes les déclarations électorales

(2) Sous réserve du paragraphe (3), le ou la responsable des élections publie toutes les déclarations électorales reçues en vertu de l'article 136.9.

Exception

(3) Le ou la responsable des élections ne publie les déclarations électorales qu'il estime diffamatoires, contraires au *Code de déontologie* ou de mauvais goût que si elles ont été approuvées conformément à l'article 136.16.

Nomination des personnes chargées d'approuver les déclarations électorales

136.16. (1) Le trésorier ou la trésorière charge au besoin au moins deux conseillers ou conseillères non juristes d'approuver les déclarations électorales.

Renvoi des déclarations électorales

(2) Le ou la responsable des élections renvoie aux conseillers et aux conseillères non juristes nommés aux termes du paragraphe (1) les déclarations électorales qu'il estime diffamatoires, contraires au *Code de déontologie* ou de mauvais goût.

Examen des déclarations électorales

(3) Les conseillers et les conseillères non juristes nommés aux termes du paragraphe (1) examinent toute déclaration électorale qui leur est renvoyée et, selon le cas :

- a) ils l'approuvent;
- b) s'ils estiment qu'elle est diffamatoire, contraire au *Code de déontologie* ou de mauvais goût :
 - (i) ils la retournent au candidat ou à la candidate qui l'a présentée,
 - (ii) ils lui expliquent par écrit leurs objections,
 - (iii) ils précisent l'échéance qu'ils lui accordent pour présenter au ou à la responsable des élections une déclaration électorale modifiée.

Examen des déclarations électorales modifiées

(4) Les conseillers et les conseillères non juristes nommés aux termes du paragraphe (1) examinent toute déclaration électorale modifiée qui est présentée au ou à la responsable des élections conformément au paragraphe (3) et, selon le cas :

- a) ils l'approuvent;
- b) s'ils estiment qu'elle est diffamatoire, contraire au *Code de déontologie* ou de mauvais goût :
 - (i) ils la retournent au candidat ou à la candidate qui l'a présentée,
 - (ii) ils lui expliquent par écrit leurs objections,
 - (iii) ils l'informent que son nom ne sera accompagné d'aucune déclaration électorale.

Décision définitive

- (5) La décision prise aux termes du paragraphe (4) est définitive.

Diffusion des renseignements électoraux

136.17. Le plus tôt possible après avoir dressé la liste des électeurs et préparé aux fins de publication les renseignements sur les candidats et les candidates à l'élection des membres parajuristes, le ou la responsable des élections :

- a) fait publier dans le Recueil de jurisprudence de l'Ontario et sur le site web du Barreau un avis de l'élection des membres parajuristes qui précise les modalités d'obtention des renseignements sur les candidats et les candidates à l'élection et les instructions de vote pertinentes;
- b) envoie l'avis prévu à l'alinéa a) par courrier électronique à tous les électeurs à leur adresse électronique professionnelle ou, à défaut, à leur adresse électronique privée, telle qu'elle figure dans les registres du Barreau.

VOTE LORS DU SCRUTIN

Vote

136.18. Lors du scrutin tenu pour l'élection des membres parajuristes, les électeurs et les électrices :

- a) ne peuvent voter pour plus de cinq candidats et candidates;
- b) expriment leur voix conformément aux modalités établies par le ou la responsable des élections.

DÉPOUILLEMENT DU SCRUTIN

Directives du responsable des élections propres au dépouillement du scrutin

136.19. (1) Le ou la responsable des élections fait procéder au décompte des voix exprimées pour chaque candidat ou candidate conformément au présent article.

Annulation des voix

(2) Si un électeur ou une électrice vote pour plus de cinq candidats ou candidates, aucune des voix exprimées n'est décomptée.

DÉCLARATION DES RÉSULTATS

Déclaration des résultats

136.20. (1) Après la fin de la période de vote le jour de l'élection et immédiatement après le décompte des voix, le ou la responsable des élections déclare élus au Comité les cinq candidats et candidates éligibles qui ont recueilli le nombre le plus élevé de voix exprimées.

Partage des voix

(2) Si deux candidats ou candidates ou plus ont recueilli le même nombre de voix, mais que le nombre de sièges à pourvoir au Comité est inférieur à celui de ces candidats et candidates, le ou la responsable des élections choisit au hasard parmi eux, en présence du trésorier ou de la trésorière, le nombre nécessaire de candidats et de candidates à élire au Comité.

Publication des résultats

(3) Le ou la responsable des élections publie les résultats de l'élection sur le site web du Barreau en précisant le nom des candidats et des candidates et le nombre de voix exprimées pour chacun.

NOUVEAU DÉPOUILLEMENT

Demande de nouveau dépouillement

136.21. (1) Si le nombre de voix séparant un candidat élu ou une candidate élue d'un autre candidat ou d'une autre candidate est inférieur à 15, le ou la responsable des élections, à la demande écrite de l'autre candidat ou candidate, fait promptement décompter de nouveau les voix exprimées pour tous les candidats et toutes les candidates, conformément à l'article 136.19, et fournit à ceux-ci les résultats du nouveau dépouillement.

Délai de présentation de la demande

(2) Nulle demande de nouveau dépouillement ne peut être présentée plus de 15 jours après la déclaration des résultats prévue à l'article 136.20.

Résultats du nouveau dépouillement

(3) Si le nouveau dépouillement lui révèle qu'un mauvais candidat ou une mauvaise candidate a été déclaré élu, le ou la responsable des élections déclare élu le bon candidat ou la bonne candidate et publie les résultats corrigés sur le site web du Barreau.

ENTRÉE EN FONCTION

Entrée en fonction

136.22. (1) Les candidats et les candidates élus au Comité par suite du scrutin entrent en fonction le jour de la première réunion ordinaire du Comité qui suit le jour de l'élection.

Mandat

(2) Sous réserve des règlements qui prévoient leur destitution, les candidats et les candidates qui entrent en fonction aux termes du paragraphe (1) occupent leur charge de membres du Comité jusqu'à l'entrée en fonction de leurs successeurs.

CONSERVATION DES RÉSULTATS DE L'ÉLECTION

Durée de conservation

136.23. Le ou la responsable des élections conserve les résultats de l'élection des membres parajuristes jusqu'à la prochaine élection de ces membres.

VACANCES

Vacance : élection parmi les candidats de l'élection précédente des membres parajuristes

136.24. (1) En cas de démission, de destitution ou d'empêchement d'un membre du Comité qui y a été élu ou est réputé y avoir été élu dans le cadre du présent article, le candidat ou la candidate à l'élection la plus récente des membres parajuristes qui remplit les conditions suivantes est réputé avoir été élu au Comité pour pourvoir à la vacance :

1. Le candidat ou la candidate n'a pas été élu au Comité lors de l'élection la plus récente des membres parajuristes.
2. Le candidat ou la candidate a recueilli le nombre le plus élevé de voix parmi ceux et celles qui n'ont pas été élus au Comité lors de l'élection la plus récente des membres parajuristes.
3. À la date où le candidat ou la candidate est réputé élu, son adresse professionnelle ou, à défaut, son adresse domiciliaire, telle qu'elle figure dans les registres du Barreau, est située en Ontario.

4. À la date où le candidat ou la candidate est réputé élu, il est titulaire d'un permis l'autorisant à fournir des services juridiques en Ontario et son permis n'est pas suspendu.
5. À la date où le candidat ou la candidate est réputé élu, il n'est pas âgé de moins 18 ans.
6. À la date où le candidat ou la candidate est réputé élu, il ou elle n'est pas un failli.
7. Le candidat ou la candidate consent à l'élection.

Interprétation : disposition 1 du paragraphe (1)

(2) Le candidat ou la candidate ne répond pas au critère énoncé à la disposition 1 du paragraphe (1) si, selon le cas :

- a) lors de l'élection la plus récente des membres parajuristes, il était inadmissible au Comité pour le seul motif qu'il n'avait pas donné son consentement à l'élection;
- b) il n'était pas auparavant réputé avoir été élu au Comité en application du paragraphe (1) pour le seul motif qu'il n'avait pas donné son consentement à l'élection.

Interprétation : disposition 2 du paragraphe (1)

(3) Le candidat ou la candidate qui ne répond pas au critère énoncé à la disposition 1 du paragraphe (1) ne doit pas être inclus parmi ceux qui entrent dans le champ d'application de la disposition 2 du paragraphe (1).

Partage des voix : disposition 2 du paragraphe (1)

(4) Pour l'application de la disposition 2 du paragraphe (1), si deux candidats ou candidates ou plus ont recueilli le même nombre de voix, le ou la responsable des élections en choisit un au hasard parmi eux, en présence du trésorier ou de la trésorière, et ce candidat ou cette candidate est celui qui a recueilli le nombre le plus élevé de voix.

Entrée en fonction et mandat

(5) Le candidat ou la candidate qui est réputé avoir été élu au Comité en application du paragraphe (1) entre en fonction immédiatement et, sous réserve des règlements qui prévoient la destitution des membres du Comité, occupe sa charge jusqu'à l'entrée en fonction de son successeur.

Items for Information Only

- 2009 Paralegal Annual Report
- Expansion of Summary Hearing Process
- Information from First Paralegal Annual Report
- Response to the Code/LeSage Report

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Ms. Pawlitza presented the Report.

Report to Convocation
September 24, 2009

Professional Development & Competence Committee

Committee Members
 Laurie Pawlitza (Chair)
 Constance Backhouse (Vice-Chair)
 Mary Louise Dickson (Vice-Chair)
 Alan Silverstein (Vice-Chair)
 Larry Banack
 Jack Braithwaite
 Thomas Conway
 Marshall Crowe
 Aslam Daud
 Jennifer Halajian
 Susan Hare
 Paul Henderson
 Laura Legge
 Dow Marmur
 Daniel Murphy
 Judith Potter
 Nicholas Pustina
 Jack Rabinovitch
 Heather Ross
 Catherine Strosberg
 Gerald Swaye

Purpose of Report: Decision

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

TABLE OF CONTENTS

For Decision

Commencement Date for Post-Call Professional Development Requirement for Newly Called Lawyers ("24/24 Requirement")	TAB A
By-Law 15 Amendments Respecting Certified Specialist Program Definition of "Recent Experience"	TAB B

COMMITTEE PROCESS

1. The Committee met on September 10, 2009. Committee members Laurie Pawlitza (Chair), Mary Louise Dickson (Vice-Chair), Alan Silverstein (Vice-Chair), Larry Banack, Jack Braithwaite, Thomas Conway, Jennifer Halajian, Paul Henderson, Dow Marmur, Judith Potter, Nicholas Pustina, Jack Rabinovitch, Catherine Strosberg and Gerald Swaye attended. Paralegal Standing Committee member, Stephen H. Parker, also attended. Staff members Diana Miles, Elliot Spears and Sophia Sperdakos also attended.

DECISION

COMMENCEMENT DATE FOR POST-CALL PROFESSIONAL DEVELOPMENT REQUIREMENT FOR NEWLY CALLED LAWYERS ("24/24 REQUIREMENT")

MOTION

2. That Convocation approve a change to the June 10, 2010 commencement date for the 24 hour professional development requirement that a lawyer must take during the first 24 months of entry into a practice category to January 1, 2011 and thereafter the requirement will commence on January 1 of the year immediately following a lawyer's call to the bar.

Background

3. In September 2008 Convocation approved the Licensing & Accreditation Task Force's recommendations respecting the licensing process, including,

the development of a post-call professional development requirement of 24 hours to be taken during the first 24 months of entry into a practice category.
4. As originally approved the commencement date for the new requirement is immediately following the call to the bar in June 2010 and thereafter immediately following the call to the bar in June of every year.
5. While this date has the effect of engaging newly called lawyers in continuing professional development immediately upon their entry to practice, it has a number of drawbacks, as follows:

- a. With the commencement date running mid-year to mid-year (June to May) it necessitates a reporting cycle at odds with the Members' Annual Report (MAR). Over a number of years, in response to member complaints about too many different reporting dates, the Law Society has tried to coordinate reporting to the calendar year.
 - b. the at odds reporting date would also require personalized tracking of each new licensee from the individual date of call (there are a number of different call dates throughout the year). This would further complicate the process.
 - c. The requirement to beginning tracking professional development immediately upon call to the bar puts added pressure on those who are trying to get their practices established. This is particularly true for those in sole or small practice. Moreover, lawyers so recently called may not yet be in a position to determine the professional development programming most useful to their practice.
6. Shifting the date forward to January 1 following the date of call to the bar would harmonize reporting dates and, for the bulk of those called to the bar in June of each year, provide some breathing room before the clock begins to run on the requirement.

BY-LAW 15 AMENDMENTS RESPECTING CERTIFIED SPECIALIST PROGRAM DEFINITION OF "RECENT EXPERIENCE"

MOTION

7. That Convocation approve the following amendments to By-Law 15 respecting "recent experience":

THAT By-Law 15 [Certified Specialist Program], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007 and November 22, 2007, be further amended as follows:

- 1. Paragraph 1 of subsection 10 (1) of By-Law 15 is revoked and the following substituted:

The licensee has engaged in the practice of law for at least seven years before the day on which the licensee applies for certification as follows:

- i. Two years in Ontario immediately before the day on which the licensee applies for certification.
- ii. At least three other years in one or more common law jurisdictions.

- 2. Paragraph 2 of subsection 10 (1) of By-Law 15 is revoked and the following substituted:

The licensee has practised law in the area of law for at least five years before the day on which the licensee applies for certification as follows:

- i. Two years in Ontario immediately before the day on which the licensee applies for certification.
- ii. Three other years in one or more common law jurisdictions.

Background

8. In April 2009 the Committee recommended to Convocation the follow changes to the “recent experience” requirement of the Certified Specialist Program, which Convocation approved:

That Convocation approve changes to the “recent experience” requirement of the Certified Specialist program as follows:

- a. Applicants must have engaged in the practice of law for at least seven years before the day they apply for certification.
 - b. Applicants must have practised in the area of law in which they seek to be certified for at least five of the seven years,
 - i. In Ontario for two years immediately before the application;
 - ii. Any other three years in Ontario or any common law jurisdiction.
9. The English amendments to By-Law 15 are set out above. The current By-Law is set out at Appendix 1. The formal motion in English and French for Convocation’s approval will be provided under separate cover.

Appendix 1

BY-LAW 15

Made: May 1, 2007

Amended: June 28, 2007
November 22, 2007

CERTIFIED SPECIALIST PROGRAM

PART I

GENERAL

Definitions

1. In this By-Law,

"Board" means the Certified Specialist Board;

"certification" means certification as a specialist;

"Committee" means the Professional Development and Competence Committee.

Exercise of powers by Committee

2. The performance of any duty, or the exercise of any power, given to the Committee under this By-Law is not subject to the approval of Convocation.

PART II

CERTIFIED SPECIALIST BOARD

Board to be established

3. (1) There is established the Certified Specialist Board.

Composition of Board

(2) The Board shall consist of not fewer than eight and not more than twelve persons appointed by the Committee as follows:

1. Two benchers who are certified specialists.
2. One lay bencher.
3. Not fewer than five and not more than nine persons who are certified specialists who are not benchers.

Same

(2.1) If the Committee is unable to comply with paragraph 1 of subsection (2), the Committee may appoint the required number of benchers who are licensed to practise law in Ontario as barristers and solicitors.

Term

(3) Subject to subsection (4), a person appointed to the Board shall hold office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(4) A person appointed to the Board holds office as a member of the Board at the pleasure of the Committee.

Chair

4. (1) The Committee shall appoint one member of the Board as chair of the Board.

Term of Office

(2) Subject to subsection (3), the chair holds office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(3) The chair holds office at the pleasure of the Committee.

Function of Board

5. It is the function of the Board,

(a) to establish standards for the certification of licensees as specialists;

(b) to determine the areas of law in respect of which licensees may be certified as specialists;

(c) to make, subject to this By-Law, rules of practice and procedure with respect to the consideration by the Board of an application under subsection 25 (3), subsection 25 (5), subsection 25 (6) or section 27 and the exercise by the Board of its discretion under subsection 25 (2) or subsection 26 (2);

(d) to develop for the Committee's approval policies relating to the certification of licensees as specialists;

(e) to recommend to the Committee the amount of the fees payable by applicants for certification and certified specialists under this By-Law; and

(f) to certify licensees as specialists.

Quorum

6. Five members of the Board constitute a quorum for the purposes of the transaction of business.

Meeting

7. (1) The Board shall meet at the call of the chair and in no case shall the Board meet less often than twice a year.

Meeting by telephone conference, etc.

(2) Any meeting of the Board may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Annual report to Committee

8. Not later than March 31 in each year, the Board shall make a report to the Committee upon the affairs of the Board of the immediately preceding year.

Confidentiality

9. (1) A member of the Board shall not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under this By-Law.

Exceptions

(2) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;
- (b) disclosure required of a member of the Board under the Society's rules of professional conduct that apply to the member;
- (c) disclosure of information that is a matter of public record; and
- (d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

PART III**CERTIFICATION***Requirements for certification*

10. (1) A licensee may be certified as a specialist in an area of law in respect of which certification is available if the licensee meets the following conditions:

1. The licensee has engaged in the practice of law for at least seven years immediately before the day on which the licensee applies for certification.
2. The licensee has practised in the area of law for at least five of the seven years mentioned in paragraph 1 as follows:
 - i Two years immediately before the day on which the licensee applies for certification.
 - ii Any other three years.
3. The licensee has the number of hours of self-study and continuing legal education programs specified by the Committee for at least three years of the five years mentioned in paragraph 2 as follows:
 - i Two years immediately before the day on which the licensee applies for certification.
 - ii Any other one year.
4. The licensee has demonstrated comprehensive knowledge of the substantive law and the practices and procedures in the area of law.
5. The licensee is not the subject and has no record, within the five year period immediately before the day on which the licensee applies for certification, of any order made against the licensee by a tribunal of the governing body of the legal profession in any jurisdiction.

6. The licensee has and has had, within the five year period immediately before the day on which the licensee applies for certification, no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in any jurisdiction in which the licensee is authorized to practise law.

7. The licensee is not, in any jurisdiction in which the licensee is authorized to practise law, the subject of a review of the licensee's professional business for the purpose of determining if the licensee is meeting standards of professional competence.

8. The licensee has and has had, within the five year period immediately before the day on which the licensee applies for certification, no serious claims or substantial number of claims made against the licensee in the licensee's professional capacity or in respect of the licensee's practice of law in any jurisdiction in which the licensee is authorized to practise law.

Same

(2) Despite subsection (1), if a licensee is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the licensee is authorized to practise law, the licensee may not be certified as a specialist in an area of law in respect of which certification is available unless to certify the licensee as a specialist would not be contrary to the public interest.

Interpretation: practice in area of law

(3) In this section, in any year, a licensee practises in an area of law if in that year the licensee practises in the area of law for the time specified by the Board from time to time.

Application for certification

11. (1) A licensee who wishes to be certified as a specialist shall apply to the Society.

Application form

(2) An application under subsection (1) shall be contained in a form provided by the Society.

Accompanying documents, etc.

(3) An application under subsection (1) shall be accompanied by,

- (a) a certificate of standing from the governing body of the legal profession in each jurisdiction in which the applicant is or was authorized to practise law issued during the three month period immediately before the day on which the applicant makes the application;
- (b) written references from such persons and such number of persons as determined by the Committee from time to time, not one of whom is,
 - (i) a person whose licence is in abeyance under subsection 31 (1) of the Act,
 - (ii) a partner, an associate, a co-worker, an employer or an employee of the applicant,
 - (iii) an individual who is counsel to the applicant, to the applicant's employer or to the applicant's firm or company;
 - (iv) a relative of the applicant,

- (v) a member of the Board,
- (vi) a bencher, or
- (vii) an employee of the Society; and
- (c) an application fee.

Documents, explanations, releases, etc.

- (4) For the purpose of assisting the Board to consider an application under subsection (1), the applicant shall provide,
- (a) to the Society, such documents and explanations as may be required; and
 - (b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Application to be considered by Society

12. Every application under section 11, to the extent that the application deals with the conditions set out in paragraphs 1 to 4 of subsection 10 (1), shall be considered by the Society and the Society shall,
- (a) if satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 10 (1), recommend to the Board that the applicant be certified as a specialist; or
 - (b) if not satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 10 (1), recommend to the Board that the applicant not be certified as a specialist.

Notice

13. If the Society intends to recommend to the Board that the applicant not be certified as a specialist, before making the recommendation the Society shall give the applicant the opportunity,
- (a) to withdraw the application; or
 - (b) to submit additional information to the Society.

Application to be considered by Board

14. Every application under section 11 shall be considered by the Board.

Recommendation to certify and determination by Board

15. (1) If the Society recommends to the Board that the applicant be certified as a specialist, the Board may,
- (a) certify the applicant as a specialist if,
 - (i) the Board is satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 10 (1); and
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 10 (2) is not present; or
 - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or

- (b) not certify the applicant as a specialist if,
 - (i) the Board is not satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 10 (1); or
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 10 (2) is present; and
 - (B) it would be contrary to the public interest to certify the applicant as a specialist.

Recommendation to not certify and determination by Board

(2) If the Society recommends to the Board that the applicant not be certified as a specialist, the Board may,

- (a) certify the applicant as a specialist if,
 - (i) the Board is satisfied that the applicant meets the conditions set out in subsection 10 (1); and
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 10 (2) is not present; or
 - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
- (b) not certify the applicant as a specialist if,
 - (i) the Board is not satisfied that the applicant meets the conditions set out in subsection 10 (1); or
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 10 (2) is present; and
 - (B) it would be contrary to the public interest to certify the applicant as a specialist.

Notice

16. (1) If the Board does not certify the applicant as a specialist under clause 15 (2) (b), the Board shall notify the applicant in writing of its decision.

Decision final

(2) The decision of the Board on an application under this part is final.

Issuance of certificate

17. The Board shall issue to an applicant certified as a specialist a certificate of specialty stating the area of law in which the applicant has been certified as a specialist.

Continuation of certification

18. A licensee certified as a specialist shall continue to be certified as a specialist so long as the licensee,

- (a) practises in the area of law in which the licensee has been certified as a specialist within the meaning of subsection 10 (3);
- (b) maintains comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the licensee has been certified as a specialist;

- (c) is not the subject and has no record of any order made against the licensee by a tribunal of the governing body of the legal profession in any jurisdiction;
- (d) has and has had no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in any jurisdiction in which the licensee is authorized to practise law;
- (e) is not, in any jurisdiction in which the licensee is authorized to practise law the subject of a review of the licensee's professional business for the purpose of determining if the licensee is meeting standards of professional competence;
- (f) has and has had no serious claims or substantial number of claims made against the licensee in the licensee's professional capacity or in respect of the licensee's practice of law in any jurisdiction in which the licensee is authorized to practise law; and
- (g) fulfils all requirements under this By-Law.

PART IV

CERTIFIED SPECIALISTS

Definition

19. In this Part,

"certified specialist" means a licensee who is certified as a specialist by the Board under Part III.

Specialist designation

20. (1) A certified specialist may use any of the following designations:

1. C.S.
2. Certified Specialist [area of law in which certified as specialist]

Same

(2) A licensee who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the licensee is a certified specialist.

Requirement to pay annual fee

21. (1) Every year a certified specialist shall pay to the Society an annual fee and any taxes that the Society is required to collect from the certified specialist in respect of the payment of the annual fee.

Payment due

(2) Payment of the annual fee is due on January 31 of each year.

Certified specialists

(3) Subsection (2) applies only to licensees who are certified specialists on January 31.

Licensees certified after January 31

(4) A licensee who is certified as a specialist after January 31 shall pay, in respect of the year in which the licensee is certified as a specialist, an amount of the annual fee as determined by the formula,

$$(A \div 12) \times B$$

where,

A is the annual fee, and

B is the number of whole calendar months remaining in the year after the month in which the licensee is certified as a specialist.

Payment due

(5) Payment of the amount of the annual fee specified in subsection (4) is due on the day on which the licensee is certified as a specialist.

Requirement to submit annual report

22. (1) A certified specialist shall submit a report to the Society by January 31 of each year in respect of the certified specialist's compliance with this By-Law during the immediately preceding year.

Report form

(2) The report required under subsection (1) shall be in a form provided by the Society.

Continuing legal education requirements

23. Every year a certified specialist shall complete in the area of law in which the specialist is certified,

- (a) the number of hours of self-study specified by the Committee, and
- (b) the number of hours of continuing legal education programs specified by the Committee.

Proof of compliance

24. (1) A certified specialist shall, upon the request of the Society and by not later than the day specified by the Society, provide proof to the satisfaction of the Society of the certified specialist's compliance with this By-Law.

Deemed failure to comply

(2) A certified specialist who fails to provide proof to the Society by the day specified by the Society of the certified specialist's compliance with this By-Law, the certified specialist shall be deemed not to be in compliance with this By-Law.

Notice to Society

(3) A certified specialist shall notify the Society immediately the certified specialist is not in compliance with this By-Law.

Automatic abeyance

25. (1) A certified specialist's certification is in abeyance while,
- (a) the certified specialist's licence is in abeyance under subsection 31 (1) of the Act;
 - (b) the certified specialist has terms, conditions, limitations or restrictions imposed on the certified specialist's authorization to practise law in any jurisdiction in which the certified specialist is authorized to practise law;
 - (c) the certified specialist is, in any jurisdiction in which the certified specialist is authorized to practise law, the subject of a review of the certified specialist's professional business for the purpose of determining if the certified specialist is meeting standards of professional competence; or
 - (d) the certified specialist has serious claims or a substantial number of claims made against the certified specialist in the certified specialist's professional capacity or in respect of the certified specialist's practice of law in any jurisdiction in which the certified specialist is authorized to practise law.

Abeyance by Board: discretion

'(2) The Board may place a certified specialist's certification in abeyance if the certified specialist is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the certified specialist is authorized to practise law and to not do so would be contrary to the public interest.

Abeyance by Board: mandatory

(3) The Board shall place a certified specialist's certification in abeyance if the certified specialist applies to the Board to have the certification placed in abeyance.

Restoration

(4) If the conditions mentioned in subsection (1) are no longer present and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), upon notice to the Society of the change in conditions, the certified specialist's certification shall be restored.

Same

(5) If the condition mentioned in subsection (2) is no longer present and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), on the application of the certified specialist, the Board may restore the certification if to do so would not be contrary to the public interest.

Same

(6) If the Board placed a certified specialist's certification in abeyance under subsection (3) and the certified specialist's certification has not been revoked under subsections 26 (1) or (2), on the application of the certified specialist, the Board shall restore the certification if,

- (a) none of the conditions in subsection (1) are present; and
- (b) the condition in subsection (2) is not present, or if it is, the Board is satisfied that it would not be contrary to the public interest to restore the certification.

Revocation

26. (1) A certified specialist's certification is automatically revoked immediately,
- (a) the certified specialist ceases to practise law in Ontario;
 - (b) the certified specialist ceases to practise in the area of law in which the certified specialist has been certified as a specialist within the meaning of subsection 10 (3);
 - (c) the certified specialist is the subject of any order made against the certified specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
 - (d) the certified specialist fails to pay an annual fee or submit an annual report;
 - (e) the certified specialist fails to meet the requirement set out in section 23; or
 - (f) the certified specialist's certification has been in abeyance for more than 12 months.

Same

- (2) The Board may revoke a certified specialist's certification if the certified specialist does not maintain comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the certified specialist has been certified as a specialist.

Surrender of certification

27. (1) A certified specialist who wishes to surrender his or her certification shall submit a request to surrender in writing accompanied by the applicable certificate of specialty to the Board and the Board shall approve the request.

Same

- (2) A licensee ceases to be certified as a specialist immediately the Board approves the licensee's request to surrender his or her certification under subsection (1).

Re: By-Law 15 Amendments Respecting Certified Specialist Program Definition of "Recent Experience"

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve the amendments to By-Law 15 (Bilingual version) which were distributed under separate cover.

Carried

BY-LAW 15
[CERTIFIED SPECIALIST PROGRAM]

THAT By-Law 15 [Certified Specialist Program], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007 and November 22, 2007, be further amended as follows:

1. Paragraph 1 of subsection 10 (1) of By-Law 15 is revoked and the following substituted:

The licensee has engaged in the practice of law for at least seven years before the day on which the licensee applies for certification as follows:

Le titulaire de permis a exercé le droit de la manière qui suit depuis au moins sept ans avant de présenter sa demande d'agrément :

- i. Two years in Ontario immediately before the day on which the licensee applies for certification.
- ii. At least three other years in one or more common law jurisdictions.

- i. pendant deux années en Ontario immédiatement avant le jour de la présentation de sa demande d'agrément.
- ii. pendant au moins trois autres années dans au moins un ressort de common law.

2. Paragraph 2 of subsection 10 (1) of By-Law 15 is revoked and the following substituted:

The licensee has practised law in the area of law for at least five years before the day on which the licensee applies for certification as follows:

Le titulaire de permis a exercé le droit de la manière qui suit dans le domaine visé pendant au moins cinq années avant le jour de la présentation de sa demande d'agrément :

- i. Two years in Ontario immediately before the day on which the licensee applies for certification.
- ii. Three other years in one or more common law jurisdictions.

- i. pendant deux années en Ontario immédiatement avant le jour de la présentation de sa demande d'agrément.
- ii. pendant trois autres années dans au moins un ressort de common law.

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Rothstein presented the Report.

Report to Convocation
September 24, 2009

Professional Regulation Committee

Committee Members
 Linda Rothstein (Chair)
 Julian Porter (Vice-Chair)
 Bonnie Tough (Vice-Chair)
 Bob Aaron
 Melanie Aitken
 Christopher Bredt
 John Campion
 Patrick Furlong
 Gary Lloyd Gottlieb
 Glenn Hainey
 Brian Lawrie
 Ross Murray
 Sydney Robins
 Baljit Sikand
 Roger Yachetti

Purpose of Report: Decision and Information

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

TABLE OF CONTENTS

For Decision

Expanding the Summary Hearing Process.....	TAB A
Amendment to By-Law 6 [Professional Liability Insurance]	TAB B

For Information

2009 Lawyer Annual Report.....	TAB C
Update on Initiatives in Response to the Code/LeSage Report	TAB D
Professional Regulation Division Quarterly Report.....	TAB E

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on September 9, 2009. In attendance were Linda Rothstein (Chair), Christopher Bredt, Patrick Furlong, Glenn Hainey, Brian Lawrie and Ross Murray. Staff attending were Lesley Cameron, Jennifer Cubbon, Sophie Galipeau, Andrea Hamberger, Malcolm Heins, Terry Knott, Zeynep Onen, Elliot Spears and Jim Varro.

EXPANDING THE SUMMARY HEARING PROCESS

Motion

2. That Convocation approve an expansion of the summary hearing process to include breaches of By-Law 8 [Reporting and Filing Requirements] and failure to report to LawPRO as matters that may be heard by a single member of the Hearing Panel.

Introduction

3. The *Law Society Act*, subsection 49.21(2) states:

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

4. Subsection 49.23(3) of the Act provides that:

A hearing before the Hearing Panel shall be heard and determined by such number of members of the Panel as is prescribed by the regulations.

5. Ontario Regulation (O. Reg.) 167/07, subsection 1(1), requires that proceedings be heard by three members of the Hearing Panel, but provides an exception to this requirement in section 2. That section identifies certain types of applications that may be heard by a single member of the Hearing Panel (see Appendix 1). Matters listed in the Regulation that have been approved by Convocation for the summary hearing process (a hearing before a single member of the Hearing Panel) are:

- a. Failing to maintain financial records according to the by-laws;
- b. Failing to respond to inquiries from the Society; and
- c. Failing to cooperate with a person conducting an audit, investigation or review, search or seizure under Part II of the *Law Society Act*.
- d. Practising law or providing legal services while suspended;
- e. Breaching an undertaking to the Society;
- f. Failing to pay costs awarded to the Society by the Hearing Panel or Appeal Panel; and
- g. Failing to comply with an order of the Hearing Panel (an application under s. 45(1) of the *Act*).

6. Items 5.d. through g. were approved for the summary hearing process at the January 2009 Convocation. The Committee's January 2009 report to Convocation discussed expanding the summary hearing process to include additional case types not currently permitted under the Regulation. This reflected the Committee's interest in exploring such an expansion. The report said:

For Future Consideration

108. The Committee plans to consider whether additional matters might benefit from a proceeding before a single bench hearing panel under a process similar to the Summary Hearing Process. O. Reg. 167/07 would require amendment in order to effect this. For example, it may be appropriate to hold a single bench hearing for a breach of By-law 8 (filing and reporting requirements), failing to report to LawPRO,....

109. Creating a single bench hearing panel for these matters would build upon the resource benefits described above. Moreover, while proceeding on two or three single issue hearings rather than one larger hearing would increase the number of hearings, they would be shorter, more focused hearings. They would only require the time of a single bench rather than three benches and as is the case for current summary hearings, a single bench could be regularly scheduled to hear these matters.
7. Convocation is asked to approve two new case types for the summary hearing process. If approval is granted, the Law Society would need to amend the Regulation and Rule 11.01 of the *Rules of Practice and Procedure*.

Background

8. On June 22, 2005, Convocation approved the policy for a summary hearing process and supporting *Rules of Practice and Procedure*.¹ Under that policy, three of the case types listed in O. Reg. 167/07 were approved for hearings by a single member of the Hearing Panel. The policy also provided that cases proceeding under the summary hearing process proceed directly to hearing rather than to the Hearings Management Tribunal (HMT) (now the Proceedings Management Conference).
9. On February 26, 2009, Convocation approved amendments to the *Rules of Practice and Procedure* to implement its January 2009 decision to expand the summary hearing process to include four additional case types listed in O. Reg. 167/07.
10. Matters heard under the summary hearing process are formal hearings, but the process differs from the regular hearing stream in certain ways. Professional Regulation staff have implemented a process at the investigation stage to ensure matters proceed quickly. The Proceedings Authorization Committee authorizes a proceeding for either the regular hearing process or the summary hearing process. Once authorized for a summary hearing, the matter is scheduled directly for hearing on the merits by the Tribunals Office, without a proceedings management conference. Witnesses are generally Law Society staff. Matters are scheduled for one-half day hearings before a regularly appearing bench. Orders are often made at the hearing.
11. The summary hearing process is effective, and provides an efficient process for addressing cases where the issues are narrowly defined and focused and where revocation of a licence is not sought as a penalty.
12. Since its implementation in 2006 and to the end of August 2009, 92 applications have proceeded to hearing under the summary hearing process and 87² hearings have been held. A report on the Society's experience with summary hearings is attached at

¹ The motion was that Convocation approve a process for summary hearings for specific regulatory matters, by approving an amendment to (then) Rule 9.01 of the *Rules of Practice and Procedure* to permit these proceedings to go directly to the Hearing Panel, rather than to the Hearings Management Tribunal at first instance, after the Conduct Application is issued.

² One paralegal has been the subject of a summary hearing.

Appendix 3. This report discloses that findings of professional misconduct have been made in 85 of the 87 hearings. In 48 cases (56%), lawyers were given a definite period of suspension, which was to continue indefinitely until the lawyers fully cooperated with the Law Society. A reprimand was imposed in 25 cases (29%) and costs were awarded against the lawyer in 81 hearings (95%).

Expanding the Case Types

13. By adopting the Committee's recommendations in June 2005 and January 2009, Convocation indicated its support for a summary process for Law Society conduct matters that are time-sensitive, are straightforward or otherwise lend themselves to such a process.
14. The Committee believes that two additional matters would be appropriate for a single bench hearing:
 - a. breaches of By-law 8 (Filing and Reporting Requirements); and
 - b. failing to report to LawPRO.
15. The requirements in By-Law 8, Parts I and II (see Appendix 4 for a copy of the By-Law) include:
 - a. a licensee's notice to the Law Society of bankruptcy or insolvency;
 - b. the requirement that the licensee report offences to the Law Society;
 - c. the requirement that the licensee provide various information if requested by the Law Society, including personal and business contact information;
 - d. the requirement that the licensee report changes in personal and business contact and other related information to the Law Society; and
 - e. in connection with the requirement to submit a public accountant's report if requested by the Law Society, the licensee's obligation to provide access to files.
16. The reports to LawPRO include a lawyer's notice of a claim as discussed in rule 6.09(2) of the *Rules of Professional Conduct*.³

Reasons Supporting the New Case Types

17. To retain the efficacy of the summary hearing process, additional matters for the summary hearing process must be analogous to the current matters and not bog down or delay the process.

³ Notice of Claim

6.09 (2) A lawyer shall give prompt notice of any circumstance that the lawyer may reasonably expect to give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudice

18. In the Committee's view, the two additional case types are appropriate for the summary hearing process because the facts underlying those allegations are straightforward and often not disputed. Few witnesses are required. Where these matters are contested, the issues most often relate to mitigating or aggravating circumstances.
19. Expanding the summary hearing process will have resource and other benefits for the Law Society. As with other case types now heard by a single member of the Hearing Panel, the two additional case types are potentially serious and are currently the subject of regular discipline hearings. However, due to the complexity and resource intensive nature of the current hearing process, the Law Society would not necessarily proceed on these matters as single issues, but would often wait to proceed on a group of allegations. This is on occasion the appropriate way to proceed, but it may have the following effects:

Commentary

Compulsory insurance imposes obligations on a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. The insurer's rights must be preserved. There may well be occasions when a lawyer believes that certain actions or the failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case a careful assessment will have to be made of the client's damages arising from the lawyer's negligence. Many factors will have to be taken into account in assessing the client's claim and damages. As soon as a lawyer becomes aware that an error or omission may have occurred, that may reasonably be expected to involve liability to the client for professional negligence, the lawyer should take the following steps.

[Amended - January 2009]

1. Immediately arrange an interview with the client and advise the client that an error or omission may have occurred, that may form the basis of a claim by the client against the lawyer.
2. Advise the client to obtain an opinion from an independent lawyer and that, in the circumstances, the first lawyer might no longer be able to act for the client.
3. Subject to rule 2.03 (Confidentiality), inform the insurer of the facts of the situation.
4. Co-operate fully and as expeditiously as possible with the insurer in the investigation and eventual settlement of the claim.
5. Make arrangements to pay that portion of the client's claim that is not covered by the insurance immediately upon completion of the settlement of the client's claim. This would include payment of the deductible under a policy of insurance in accordance with By-Law 6 (Professional Liability Insurance).

[Amended - January 2009]

- a. increasing the investigation time, as the investigator is required to add new complaints to his or her investigation as they arrive;
- b. expanding the focus of the investigation, making it harder to conclude;
- c. expanding the overall age of investigations for the reasons above;
- d. increasing the amount of time required to negotiate the agreed statement of facts; and
- e. increasing the length of the hearing, thereby increasing the amount of bench time hearing time (e.g. a three day hearing rather than a one day hearing).

20. While proceeding on two or three single issue hearings rather than one larger hearing would increase the number of hearings, they would be shorter, more focused hearings. They would only require the time of a single benchers rather than three benchers.
21. As is the case for current summary hearings, a single benchers could be regularly scheduled to hear these two types of cases.

Implementing the Proposal

22. If Convocation approves the expansion of the summary hearing process to include the two additional case types, Convocation would be required to prepare an amendment to O. Reg. 167/07 and forward it to the government for cabinet approval. An amendment to Rule 11.01 of the *Rules of Practice and Procedure* would also be required. These amendments will be prepared for review at a future Convocation.

APPENDIX 1

ONTARIO REGULATION 167/07 HEARINGS BEFORE THE HEARING AND APPEAL PANELS

HEARINGS BEFORE THE HEARING PANEL

Proceedings to be heard by one member

2. (1) Subject to subsection (2), the chair or, in the absence of the chair, the vice-chair, shall assign either one member or three members of the Hearing Panel to a hearing to determine the merits of any of the following applications:

1. An application under subsection 34 (1) of the Act for a determination of whether a licensee has contravened section 33 of the Act by one or more of the following means (but not by other means):
 - i. Practising law in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may practise law in Ontario while his or her license is suspended.
 - ii. Providing legal services in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may provide legal services in Ontario while his or her license is suspended.
 - iii. Breaching an undertaking to the Society.
 - iv. Failing to honour a financial obligation to the Society.
 - v. Failing to maintain an investment authority or a report on an investment as required by the by-laws.
 - vi. Failing to maintain financial records as required by the by-laws.
 - vii. Failing to respond to inquiries from the Society.
 - viii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.
 - ix. Failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel.

2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.
3. An application under subsection 45 (1) of the Act.
4. An application under subsection 49.42 (1) of the Act, if the order giving rise to the application was made by one member of the Hearing Panel.
5. An application under subsection 49.42 (3) of the Act.
6. An application under subsection 49.43 (1) of the Act. O. Reg. 167/07, s. 2 (1).

APPENDIX 2

RULE 11

SCHEDULING

Hearing on merits of proceeding

Scheduling by panelist

11.01 (1) Subject to subrule (2), a panelist shall schedule every hearing on the merits of a proceeding.

Scheduling by Tribunals Office

- (2) The Tribunals Office may schedule a hearing on the merits of a proceeding where,
 - (a) the hearing is to determine whether a licensee has contravened section 33 of the Act by one or more of the following means:
 - i. practising law in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may practice law in Ontario while his or her licence is suspended,
 - ii. providing legal services in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may provide legal services in Ontario while his or her licence is suspended,
 - iii. breaching an undertaking to the Society,
 - iv. failing to maintain financial records as required by the by-laws,
 - v. failing to respond to inquiries from the Society,
 - vi. failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act,
 - vii. failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel;
 - (b) the proceeding is a non-compliance proceeding;
 - (c) the nature of the proceeding requires that the hearing be expedited; or

(d) the parties agree on the date of the hearing, which is not later than 90 days after the day on which the originating process is deemed to have been served on the respondent, and the parties notify the Tribunals Office in writing of their agreement.

APPENDIX 3

MEMORANDUM

TO: Zeynep Onen, Director, Professional Regulation

FROM: Catherine Braid, Manager, Case Management

DATE: August 31, 2009

SUBJECT: Summary Hearings

The statistics reported in this memorandum focus on the summary hearing applications that have been issued and the summary hearings that have been held since the summary hearing process was initiated until the date of this memorandum.

Summary Hearing Applications Issued

The first summary hearing application was issued on February 10, 2006. Since that date, a total of 108 summary hearing applications have been issued, broken down by calendar year as follows:

Year	Applications Issued
2006	20
2007	35
2008	34
2009	19 ⁴
Total	108

Of the 108 applications issued

- two applications were abandoned prior to hearing;
- one application was closed prior to hearing, pursuant to PAC authorization; and
- 13 applications are still awaiting hearing.

Hence, 92 applications have proceeded to hearing since the summary process was initiated.

⁴ As at August 31, 2009; this number includes one paralegal licensee

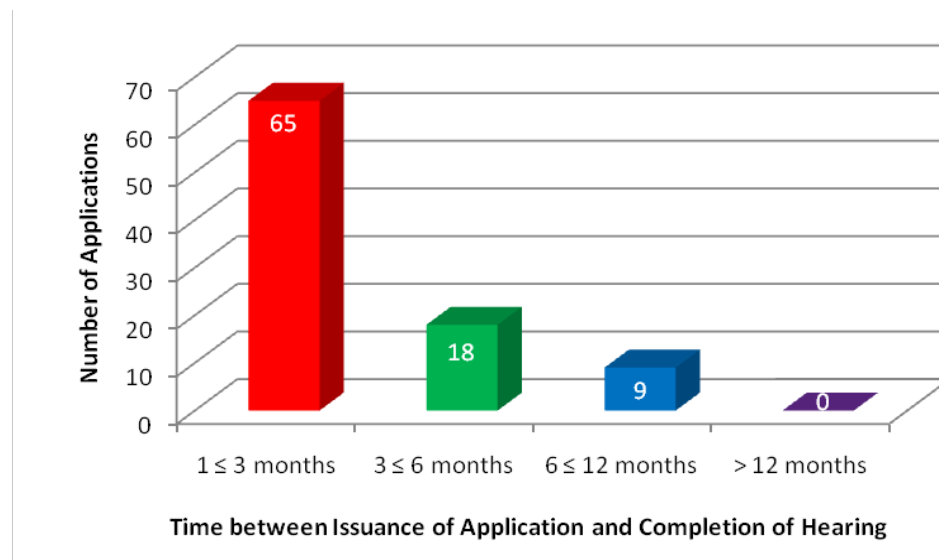
Summary Hearings Completed

The 92 issued applications have resulted in a total of 87 summary hearings⁵ to date. The following chart depicts the number of hearings held in each of the three calendar years:

Year	Summary Hearings Completed
2006	15
2007	28
2008	28
2009	16
Total	87

The 87 hearings involved 75 lawyers and one paralegal licensee: eight lawyers have had two separate summary hearings; one lawyer has had three separate summary hearings.

Of the 92 applications that went to hearing, 65 applications (71%) proceeded to hearing (and were completed) within three months of the date of issuance. The following chart provides a break-down of the time between issuance of the application and the completion of the hearing:



Of the 65 applications that were completed within three months (the red bar in the graph above):

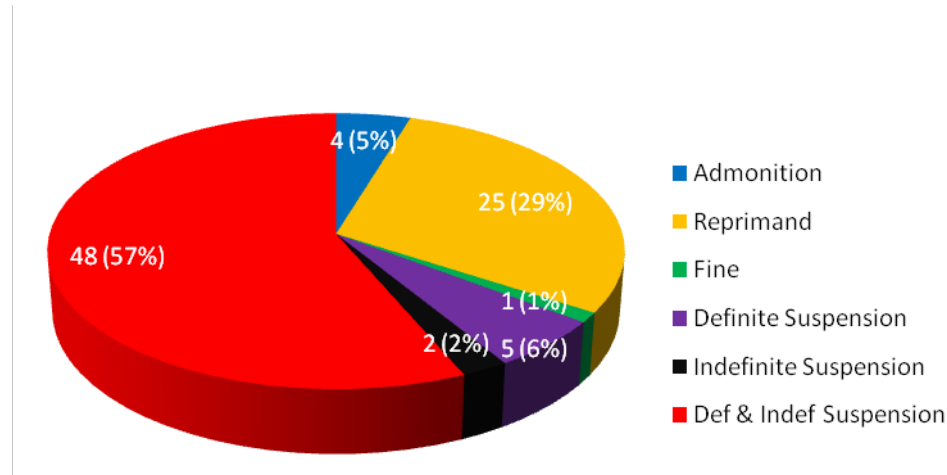
- 13 were completed within one month of issuance;
- 33 were completed between one and two months of issuance; and
- 19 were completed between two and three months of issuance.

⁵ Two applications were dealt with in each of five hearings.

Findings Made and Penalties Imposed

Of the 87 summary hearings held to date, findings of professional misconduct have been made in 85 cases⁶ (98%).

With respect to the penalties imposed, in 48 of the 85 cases (56%), lawyers were given a definite period of suspension which was to continue indefinitely until the lawyers fully cooperated with the Law Society. The following graph depicts the various penalties imposed in the 85 hearings held to date where a finding of professional misconduct was made:



In addition to the penalties imposed above:

- costs were awarded against the lawyer in 81 hearings (95% of the hearings held); and
- other conditions were imposed in 55 cases (65% of the hearings held).

Cooperation – Pre and Post Hearing

In 35 of the 85 hearings, lawyers cooperated with the Law Society in the period after the application was issued but before the date of the summary hearing. In these situations, a lesser penalty was imposed at the hearing – usually a reprimand.

In 59% of the cases (50 cases), lawyers did not cooperate or only partially cooperated with the Law Society prior to hearing, resulting in a more severe penalty (usually a definite followed by an indefinite period of suspension as noted above). A review of the lawyers who had not cooperated at the time of the hearing (and, therefore, received an indefinite suspension as part or all of the penalty imposed) reveals that the lawyers subsequently cooperated in only 11 cases (i.e. 22%). In these cases:

⁶ In one case, the Hearing Panel found that the Law Society's case was not proven. In oral reasons, the Hearing Panel stated that, on a balance of probabilities, the lawyer believed he had communicated with the Law Society and "although he had poor habits, he was not ignoring the Law Society". In another case, upon receipt of the lawyer's executed undertaking, the Hearing Panel dismissed the application and converted the hearing to an Invitation to Attend.

- two of the lawyers cooperated and were reinstated within three months of the summary hearing;
- four of the lawyers cooperated and were reinstated three to six months after the summary hearing;
- one lawyer cooperated and was reinstated six to 12 months following the summary hearing; and
- four lawyers cooperated and were reinstated 12-24 months after the summary hearing.

In the remaining 39 cases (in which the lawyers have not cooperated with the Law Society to date):

- the lawyers' licences remain suspended in 29 cases; and the paralegal licensee's licence remains suspended (for a total of 30 cases);
- in nine instances, the lawyers' licences were revoked/surrendered as a result of subsequent conduct hearings.

APPENDIX 4

BY-LAW 8

Made: May 1, 2007

Amended: June 28, 2007

April 24, 2008

June 26, 2008

October 30, 2008

April 30, 2009

May 21, 2009 (editorial changes)

REPORTING AND FILING REQUIREMENTS

PART I

REPORTING REQUIREMENTS

BANKRUPTCY OR INSOLVENCY OF LICENSEE

Notice of bankruptcy or insolvency

1. A licensee shall immediately notify the Society whenever any of the following events occurs: 1. The licensee receives notice of or is served with a petition for a receiving order against him or her filed in court under subsection 43 (1) of the *Bankruptcy and Insolvency Act* (Canada). 2. The licensee makes an assignment of all his or her property for the general benefit of his or her creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada).

OFFENCES

Requirement to report offences: licensees

2. (1) Every licensee shall inform the Society in writing of,

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

Requirement to report: private prosecution

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

Time of report

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

Same

(4) In the circumstances mentioned in subsection (2), a licensee shall report a charge and the disposition of the charge as soon as reasonably practicable after he or she receives notice of the disposition.

Interpretation: "indictable offence"

(5) In this section, "indictable offence" excludes an offence for which an offender is punishable only by summary conviction but includes, (a) an offence for which an offender may be prosecuted only by indictment; and (b) an offence for which an offender may be prosecuted by indictment or is punishable by summary conviction, at the instance of the prosecution.

INFORMATION: GENERAL

Requirement to provide various information

3. (1) The Society may require a licensee to provide to the Society the following information:

1. Personal identification information, including the licensee's legal and assumed names.
2. Personal contact information.
3. Business contact information.
4. Information with respect to the licensee's professional business, including,
 - i. information about whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario,
 - ii. information with respect to where and in what capacity the licensee is practising law or providing legal services,
 - iii. information with respect to the licensee's handling of money and other property,
 - iv. information with respect to the licensee's storage of client files,
 - v. information with respect to the licensee's storage of wills and powers of attorney, and
 - vi. information with respect to the licensee's storage of corporate records, including minute books and seals.

Interpretation: personal and business contact information

(2) For the purposes of subsection (1),

(a) personal contact information includes,

- (i) home address,
- (ii) home telephone number, home facsimile number, and
- (iv) home e-mail address; and

(b) business contact information includes,

- (i) business address,
- (ii) business telephone number,
- (iii) business facsimile number, and

(iv) business e-mail address.

Notice of requirement

(3) The Society shall notify a licensee in writing of the requirement to provide information under subsection (1) and shall send to the licensee a detailed list of the information to be provided by him or her.

Time for providing information

(4) Subject to subsection (5), the licensee shall provide to the Society the specific information required of him or her not later than ten days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

(5) On the request of the licensee, the Society may extend the time within which the licensee is required to provide to the Society the specific information required of him or her.

Request for extension of time

(6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and by not later than the day by which the licensee is required under subsection (4) to provide information to the Society.

Additional authority to provide information

(7) The Society's authority to require a licensee to provide information contained in this section is in addition to, and does not limit, the Society's authority to require a licensee to provide information contained elsewhere in this By-Law, in any other by-law or in the Act.

REPORTING CHANGES

Requirement to report changes

4. (1) A licensee shall notify the Society in writing immediately after any change in the following information, previously provided by the licensee to the Society either before or after the coming into force of this section:

1. The licensee's legal and assumed names.
2. The licensee's personal contact information.
3. The licensee's business contact information.
4. Information with respect to whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario.

5. Information with respect to the location and account number of any account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act*, 1994 applies into which the licensee pays or paid money received in trust for a client.

Interpretation: personal and business contact information

(2) For the purposes of subsection (1),

(a) personal contact information includes,

(i) home address,

(ii) home telephone number,

(iii) home facsimile number, and

(iv) home e-mail address; and

(b) business contact information includes,

(i) business address,

(ii) business telephone number,

(iii) business facsimile number, and

(iv) business e-mail address.

Information required

(3) The notice required under subsection (1) shall include details of the change and the effective date of the change.

Documents, explanations

(4) The licensee shall provide to the Society such documents and explanations with respect to any change in the information mentioned in subsection (1) as the Society may require.

PART II

FILING REQUIREMENTS

ANNUAL REPORT

Requirement to submit annual report

5. (1) Every licensee shall submit a report to the Society, by March 31 of each year, in respect of,

- (a) the licensee's professional business during the preceding year; and
- (b) the licensee's other activities during the preceding year related to the licensee's practice of law or provision of legal services.

Annual Report

- (2) The report required under subsection (1) shall be in a form provided by the Society.

Exemption from requirement to submit annual report

- (3) The following licensees may apply to the Society for an exemption from the requirement to submit a report under subsection (1):

1. A licensee who holds a Class L1 licence who is over sixty-five years of age and who,
 - i. does not practise law in Ontario,
 - ii. is not an estate trustee,
 - iii. is not a trustee of an *inter vivos* trust, and
 - iv. does not act as an attorney under a power of attorney for property given by a client or former client.
2. A licensee who holds a Class P1 licence who is over sixty-five years of age and who does not provide legal services in Ontario.
3. A licensee who is incapacitated within the meaning of the Act.

Application by licensee's representative

- (4) The Society may permit any person on behalf of a licensee to make an application under subsection (3).

Application form

- (5) An application under subsection (3) shall be in a form provided by the Society.

Documents and explanations

- (6) For the purposes of assisting the Society to consider an application under subsection (3), the licensee or the person applying on behalf of the licensee shall provide to the Society such documents and explanations as may be required.

Consideration of application

- (7) The Society shall consider every application made under subsection (3) and if satisfied that the licensee is eligible for an exemption under paragraph 1 or 2 of subsection (3), the Society shall approve the application.

Duration of exemption

(8) A licensee whose application is approved is exempt from the requirement to submit a report under subsection (1) in respect of the year in which the application is approved and in respect of every year thereafter if the licensee remains eligible for the exemption throughout the entire year.

Period of default

6. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file a report required under section 5 is 120 days after the day the report is required to be submitted.

Reinstatement of licence

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 5, for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report in a form provided by the Society.

Requirement to submit public accountants report

7. (1) The Society may require any licensee who is required to submit a report under subsection 5 (1) to submit, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the licensee is required to submit a report to the Society under subsection 5 (1).

Contents of report and time for filing

(2) The Society shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

Licensee's obligation to provide access to files, *etc.*

(3) For the purpose of permitting the public accountant to complete the report, the licensee shall,

(a) grant to the public accountant full access, without restriction, to all files maintained by the licensee;

(b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and

(c) provide to the public accountant such explanations as the public accountant may require.

Authority to confirm independently particulars of transactions

(4) For the purpose of permitting the public accountant to complete the report, the public accountant may confirm independently the particulars of any transaction recorded in the files.

Cost

(5) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the licensee.

Public accountant's duty of confidentiality

(6) When retaining a public accountant to complete a report required under this section, a licensee shall ensure that the public accountant is bound not to disclose any information that comes to his or her knowledge as a result of activities undertaken to complete the report, but the public accountant shall not be prohibited from disclosing information to the Society as required under this Part.

Period of default

8. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 7 is 60 days after the day the report is required to be submitted.

Reinstatement of licensee

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to file a report of a public accountant in accordance with section 7, for the purpose of subsection 47 (2) of the Act, the licensee shall file the report.

Failure to submit public accountant's report: investigation

9. (1) If a licensee fails to submit the report of a public accountant in accordance with section 7, the Society may require an investigation of the licensee's financial records to be made by a person designated by it, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

Investigation: application of subss. 7 (3) and (4)

(2) Subsections 7 (3) and (4) apply with necessary modifications to the investigation under this section.

Confidentiality

(3) A person designated to investigate a licensee's financial records under this section shall not disclose any information that comes to his or her knowledge as a result of the investigation except as required in connection with the administration of the Act or the by-laws.

Cost

(4) The cost of the investigation under this section shall be paid for by the licensee.

PART III
REGISTER

Contents of register

10. (1) In addition to the information mentioned in subsection 27.1 (2) of the Act, the register that the Society is required to establish and maintain under section 27.1 of the Act shall contain the following information:

1. The assumed names, if any, of each licensee.
2. An indication of every time period that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario.
3. For each time period that a licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario,
 - i. where and in what capacity the licensee practises law or provides legal services, and
 - ii. the licensee's business contact information, including address, telephone number, facsimile number and e-mail address.
4. For each time period that a licensee does not practise law in Ontario as a barrister and solicitor or provide legal services in Ontario,
 - i. if the licensee is otherwise working, the licensee's business contact information, including address, telephone number, facsimile number and e-mail address, or
 - ii. if the licensee is not otherwise working, information as to how a licensee may be contacted by former clients.
5. For a licensee who is deceased, the name and contact information, if any, of the licensee's estate trustee.

Availability to public

(2) The Society shall make the register available for public inspection in one or more of the following ways:

1. By establishing and maintaining a directory of licensees containing some or all of the information contained in the register on the Society's website.
2. By publishing a print directory of licensees containing some or all of the information contained in the register.
3. By establishing and maintaining a telephone line, open during the Society's normal business hours, for answering inquiries about contents of the register with respect to any licensee.

AMENDMENT TO BY-LAW 6 [PROFESSIONAL LIABILITY INSURANCE]

Motion

23. That Convocation amend By-Law 6 to add an exemption from the payment of insurance premium levies for a lawyer otherwise exempt from the payment of the levies whose practice is restricted to the provision of *pro bono* legal services for LawPRO-approved Pro Bono Law Ontario programs.

The formal motion to amend By-Law 6 in English and French will be provided to Convocation under separate cover.

Explanation

24. Currently, By-Law 6 subsection 9(2), paragraph 1 reads:

(2) A licensee who is exempt from payment of insurance premium levies under paragraph 1, 2, 3, 4, 5, 6 or 7 of subsection (1) continues to be exempt from payment of insurance premium levies even though he or she engages in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies if the following conditions are met:

1. The licensee's practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies is restricted to engaging in the practice of law only on a *pro bono* basis and only to or on behalf of non-profit organizations.

25. In addition to *pro bono* services for non-profit organizations, LawPRO will continue an exemption from payment of insurance premium levies for a lawyer described in subsection 9(2) whose practice is restricted to the provision of *pro bono* legal services for LawPRO-approved PBLO programs. This was approved by Convocation as a feature of the 2003 insurance program, as described in LawPRO's September 2002 report to Convocation.⁷

⁷ The relevant recommendation reads:

38. Accordingly, the LAWPRO Board of Directors recommends that the following program changes be made with respect to approved *pro bono* legal services provided by a member through an approved *pro bono* legal services program:

- (a) That members purchasing the ongoing practice coverage under the program not be required to pay any deductible amount or claims history levy surcharge for claims relating solely to such services;
- (b) That members purchasing the ongoing practice coverage under the program who wish to apply for the part-time practice option, not be required to consider any hours of professional time or past claims relating solely to such services in their application for that option;
- (c) That members claiming exemption under the program be provided with coverage for such services under the program in the ordinary course as part of their standard run-off program coverage (even though the services are provided while exempt under the program); and
- (d) That members claiming exemption under the program not be required to pay any deductible amount for claims relating solely to such services.

...

40. Approved *pro bono* legal services programs would not include programs beyond those associated with Pro Bono Law Ontario, without further direction from Convocation.

26. As By-Law 6 only references *pro bono* services for non-profit organizations, the By-Law requires an amendment to include reference to *pro bono* legal services for PBLO programs.
27. The proposed amendment is to strike out paragraph 1 and substitute it with the following:
1. The licensee's practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies is restricted to engaging in the practice of law only on a *pro bono* basis and only,
 - i. to or on behalf of non-profit organizations, or
 - ii. through a program that is and continues to be registered with Pro Bono Law Ontario and approved by the insurer of the Society's insurance plan while the licensee is engaging in the practice of law through the program.

INFORMATION

2009 LAWYER ANNUAL REPORT

28. The Lawyer Annual Report, formerly called the Member's Annual Report, for the filing year 2009 appears at Appendix 5 for the information of Convocation.
29. The Lawyer Annual Report is the form provided to lawyers by the Law Society under authority of By-Law 8, as follows:

PART II

FILING REQUIREMENTS

ANNUAL REPORT

Requirement to submit annual report

5. (1) Every licensee shall submit a report to the Society, by March 31 of each year, in respect of,

(a) the licensee's professional business during the preceding year; and

(b) the licensee's other activities during the preceding year related to the licensee's practice of law or provision of legal services.

Annual Report

(2) The report required under subsection (1) shall be in a form provided by the Society.

30. The Lawyer Annual Report is not a prescribed form under the By-Law. As such, Convocation's approval of clarifying or other similar changes to the form from year to year is not required.
31. A table showing changes to the form for the filing year 2009 appears at Appendix 6. Most of the changes are to clarify existing questions or to make electronic programming for the form easier. The changes of a more substantive nature include:
- a. a new question on compliance with the client identification and verification requirements in By-Law 7.1, Part III, similar to that in the form for the "no cash" rule in By-Law 9, Part III; and
 - b. the voluntary question to help the Law Society collect demographic data about lawyers⁸, approved by Convocation in May 2009.

APPENDIX 5

LAWYER ANNUAL REPORT 2009

APPENDIX 6

EXPLANATION OF CHANGES
2009 LAWYER ANNUAL REPORT

CHANGE	EXPLANATION
Form Name.	The name of the form has been changed from "2009 Member's Annual Report" to "2009 Lawyer Annual Report".
Reference to " <i>member</i> " removed.	All references to the word " <i>member</i> " have been removed.

⁸ A similar question is included with the Paralegal Annual Report.

Section A – “ <i>Client Identification</i> ” – <i>New</i> .	This question was added for compliance purposes in connection with the new client ID rules in By-Law 7.1.
Section A – “ <i>Pro Bono Services</i> ”, the wording was changed from: “Was the pro bono work you provided for Pro Bono Law Ontario (PBLO) sponsored programs” to “Did you provide pro bono services for Pro Bono Law Ontario (PBLO) sponsored programs?”	The previous wording could be misinterpreted to infer that all pro bono work was for PBLO. This was more of an issue in the French translation of the question.
Section A 5	Removed the language “ <i>Hindustani</i> ”.
Section D 1 – “ <i>Canadian Law Practice- Ontario</i> ”, a qualifying question was added.	The question “Did you practise law relating to Ontario Law in 2009?” was added to prequalify the next question for clarity.
Section D 2 – “ <i>Canadian Law Practice- Other than Ontario</i> ”, a qualifying question was added.	The question “Did you practise law relating to Canadian jurisdictions other than Ontario in 2009?” was added to prequalify next question for clarity.
Section D 1&2	“ <i>Aboriginal Law</i> ” was added as new category.
Section E 2 d)	The option, “The Law Society of Upper Canada” as a separate program was added.
Section G “(Non-trust)”	General accounts are commonly referred to as Non-Trust. The 2009 report will combine both for clarity.
Section F 3 a) vii), the wording: “ <i>include the total dollar value in the reconciliation in Section G question 5c)</i> ” was moved from F 3 a) vii) to G 5 c)	The previous location of this question did not lend itself to e-programming. Lawyers designating a financial filing partner could not complete the form as instructed.
Section F 3 b) vii), the wording: “ <i>include the total dollar value in the reconciliation in Section G question 5c)</i> ” was moved from F 3 b) vii) to G 5 c)	The previous location of this question did not lend itself to e-programming. Lawyers designating a financial filing partner could not complete the form as instructed.
Section F 3 c) vi), the wording: “ <i>include the total dollar value in the reconciliation in Section G question 5c)</i> ” was moved from F 3 c) vi) to G 5 c)	The previous location of this question did not lend itself to e-programming. Lawyers designating a financial filing partner could not complete the form as instructed.
Section G 4, the wording: “ <i>and proceed to question 5 to report on trust accounts.</i> ” was deleted.	This question incorrectly directed lawyers who answered “ <i>no</i> ” to G 1 a) to report on trust accounts.
Section G 10 a)	An N/A option was added.
Demographic Question Attachment - <i>New</i>	The question was added as approved by Convocation.

UPDATE ON INITIATIVES IN RESPONSE TO THE CODE/LESAGE REPORT

Introduction and Background

32. In February 2008, Attorney General Chris Bentley appointed The Honourable Patrick J. LeSage, C.M., Q.C. and Professor Michael Code to conduct a review of large and complex criminal case procedures, and to identify issues and recommend solutions to moving these cases through the justice system faster and more effectively. Mr. LeSage and Mr. Code undertook to write a report on their findings and in November, 2008, the Attorney General released their report entitled "Report of the Review of Large and Complex Criminal Case Procedures".
33. One of the issues identified in the Report as contributing to the length of these cases was the competency and conduct of counsel. The role of the Law Society with respect to ensuring the competency and the regulation of counsel, in this context, was specifically examined and commented upon. Among other things, the Report questioned the adequacy of the Society's sanctions for court room misconduct, based on a perception that the Law Society treated these cases with leniency or in some cases took no action in response to the information. The Report called on the Law Society to treat cases of court room misconduct as serious professional misconduct.
34. The Law Society considered the report and the action it should take to address not only the criticism leveled at the Law Society about its treatment of court room misconduct, but a number of the issues that underlie the conduct of lawyers identified in the Report, including the lack of effective mentoring for inexperienced counsel.
35. Since November, the Law Society, through the Treasurer and bencher Glenn Hainey, has held meetings with the Chief Justices of the Court of Appeal for Ontario, the Superior Court of Justice and the Ontario Court of Justice, other members of those courts, and representatives of the Attorney General's office and a number of legal organizations, such as The Advocates' Society and The Criminal Lawyers' Association, to determine ways to address the problems identified in the Report.
36. It became increasingly apparent during these discussions that many judges feel it would be most beneficial to have a procedure whereby a lawyer could be referred for mentoring rather than as the subject of a formal misconduct complaint to the Law Society. Many judges would welcome the opportunity to be able to refer lawyers, particularly younger lawyers, to senior members of the profession for mentoring in respect of the lawyer's inappropriate behaviour in the court room. In many cases, the judges feel that the conduct, although inappropriate, does not warrant a full Law Society complaints investigation, with the serious consequences that could result from that process.
37. To address these issues, Protocols for both the Superior Court of Justice and the Ontario Court of Justice have been developed, which provide for the referral by the Court of both misconduct complaints and requests for mentoring in appropriate cases. These Protocols have been agreed to by The Superior Court of Justice and the Ontario Court of Justice and have been approved in principle by the Ministry of the Attorney General, The Criminal Lawyers' Association and The Advocates' Society as workable and effective solutions to the problems identified in the Report.

38. This information report and its appendices provide details about the Protocols and how they will operate.

The Protocols

39. Three documents are attached at Appendix 7:
- a. Protocol – Referrals of Misconduct, Requests for Mentoring – Law Society of Upper Canada, Ontario Court of Justice;
 - b. Malcolm Heins' September 9, 2009 letter to The Honourable Madam Justice Heather Forster Smith, Chief Justice of the Superior Court of Justice, setting out the understanding for the Protocol for referral of matters to the Law Society from the Superior Court; and
 - c. Protocol – Referral of Mentoring Requests.
40. The first document is a Protocol that describes the process for the Ontario Court of Justice for reporting complaints about lawyers and paralegals and initiating requests for mentoring for lawyers⁹. The Protocol:
- a. outlines the options available to a judge when a counsel engages in unprofessional conduct in the course of a civil or criminal proceeding before the Court,
 - b. describes the Court process prior to and with respect to making a complaint about the conduct of a lawyer or paralegal or requesting mentoring for a lawyer,
 - c. sets out the Law Society process to be followed upon receipt of the complaint or a request for mentoring, and
 - d. proposes that education sessions be arranged for those involved in this process to explain the procedures in the Protocol and appropriate conduct before the Courts.
41. Mr. Heins' letter confirms the understanding reached between the Superior Court and the Law Society on referral of incidents of misconduct and mentoring requests from the Court. The process is similar but not identical to the process in the Protocol between the Law Society and the Ontario Court of Justice.¹⁰
42. The third document is a Protocol for referral of mentoring requests to one of the three entities that to date have agreed to provide mentoring services - The Advocates' Society for civil matters, The Criminal Lawyers' Association for criminal defence matters and the Ministry of the Attorney General for matters involving Crown counsel. The Protocol outlines the process to be following by the Law Society upon receipt of a request from either the Superior or the Ontario Court for mentoring and the basis upon which a referral to the entity providing the services would be made. The Protocol also includes reporting obligations from the entity providing the services to the Law Society and from the Law Society to the Court about the mentoring, or the fact that it was declined by the lawyer.

⁹ Discussion on establishing mentoring for paralegals is underway.

¹⁰ Discussion on establishing mentoring for the Small Claims Court is also underway.

APPENDIX 7

PROTOCOL
REFERRAL OF MENTORING REQUESTS

September 2009

The Law Society of Upper Canada's Judicial Complaint and Mentoring Referral Protocols with the Superior Court of Justice and the Ontario Court of Justice provide for requests for mentoring to the Law Society which can be made by either court in respect of lawyers who have been identified by the referring court as an individual who would benefit from mentoring. This document describes the process for the referral from the Law Society to the mentoring organizations.

Referrals from the courts will be forwarded directly to the Law Society's Chief Executive Officer, Malcolm Heins. The Office of the CEO will arrange for a file to be opened together with an acknowledgement to the court or judge.

The lawyer's complaint history with the Law Society or the nature of the referral may indicate that mentoring is not the appropriate disposition of the matter in question. Where it is determined that the referral or the lawyer does not qualify for mentoring, the case will be classified as a complaint and will proceed through the regulatory process. The court will be so notified and the case will be placed in the process for complaints by the courts.

If it is determined that mentoring is appropriate, the lawyer will be provided with a letter setting out the nature of the conduct leading to the request for referral, and a consent form to indicate that the lawyer agrees to the referral for mentoring (Appendix A).

Where the lawyer accepts mentoring, the Law Society will prepare a referral for mentoring to the appropriate organization. The process is as follows:

1. The Law Society will determine the appropriate organization to provide the mentoring.
2. The Law Society will contact the appropriate organization and advise that organization of the mentoring referral, the name of the lawyer and his/her year of call, area of practice and address.
3. The mentoring organization will identify an appropriate mentor and provide the mentor's name to the Law Society.
4. The Law Society will advise the lawyer of the name of the mentor and that he/she should expect the mentor's call to arrange for a meeting.
5. The Law Society will provide the mentor identified by the organization with the referral information received from the referring court and the material provided to the lawyer, including the executed consent form. The mentor will then contact the lawyer to set up their meeting.
6. The form of the mentoring session and what takes place during the mentoring session is in the discretion of the mentor.

7. The material provided by the Law Society to the mentor will include a form which the mentor will be asked to complete at the conclusion of the mentoring session. If the Law Society does not receive the confirmation within a pre-determined time frame, it will follow up with the mentor to determine whether the mentoring session took place. The form will simply state the name of the lawyer and mentor and indicate whether or not the mentoring session took place. No other details concerning the mentoring session will be reported by the mentor. The form will be returned to the Monitoring and Enforcement department of the Law Society, which will proceed to close the file.
8. The Law Society will notify the referring court when the file is closed that the mentoring session took place or that the lawyer refused mentoring. No other details concerning the mentoring session will be provided to the referring court.

Lawyers providing mentorship through these organizations will be required to sign a general confidentiality agreement with the Law Society, which confirms that any details concerning the mentoring sessions will be kept confidential.

APPENDIX A

Dear ☐.

Re: Request for Mentoring

The Law Society of Upper Canada has received a request from the ☐ Court of Justice for a mentoring referral in respect of your conduct in accordance with the Law Society's Judicial Complaint and Mentoring Referral Protocol, a copy of which is attached.

The conduct in respect of which you have been referred for mentoring involves ☐

This mentoring referral is not part of the Law Society's discipline process and does not involve any allegations of professional misconduct on your part. Although you are not obligated to participate in the mentoring session, the Court has identified conduct on your part which suggests you could benefit from a mentoring session and you are strongly encouraged to take advantage of the resources of (name of the organization) Mentoring Panel for this purpose.

Enclosed is a consent form which I ask you to complete and return to me, following which a mentoring session will be arranged and you will be contacted by a member of (name of the organization) Mentoring Panel.

We are hopeful that the mentoring session will be of assistance to you.

Yours truly,

Malcolm L. Heins
Chief Executive Officer

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

43. The Professional Regulation Division's Quarterly Report (second quarter 2009), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period April to June 2009.

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

- (1) Copy of the 2009 Lawyer Annual Report.
(Appendix 5, pages 31 – 43)
- (2) Copy of the Protocol – Referrals of Misconduct, Requests for Mentoring – Law Society of Upper Canada, Ontario Court of Justice.
(Appendix 7, pages 49 – 54)
- (3) Copy of September 9, 2009 letter from Malcolm Heins to the Honourable Madam Justice Heather Forster Smith, Chief Justice of the Superior Court of Justice re: Referrals of misconduct and requests for mentoring regarding Lawyers Conduct.
(Appendix 7, pages 55 – 57)
- (4) Copy of the Professional Regulation Division's Quarterly Report – April – June 2009).
(pages 62 – 93)

Re: Amendment to By-Law 6 [Professional Liability Insurance]

It was moved by Ms. Rothstein, seconded by Mr. Bredt, that Convocation approve the amendments to By-Law 6 (Bilingual version) which were distributed under separate cover.

Carried

BY-LAW 6
[PROFESSIONAL LIABILITY INSURANCE]

THAT By-Law 6 [Professional Liability Insurance], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007 and February 21, 2008, be further amended as follows:

1. Subsection 9 (2) of By-Law 6 is amended by striking out paragraph 1 and substituting the following:

- | | |
|---|--|
| <p>1. The licensee's practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies is restricted to engaging in the practice of law only on a <i>pro bono</i> basis and only,</p> | <p>1. L'exercice du droit en Ontario, bien que contraire à la disposition exonérant les titulaires de permis du paiement des cotisations d'assurance, se limite à l'offre bénévole de conseils ou de services juridiques uniquement à des organismes à but non lucratif,</p> |
| <p>i. to or on behalf of non-profit organizations, or</p> | <p>i. ou au nom de tels organismes,</p> |
| <p>ii. through a program that is and continues to be registered with Pro Bono Law Ontario and approved by the insurer of the Society's insurance plan while the licensee is engaging in the practice of law through the program.</p> | <p>ii. par l'entremise d'un programme qui est et continue d'être inscrit à Pro Bono Law Ontario et approuvé par l'assureur du régime d'assurance du Barreau tandis que le titulaire de permis exerce le droit par l'entremise du programme.</p> |

Re: Expanding the Summary Hearing Process

It was moved by Ms. Rothstein, seconded by Mr. Bredt, that Convocation approve an expansion of the summary hearing process to include breaches of By-law 8 [Reporting and Filing Requirements] and failure to report to LAWPRO as matters that may be heard by a single member of the Hearing Panel.

Carried

Mr. Hainey updated Convocation on the Law Society's protocol with the Ontario courts regarding judicial complaints.

Items for Information Only

- 2009 Lawyers Annual Report
- Professional Regulation Division Quarterly Report

The Treasurer announced that he would be conducting a series of province wide meetings with members of the Society to discuss civility issues beginning in October.

MOTION – APPOINTMENT

It was moved by Mr. Caskey, seconded by Mr. Swaye, that Lawrence Eustace be appointed to the Professional Development and Competence Committee.

Carried

COMPENSATION FUND COMMITTEE REPORT

Mr. Heintzman presented the Report.

Report to Convocation
September 24, 2009

Compensation Fund Committee

Committee Members
Thomas Heintzman (Chair)
Marshall Crowe
Dr. S.M. Aslam Daud
Michelle Haigh
Susan McGrath
Stephen Parker
Nicholas Pustina
Baljit Sikand
Gerald Swaye

Purpose of Report: Decision and Information

Prepared by the Professional Regulation Division
(Dan Abrahams 416.947.7626 / Zeynep Onen 416.947.3949)

TABLE OF CONTENTS

For Decision

PROPOSED AMENDMENT TO BY-LAW 12 (COMPENSATION FUND)..... TAB A

For Information..... TAB B

RECOMMENDED LAWYER AND PARALEGAL COMPENSATION
FUND LEVIES, 2010

GRANTS PAID BY THE FUND

COMMITTEE PROCESS

1. The Committee discussed the matters reported here on September 10, 2009. Committee members in attendance were Thomas Heintzman (Chair), Michelle Haigh, Susan McGrath, Stephen Parker, Nicholas Pustina, Baljit Sikand and Gerald Swaye. Dr. S.M. Aslam Daud participated by teleconference. Staff members Zeynep Onen, Maria Loukidelis, Dan Abrahams and Andrew Cawse also attended. The Compensation Fund's actuary, Brian Pelly of Eckler Ltd., was present to explain his analysis and answer questions.

DECISION

PROPOSED AMENDMENT TO BY-LAW 12 (COMPENSATION FUND)

MOTIONS (2)

2. MOTION 1: That Convocation approve an amended By-Law 12 (Compensation Fund) to reconstitute the Compensation Fund Committee as a more streamlined, five-member entity in order to incorporate the functions of both the current Committee and the current Review Subcommittee. The proposed revised By-Law 12 is attached at Appendix 1 with proposed amendments underlined in boldface. Current By-Law 12 is attached as Appendix 2.
3. MOTION 2: That Convocation recommend an amendment to the *Law Society Act* that would enable persons licensed to provide legal services who are members of the Paralegal Standing Committee to be appointed by Convocation to serve as members of the Compensation Fund Committee created by the amended By-Law 12.

Background

4. Section 51 of the *Law Society Act* gives Convocation the power to make grants from the Compensation Fund. It also permits Convocation to delegate any of the powers conferred upon it under the section to a Committee of Convocation and Convocation has

delegated the administration of the Fund, including its grant-making power, to the Compensation Fund Committee. The Compensation Fund Committee is “established” in By-Law 12 made under the *Law Society Act*.

5. The Compensation Fund Committee is responsible to Convocation for the administration of the Fund.
6. Currently the Compensation Fund Committee relies on a subcommittee process make grants out of the Compensation Fund. This structure dates back to 1988 when Convocation adopted a report recommending the establishment of a Review Subcommittee composed “from time to time of a panel of three members of the Compensation Fund Committee”.
7. The payments are reviewed by the Subcommittee and then reported to the Committee as a whole, which is accountable to Convocation. The Subcommittee is currently composed of two lawyer benchers and a lay bencher.
8. The Compensation Fund Committee is also responsible for the development of Fund policy, the operation of the Fund and the general oversight of Fund activities.
9. In February 2009, the Committee determined that for greater efficiency and more effective oversight, the Committee should be reconstituted as a single Committee to perform all of the functions currently exercised by the Compensation Fund Committee and the Review Subcommittee.
10. It is envisioned that the new Committee would have the following responsibilities:
 - a. General oversight of the Compensation Fund, to ensure its financial health and stability;
 - b. The conduct of ongoing policy review and, as required, the making of necessary recommendations, in particular the proposal to Convocation of amendments to the Guidelines that determine who is eligible for compensation from the Fund and under what circumstances;
 - c. The review and approval of staff and referee recommendations for grants from the Fund in excess of \$5000.00; and
 - d. Other duties and responsibilities as delegated to the Committee by Convocation in accordance with section 51 of the *Act*.
11. The Committee gave careful consideration to the size and composition of the new Committee. The present Committee has nine members, three of whom serve on the Review Subcommittee. It was felt that a smaller Committee, composed of five members, would be most able to assume both the policy and oversight responsibilities of the current Committee and the grant review function currently exercised by the Review Subcommittee.
12. In terms of composition, the Committee determined that the new committee should have two lawyer Benchers, one of whom would serve as Chair and would vote on grant recommendations only to break a tie. The Committee should have two lay Benchers, partly in recognition of the strong *nexus* between the existence of the Compensation Fund and the protection of the public interest. Since the Fund also exists for the benefit of victims of dishonesty by licensed paralegals, it is essential to have a representative from amongst those licensed to provide legal services as well.

Paralegal representation

13. The Committee notes that under the Law Society Act, Convocation is provided with authority to delegate its powers concerning the Compensation Fund to a "Committee of Convocation". Section 51(10) states: "Convocation may delegate any of the powers conferred upon it by this section to a committee of Convocation ...". As such, only benchers may be appointed to sit on the Compensation Fund Committee. The Committee notes that in addition to the two paralegal Benchers, the members of the Paralegal Standing Committee would also be appropriate potential candidates for membership on the Compensation Fund Committee.
14. It is the view of the Committee that paralegals may be appropriately represented on the Committee by *either* a person licensed to provide legal services who is a member of the Paralegal Standing Committee or a Bencher licensed to provide legal services. As a practical matter, the ability to appoint members of the Paralegal Standing Committee would also provide greater flexibility and reduce demands on the time of the two paralegal benchers.
15. For this reason, the Committee, asks Convocation to endorse an amendment to section 51(10) of the Act to provide Convocation the authority to appoint paralegal members of the Paralegal Standing Committee to the Compensation Fund Committee.

Appendix 1

AMENDED BY-LAW 12
(proposed)

Made: May 1, 2007
Amended: June 28, 2007
Amended: _____

COMPENSATION FUND

EXERCISE OF POWERS

Exercise of powers, *etc.*

The holders of the following offices may exercise the powers and perform the duties under subsection 51 (11.1) of the Act:

The office of Director, Professional Regulation.

The office of Senior Counsel, Professional Regulation.

COMPENSATION FUND COMMITTEE

Compensation Fund Committee

The standing committee known as the Lawyers Fund for Client Compensation Committee is continued as the Compensation Fund Committee.

Application of By-Law

The following provisions of By-Law 3 [Benchers, Convocation and Committees] apply to the Compensation Fund Committee:

Section 107, except that in the application of subsection 107 (3), the reference to “under this Part” shall be read as a reference to “under By-Law 12 [Compensation Fund]”.

Sections 109 to 116.

Composition

Despite subsections 109 (1) and (2) of By-Law 3 [Benchers, Convocation and Committees], the Compensation Fund Committee shall consist of five persons appointed by Convocation, of whom,

two shall be benchers who are licensed to practise law in Ontario as barristers and solicitors; and

two shall be lay benchers; and

one shall be a bencher who is licensed to provide legal services in Ontario.

Chair

3.2 (1) The chair of the Compensation Fund Committee shall be one of the persons in clause 3.1 (a).

(2) The chair shall not vote on a motion to make a grant from the Compensation Fund except in the case of a tie when the chair may cast a tie-breaking vote.

Consideration of a grant

3.3 (1) A resolution to make or not make a grant from the Compensation Fund that is in writing and is signed by at least three members of the Compensation Fund Committee entitled to vote on that resolution is as valid as if it had been passed at a meeting of the Committee.

Mandate

4. (1) The Compensation Fund Committee is responsible to Convocation for the administration of the Compensation Fund.

Powers

The Compensation Fund Committee may make grants from the Compensation Fund in amounts over \$5,000 and the making of such grants is not subject to the approval of Convocation.

(2) The Compensation Fund Committee may make such arrangements and take steps as it considers advisable to carry out its responsibilities.

Appendix 2

BY-LAW 12 (current)

Made: May 1, 2007
Amended: June 28, 2007

COMPENSATION FUND

EXERCISE OF POWERS

Exercise of powers, etc.

The holders of the following offices may exercise the powers and perform the duties under subsection 51 (11.1) of the Act:

The office of Director, Professional Regulation.

The office of Senior Counsel, Professional Regulation.

COMPENSATION FUND COMMITTEE

Compensation Fund Committee

The standing committee known as the Lawyers Fund for Client Compensation Committee is continued as the Compensation Fund Committee.

Application of By-Law

The following provisions of By-Law 3 [Benchers, Convocation and Committees] apply to the Compensation Fund Committee:

Section 107.

Sections 109 to 116.

Mandate

The Compensation Fund Committee is responsible to Convocation for the administration of the Compensation Fund.

Powers

The Compensation Fund Committee may make such arrangements and take steps as it considers advisable to carry out its responsibilities

INFORMATION

RECOMMENDED LAWYER AND PARALEGAL

COMPENSATION FUND LEVIES, 2010

Background

16. At its September 2009 meeting, the Compensation Fund Committee considered the required levy from lawyers and paralegals to pay grants from the Fund in 2010. The Committee's recommendation concerning this levy was forwarded to Finance Committee in the normal course. The recommendation is based on the report of the Law Society's actuary, as well as advice from the Finance Department and Fund staff. The Committee reviewed and discussed reports from the Fund's actuary, Brian Pelly of Eckler Ltd., as well as information including a preliminary draft 2010 budget assembled by Finance staff.

Funds required to meet the needs for projected grant payments in 2010

17. With respect to lawyers, the actuary had recommended that the Law Society allocate \$2.45 million for expected routine grant payments in 2010. This is down from the \$2.7 million provision in 2009 and the provision included in the current draft budget materials for 2010. The Committee recommends to the Finance Committee that the provision for expected claims in 2010 be set at \$2.45 million.
18. With respect to paralegals, the actuarial reporting as well as staff reports concerning inquiries and claims received indicates that incurred claims will not exceed a projected estimate of \$121,000, the amount provided in the current draft budget.
19. The Committee is therefore recommending to the Finance Committee that:
 - a. The Compensation Fund provision for expected claims for lawyers be set at \$2.45 million in 2010.
 - b. The Compensation fund provision for expected claims for paralegals be set at \$121,000 in 2010.

GRANTS PAID BY THE FUND

20. The Committee wishes to report that the following grants were approved and paid from the Fund between August 1, 2008 and August 27, 2009, in the amounts shown. (Only licensees whose discipline proceedings are completed or who are deceased are identified by name.)

August 1, 2008 to January 31, 2009

Licensee	Number of Claimants	Total Grants Paid
Solicitor #158 (Suspended September 14, 2007)	1	\$1,550.00
Solicitor #161 (Suspended October 6, 2006)	2	\$14,240.00
Solicitor #169 (Pending Investigations)	1	\$67,000.00
Solicitor #170 (Suspended January 11, 2008)	1	\$100,000.00
Solicitor #178 (Suspended September 14, 2007)	1	\$2,460.00
Solicitor #179 (Suspended June 4, 2008)	18	\$592,256.45
Solicitor #182 (Suspended July 18, 2008)	3	\$109,320.32
Solicitor #183 (Suspended October 3, 2008)	1	\$1,000.00
Solicitor #186 (Suspended July 14, 2008)	1	\$136,295.82
Solicitor #187 (Suspended October 3, 2008)	1	\$750.00
Solicitor #188 (Suspended October 16, 2008)	1	\$62,923.28
Brian Doucette (Licence Revoked Aug. 12, 2008)	1	\$1,947.00
Christopher Opoka-Okumu (Suspended Oct.6, 2006)	1	\$800.00
Hamidreza Mojtahedi (Licence Revoked May 27, 2008)	1	\$2,000.00
Peter Leich (Disbarred July 6, 2006)	1	\$11,934.38
Glenn Sacks (Permitted to Resign July 22, 2006)	1	\$11,934.37
Joseph Amorim (Permitted to Resign Nov. 26, 1998)	2	\$125,000.00
Jeffrey Barnabe (Licence Revoked July 3, 2008)	4	\$6,840.00
Mohammed Muslim (Permitted to Resign Sept. 14, 2006)	1	\$30,000.00
Renato Fellin (Disbarred April 26, 2006)	3	\$35,327.21
Gordon Campbell (Disbarred October 19, 2005)	1	\$18,790.59
Danny Branoff (Licence Revoked April 27, 2007)	1	\$5,000.00
Peter Poulakis (Licence Revoked May 22, 2008)	2	\$4,924.76
TOTAL GRANTS PAID		\$1,342,294.18

February 1, 2009 to August 27, 2009

Licensee	Number of Claimants	Total Grants Paid
Solicitor #161 (Suspended October 6, 2006)	1	\$ 18,172.81
Solicitor #179 (Suspended June 4, 2008)	1	\$ 75,953.48
Solicitor #183 (Suspended October 3, 2008)	2	\$151,601.88
Solicitor #186 (Suspended July 14, 2008)	2	\$ 22,176.26
Solicitor #188 (Suspended October 16, 2008)	1	\$ 7,277.49
Solicitor #189 (Suspended March 12, 2008)	11	\$ 39,150.00
Solicitor #190 (Suspended June 13, 2008)	5	\$ 33,702.08
Solicitor #191 (Suspended April 25, 2008)	1	\$ 175.00
Solicitor #192 (Suspended June 4, 2008)	2	\$ 56,005.96
Solicitor #193 (Suspended April 1, 2009)	1	\$ 78,126.59
Colin MacDonald (Disbarred March 8, 2006)	1	\$ 29,759.64

Michael Decosimo (Disbarred March 25, 1999)	4	\$239,399.88
Richard Michna (Licence Revoked March 27, 2008)	2	\$ 81,783.53
Ricardo Aguirre (Licence Revoked August 4, 2009)	1	\$ 1,700.00
William E. Mathers (Deceased June 17, 2008)	1	\$ 27,562.09
Larry Mavis (Disbarred August 12, 2003)	1	\$ 70.50
Gordon Rush (Deceased October 11, 2008)	1	\$ 15,000.00
Myles McLellan (Licence Revoked May 12, 2009)	3	\$ 6,483.16
Walter Wysocky (Suspended June 13, 2008)	1	\$ 5,000.00
William Brown (Deceased September 10, 2008)	1	\$ 464.40
Renato Fellin (Disbarred April 26, 2006)	1	\$ 60,000.00
Clarence Griffin (Licence Revoked May 27, 2008)	1	\$ 1,600.00
Peter Poulakis (Licence Revoked May 22, 2008)	1	\$ 3,457.35
TOTAL GRANTS PAID		\$954,622.10

Re: Proposed Amendment to By-Law 12

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

MOTION 1: Convocation approve an amended By-Law 12 (Compensation Fund) to reconstitute the Compensation Fund Committee as a more streamlined, five-member entity in order to incorporate the functions of both the current Committee and the current Review Subcommittee. The proposed revised By-Law 12 is attached at Appendix 1 with proposed amendments underlined in boldface. Current By-Law 12 is attached as Appendix 2.

MOTION 2: Convocation recommend an amendment to the *Law Society Act* that would enable persons licensed to provide legal services who are members of the Paralegal Standing Committee to be appointed by Convocation to serve as members of the Compensation Fund Committee created by the amended By-Law 12.

The matter was sent back to the Committee.

Item for Information Only

- Recommended Lawyer and Paralegal Compensation Fund Levies, 2010

AUDIT COMMITTEE REPORT

Ms. Symes discussed the changes to the Law Society's financial reporting.

Audit Committee

Committee Members
Beth Symes (Chair)
Ab Chahbar (Vice Chair)
Melanie Aitken
Marshall Crowe
Seymour Epstein
Glen Hainey
Doug Lewis
Bill Simpson

Purpose of Report: Information

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

COMMITTEE PROCESS

1. The Audit Committee (“the Committee”) met on September 9, 2009. Committee members in attendance were Beth Symes(c), Ab Chahbar(v-c) (teleconference), Glen Hainey, and Doug Lewis.
2. Also in attendance were Kathleen Waters and Steve Jorgensen from LAWPRO, Paula Jesty, Sam Persaud and Trevor Ferguson of Deloitte & Touche LLP.
3. Staff in attendance were Malcolm Heins, Wendy Tysall, Brenda Albuquerque-Boutilier, Fred Grady and Andrew Cawse.

FOR INFORMATION

GENERAL FUND - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED
JUNE 30, 2009

4. Convocation is requested to receive the financial statements for General Fund for the second quarter of 2009 for information.

General Fund
Financial Statement Highlights
For the six months ended June 30, 2009

Background

5. The Society's General Fund is composed of a number of funds included in these financial statements.
- The Unrestricted Fund is the Society's operating fund representing the bulk of its revenues and expenses relating to the licensing and regulation of lawyers and paralegals.
 - There are a number of special purpose funds restricted by Convocation. These are the Capital Allocation, Invested in Capital Assets, County Libraries, Parental Leave Assistance Plan, Repayable Allowance, Endowment, Special Projects and the Working Capital Reserve funds.
 - The Capital Allocation Fund is the source of funding for the Society's acquisition of major capital assets and the repair and upgrade of Osgoode Hall. The fund is replenished by a dedicated annual levy, currently \$45, on all lawyers and paralegals.
 - The Invested in Capital Assets Fund represents the net book value of the Society's physical assets. Additions to the fund are made by the capitalization of assets acquired through the capital allocation fund. Additions are recorded annually by means of an inter-fund transfer on the Statement of Changes in Fund Balances. Amortization is reported as an expense of the fund.
 - The County Libraries Fund reports the transactions between LibraryCo Inc. and the Law Society. The Law Society levies an amount on lawyers as approved by Convocation in the annual budget, currently \$220 per lawyer. This levy is reported as income of the fund and transfers to LibraryCo Inc. are reported as an expense of the fund.
 - The Parental Leave Assistance Plan has been established with \$540,000, representing the entire annual fee allocation for the fiscal year. Under the Program, which commenced in March 2009, the Law Society will provide a fixed sum of \$750 per week for up to twelve weeks to cover, among other things, expenses associated with maintaining practice expenses during a maternity, parental or adoption leave.
 - Other Restricted Funds:
 - o The Repayable Allowance Fund is used to provide financial assistance to those enrolled in the Society's Licensing Process. The fund is replenished annually through the budget process by a \$100,000 annual contribution.

- o The Society's Endowment Fund is the J. Shirley Denison Fund, administered under the terms of Mr. Denison's will by Convocation for the relief of poverty for lawyers and licensing process lawyer candidates.
 - o The Special Projects Fund is used to carry forward funding to a future fiscal period for a program or activity for which funding is not provided in the current year budget. For 2009 the fund is comprised of funding for the Governance Task Force, the maintenance of Law Society lawns, gardens and trees, the Task Force on Accreditation and Women in Private Practice.
 - The Working Capital Reserve is maintained by policy of Convocation to ensure cash is available to meet the operating needs of the Society. By policy, the fund is maintained at a balance of up to two months operating expenses.
6. In addition to the General Fund, separate second quarter financial statements have been prepared for the Compensation Fund, LibraryCo Inc., LawPro, the Combined Errors and Omissions Insurance (E&O) Fund and the stand alone E&O Fund. However for the 2009 year end a separate format for our financial statements is planned. Law Society entity statements will be provided, combining the General Fund, Compensation Fund and stand alone E&O Fund. LibraryCo and LawPro will continue to have their separate financial statements.

Financial Statements

7. The General Fund Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit corporations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.
8. Unless specifically related to a particular restricted fund, all revenue, including investment income, is recognized as revenue of the Unrestricted Fund.
9. The General Fund Financial Statements for the six months ended June 30, 2009 comprise the following statements with comparative numbers for June 30, 2008:
- Balance Sheet
 - Statement of Revenues and Expenses
 - Statement of Changes in Fund Balances
10. Supplemental schedules include Schedules of Revenues and Expenses for both the Lawyers and Paralegal Unrestricted Funds, comparing the results of operations for the six months to the year-to-date budget for these funds.

Balance Sheet

- Current assets at the end of June 2009 are at the same level as June 2008. At June 2009 current assets comprise \$6.6 million in cash, \$31.2 million in short-term investments, \$6.5 million in accounts receivable (annual fees owing) and \$335,000 in prepaid expenses.

- Portfolio investments are shown at fair value of \$11.4 million compared to \$10.7 million in 2008.
- The decrease in capital assets from \$20.0 million to \$18.1 million reflects the accumulated amortization for the period offset by \$1.1 million in additions, recorded in December 2008, for projects such as upgrading the barristers' lounge area, various mechanical and electrical upgrades, as well as software upgrades.
- Current liabilities are also relatively static year-on-year totaling \$32.4 million at the end of June 2009 comprising accounts payable and accrued liabilities of \$4.6 million and \$27.9 million in deferred revenue (primarily lawyer and paralegal fees).
- Unclaimed trust funds continue to increase, now totaling \$1.9 million compared to \$1.8 million at June 30, 2008.
- Fund Balances have increased from \$39.0 million to \$39.8 million with 2009 activity analyzed on the Statement of Changes in Fund Balances. The lawyer unrestricted fund balance has increased by \$1.4 million from June 2008 reflecting the operating surplus after inter-fund transfers over the immediately preceding twelve months.

Statement of Revenues and Expenses

11. The unrestricted fund portion of the General Fund has a surplus of \$189,000 in the first half of 2009, compared with a surplus of \$4.3 million in 2008. As detailed below, this is due to a decrease in revenues of \$3.4 million and an increase in expenses of \$700,000.
 12. The restricted fund portion of the General Fund incurred a deficit for the period of \$897,000 because of the role of depreciation which is not specifically financed as part of General Fund operations.
- General Fund annual fee revenue is recognized on a monthly basis. Annual fees have increased from \$23 million in 2008 to \$26 million in 2009, with an increase of 879 lawyers and a fee increase of \$50 per lawyer. Paralegal billings for the full six months of 2009 are also reflected. The prior year comparator has May 1, 2008 as the start date for the paralegal licensing process. There were approximately 2,300 paralegals at the start of 2009 and their annual fee is \$900 (\$845 in 2008).
 - Professional development and competence revenues have decreased to \$5.6 million from \$9.3 million in 2008. This is due to an expected decrease in the number of paralegal applicants for the licensing program as the 2008 year was the first in which paralegal licensing occurred, resulting in a high initial volume of candidates. In addition, there has been a reduction in continuing education revenue as fewer programs are being offered. Finally, there was a budgeted decrease in lawyer licensing process fees from \$2,940 in 2008 to \$2,400 per candidate as a result of changes to the licensing process approved by Convocation.
 - Investment income has decreased from \$2.5 million to \$1.6 million. The main component of the reduction is the pro-rated allocation of the E&O investment surplus of \$1 million for the first half of the year compared to \$1.875 million for the first half of 2008.

Difficult market conditions such as low interest rates on short-term investments continue, but at the end of June the effect of this has been offset by improved market valuations during the first six months of the 2009.

- Included in other revenues of \$2.7 million are lawyer referral fees, Ontario Reports royalties, catering revenue and other miscellaneous revenues.
- Regulatory expenses of \$8.8 million are higher than the same period in 2008 by just under \$700,000. The 2009 budget envisaged these expenses increasing by \$3.1 million for the year in response to the increasing number of complaints and continuing influx of mortgage fraud complaints. Year to date, the increase in actual expenses is spread across most departments for the budgeted staffing increases and the costs of paralegal good character hearings.
- Professional development and competence expenses are in line with the prior year. In the light of lower CLE program volumes, continuing education staff have been re-deployed to support 2009 priorities which include changes to the licensing process and provision of support to the working groups for sole and small firms and retention of women.
- Administrative expenses are \$106,000 more than the same period in 2008, consistent with budgeted increases.
- Other expenses include benchner related payments, payments to the Federation, insurance, catering costs and other miscellaneous expenses and total \$3.2 million for the first six months of 2009.
- Capital allocation fund expenses have decreased from \$1.1 million in 2008 to \$765,000 in 2009, reflecting the timing of information technology projects, including hardware and software upgrades.
- County libraries fund expenses are \$964,000 more than for the same period in 2008 (\$5.3 million versus \$4.3 million) primarily due to the timing of transfers. Totals for the 2009 year are projected and budgeted to be \$7.4 million compared to \$7.7 million in 2008.

Changes in Fund Balances

- The Parental Leave Assistance Plan has been established with \$540,000 representing the entire annual fee allocation for the fiscal year and at June 30, \$62,000 has been paid to 13 applicants since inception. As at the end of August, applications were being received at the rate of approximately five a month, which is in line with projections for the program.
- Included in other restricted funds is the endowment fund reflecting interest earned on the fund's cash reserves and payments of \$36,000 (2008: \$15,000) made from the J. Shirley Denison Fund.

- Also included in the other restricted funds is the repayable allowance fund, which for the six months ended June 30, 2009, has provided loans totaling \$59,000 to 23 lawyer licensing process candidates (2008: \$45,000 to 15 candidates).

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

THE LAW SOCIETY OF UPPER CANADA**General Fund****Balance Sheet***Unaudited**Stated in thousands of dollars*

As at June 30		2009	2008
Assets			
Current Assets			
1	Cash	6,585	5,040
2	Short-term Investments	31,213	32,340
3	Cash and short-term investments	37,798	37,380
4	Accounts receivable	6,464	6,500
5	Prepaid expenses	335	159
6	Total current assets	44,597	44,039
7	Portfolio investments	11,422	10,708
8	Capital assets	18,119	20,022
9	Total Assets	74,138	74,769
Liabilities and Fund Balances			
Current Liabilities			
10	Accounts payable and accrued liabilities	4,573	5,300
11	Deferred revenue	27,851	28,659
12	Total current liabilities	32,424	33,959
13	Unclaimed trust funds	1,874	1,769
14	Total Liabilities	34,298	35,728
Fund Balances			
Unrestricted funds			
15	Lawyers	4,014	2,600
16	Paralegals	1,290	1,641
Restricted funds			
17	Capital allocation	4,864	4,130
18	Invested in capital assets	18,119	20,022
19	County libraries	-	(511)
20	Parental leave assistance plan	478	-
21	Other	400	484
22	Working capital reserve	10,675	10,675
23	Total Fund Balances	39,840	39,041
24	Total Liabilities and Fund Balances	74,138	74,769

THE LAW SOCIETY OF UPPER CANADA**General Fund****Statement of Revenues and Expenses***Unaudited**Stated in thousands of dollars**For the six months ending June 30*

	2009			2008		
	Unrestricted Fund	Restricted Funds	Total	Unrestricted Fund	Restricted Funds	Total
Revenues						
1 Annual fees	19,396	6,620	26,016	17,999	5,063	23,062
2 Professional development and competence	5,556	-	5,556	9,267	-	9,267
3 Investment income	1,636	1	1,637	2,542	-	2,542
4 Other	2,660	63	2,723	2,887	61	2,948
5 Total revenues	29,248	6,684	35,932	32,695	5,124	37,819
Expenses						
6 Professional regulation	8,783	-	8,783	8,095	-	8,095
7 Professional development and competence	8,210	-	8,210	8,208	-	8,208
7 Administrative	4,237	-	4,237	4,131	-	4,131
8 Other	3,184	-	3,184	3,415	-	3,415
9 Client service centre	2,544	-	2,544	2,406	-	2,406
10 Facilities	2,007	-	2,007	1,856	-	1,856
11 Policy and legal services	1,112	-	1,112	1,037	-	1,037
13 Communications	680	-	680	640	-	640
14 Equity	603	-	603	477	-	477
15 Tribunals	442	-	442	412	-	412
16 Capital allocation fund	-	765	765	-	1,100	1,100
17 Invested in capital assets - amortization	-	1,373	1,373	-	1,484	1,484
18 County libraries fund	-	5,286	5,286	-	4,322	4,322
19 Parental Leave Assistance Plan	-	62	62	-	-	-
20 Repayable allowance fund	-	59	59	-	45	45
21 Endowment	-	36	36	-	15	15
22 Special projects fund	-	-	-	-	50	50
23 Total expenses	31,802	7,581	39,383	30,677	7,016	37,693
Less: Expenses allocated to Compensation						
24 Fund	(2,743)		(2,743)	(2,304)		(2,304)
25 Net expenses	29,059	7,581	36,640	28,373	7,016	35,389
26 (Deficit) / Surplus	189	(897)	(708)	4,322	(1,892)	2,430

THE LAW SOCIETY OF UPPER CANADA**General Fund****Statement of Changes in Fund Balances***Unaudited**Stated in thousands of dollars**For the six months ending June 30*

2009												2008
Unrestricted Fund												
Lawyers	Paralegals	Total unrestricted fund	Capital Allocation	Invested in Capital Assets	County Libraries	Parental Leave	Other restricted	Working Capital Reserve	Total Restricted Funds	Total		Total
Fund balances,												
1 beginning of year	3,950	1,249	5,199	4,772	19,492	-	-	410	10,675	35,349	40,548	36,611
2 Revenues	27,847	1,401	29,248	857	-	5,286	540	1	-	6,684	35,932	37,819
3 Expenses	27,699	1,360	29,059	765	1,373	5,286	62	95	-	7,581	36,640	35,389
4 (Deficit) surplus	148	41	189	92	(1,373)	-	478	(94)	-	(897)	(708)	2,430
Interfund transfers												
5 Transfer to repayable allowance fund	(100)	-	(100)	-	-	-	-	100	-	100	-	-
6 Transfer to special projects fund	16		16	-	-	-	-	(16)	-	(16)	-	-
7 Total interfund transfers	(84)	-	(84)	-	-	-	-	84	-	84	-	-
8 Fund balances, end of period	4,014	1,290	5,304	4,864	18,119	-	478	400	10,675	34,536	39,840	39,041

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....
IN PUBLIC

.....
FOR INFORMATION

COMPENSATION FUND - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED
JUNE 30, 2009

14. Convocation is requested to receive the financial statements for the Compensation Fund for the second quarter of 2009 for information.

Law Society of Upper Canada
Compensation Fund
Financial Statement Highlights
For the six months ended June 30, 2009

Background

15. By statute, the Law Society maintains a compensation fund to mitigate losses sustained by clients as a result of the dishonesty of a member of the Law Society of Upper Canada. Prior to 2008, the fund was known as the Lawyers Fund for Client Compensation. With paralegal regulation added to the Society's mandate, the fund was renamed the Compensation Fund and now permits members of the public to seek compensation from the Society as a result of dishonesty by paralegals licensed by the Law Society, as well as by lawyers.
16. The annual Compensation Fund levy for the 2009 fiscal year was set at \$226 for lawyers and \$145 for paralegals with the adoption of the annual budget for lawyers and paralegals in November 2008. The respective figures for the 2008 year were \$220 and \$145.

One Compensation Fund, Two Pools

17. Revenues and expenses related to paralegals are segregated from those of lawyers in order to maintain separate funding pools to satisfy claims arising from each group without using the funds provided by each to satisfy claims and expenses of the other.
18. This is accomplished by segregating the Fund Balance between lawyers and paralegals on the Balance Sheet and by segregating revenues and expenses on the Statement of Revenues and Expenses and Change in Fund Balances.

Sources of Funding

19. The fund is financed by annual levies on lawyers and paralegals approved on an annual basis by Convocation. A second source of revenue for the fund is income earned on the investment of cash reserves surplus to the operating needs of the fund. A third, and far less significant funding component, is the collection of recoveries from members as a part of the disciplinary process.

Expenses of the Fund

20. In addition to claims paid to clients (currently with limits of \$150,000 for lawyers and \$10,000 for paralegals), the fund has direct administrative expenses for staff, etc. and allocated administrative expenses charged to it similar to all Law Society operating departments. Due to the roles played by the departments in assisting the fund in efficiently fulfilling its mandate, the fund pays 100% of the cost of the spot audit program (including its allocated administration costs), 25% of the costs of the investigations department and 6% of the cost of the discipline department.
21. The allocation of spot audit costs was approved by Convocation with the introduction of the program in 1998. The program is considered a significant factor in the mitigation of claims against the fund.

Financial Statements

22. The Compensation Fund Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit corporations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.
23. The Compensation Fund Financial Statements for the six months ended June 30, 2009 comprise the following statements with comparative numbers for June 30, 2008:
 - o Balance Sheet
 - o Statement of Revenues and Expenses and Change in Fund Balances

The Paralegal Pool

24. The Fund's paralegal activity commenced in the second quarter of 2008. The fund balance at the end of that year was \$7,000. After the first half of 2009 the Paralegal Pool has a balance of \$20,000.

The Lawyer Pool

25. The fund balance of \$19.7 million has slightly decreased from the amount of \$19.9 million at the beginning of the year as increased revenues did not quite offset the increase in the Reserve for unpaid grants. The fund balance has declined by \$792,000 from June 2008 in line with the operating deficit over that period.

Balance Sheet

- Cash and short-term investments have decreased from \$11.3 million to \$10.6 million June 2008 to June 2009 due to the financial deficit experienced in the 2008 financial year.
- Portfolio investments are shown at fair value of \$25.8 million compared to \$23.9 million in 2008.
- Deferred Revenue has increased from \$3.4 million to \$3.9 million due to increased annual fee revenue.
- The Reserve for unpaid grants is based on an actuarial valuation. The reserve has increased from \$11.6 million in June 2008 to \$13.2 million in June 2009 in line with the net increase in open claims and inquiry files of 22 over the period.

At the end of June 2009, the estimated paralegal claim liabilities comprised \$110,000 of the total of \$13.2 million reserve for unpaid grants.

Revenues and Expenses and Change in Fund Balances

- Annual fee revenues of \$3.9 million have increased by \$594,000 from the first half of 2008. The increase is attributable to the inclusion of paralegals and the increase of \$26 in the levy for lawyers.
- Investment income has increased from \$581,000 to \$1.3 million. As portfolio investments are shown at market value, investment income reflects the recent volatility in the securities markets. The first six months of 2008 resulted in unrealized losses of \$48,000. The first six months of 2009 has resulted in unrealized gains of \$899,000.
- Claim recoveries have reached \$193,000 for the year compared to \$24,000 in 2008, although recoveries do not follow any pattern.
- The provision for unpaid grants expense of \$2.5 million at June 2009 compares to \$2.3 million at the same time in 2008 as the number of enquiries and claims continue to increase over the period. The provision is based on an actuarial valuation.
- Spot audit costs allocated from the general fund are up \$183,000 as budgeted costs have increased over 2008, partly due to the creation of a paralegal audit team.
- Investigations and discipline costs allocated from the general fund are up \$136,000 and administrative costs are up \$123,000 as budgeted costs have increased over 2008.

THE LAW SOCIETY OF UPPER CANADA

Compensation Fund

Balance Sheet

Unaudited

Stated in thousands of dollars

As at June 30

	2009	2008
Assets		
Current assets		
1 Cash	579	1,710
2 Short-term investments	10,018	9,595
3 Cash and short-term investments	10,597	11,305
4 Interest and other receivables	538	392
5 Total current assets	11,135	11,697
6 Portfolio investments	25,778	23,893
7 Total Assets	36,913	35,590
Liabilities and Fund Balances		
Current Liabilities		
8 Accounts payable and accrued liabilities	97	128
9 Deferred revenue	3,904	3,377
10 Reserve for unpaid grants	13,201	11,602
11 Total Liabilities	17,202	15,107
Fund Balances		
12 Lawyers	19,691	20,483
13 Paralegals	20	-
14 Total Fund Balances	19,711	20,483
15 Total Liabilities and Fund Balances	36,913	35,590

THE LAW SOCIETY OF UPPER CANADA**Compensation Fund****Statement of Revenues and Expenses and Change in Fund Balances***Unaudited**Stated in thousands of dollars*

		2009			2008
<i>For the six months ending June 30</i>		Lawyers	Paralegals	Total	Total
Revenues					
1	Annual fees	3,753	151	3,904	3,310
2	Investment income	1,297	-	1,297	581
3	Recoveries	193	-	193	24
4	Total Revenues	5,243	151	5,394	3,915
Expenses					
5	Provision for unpaid grants	2,527	45	2,572	2,289
6	Spot audit	1,196	64	1,260	1,077
7	Share of investigation and discipline	769	22	791	655
8	Administrative	730	7	737	614
9	Salaries and benefits	191	-	191	227
10	Total Expenses	5,413	138	5,551	4,862
11	(Deficit)/Surplus	(170)	13	(157)	(947)
12	Fund balances, beginning of period	19,861	7	19,868	21,430
13	Fund Balances, end of period	19,691	20	19,711	20,483

FOR INFORMATION**LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED
JUNE 30, 2009**

26. Convocation is requested to receive the financial statements for the second quarter of 2009 for information.

27. The financial statements have been reviewed and approved by the board of LibraryCo.

FOR INFORMATION

LAWPRO COMBINED ERRORS & OMISSIONS INSURANCE FUND FINANCIAL
STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2009

28. Convocation is requested to receive the 2009 second quarter financial statements for LAWPRO and the Combined Errors & Omissions Fund Financial Statements for information.
29. The second quarter financial statements have been approved by the LAWPRO board.

FOR INFORMATION

LAW SOCIETY ENTITY FINANCIAL REPORTING RECOMMENDATIONS

The Committee reviewed draft Law Society financial statements which combine the General Fund, the Compensation Fund and the Errors and Omissions Insurance Fund as at June 30, 2009, in preparation for the new financial reporting format for the annual financial statements.

30. The Law Society currently produces three separate, audited, annual financial statements for the General Fund, the Compensation Fund and the Combined Errors & Omissions Insurance Fund. The latter includes a stand-alone Errors and Omissions Insurance Fund ("E&O Fund"). The Lawyers' Professional Indemnity Company (LPIC or LAWPRO) has run the E&O Fund under the terms of an administrative agreement with the Law Society. There have been no separate, published audited annual financial statements for the E&O Fund. Unaudited financial statements for the E&O Fund have been presented to the Audit Committee on a quarterly basis. Financial information related to the E&O Fund is included in the Law Society's not-for-profit tax returns.
31. The Committee has previously discussed the implications of changes in financial reporting, particularly the adoption of International Financial Reporting Standards ("IFRS"). Canadian accounting standards for Publicly Accountable Enterprises will be replaced with International Financial Reporting Standards (IFRS) for fiscal years beginning on or after January 1, 2011. LAWPRO is a publicly accountable enterprise as it reports to the insurance regulatory authorities, so LAWPRO will adopt IFRS.
32. Accounting standards pertaining to the Law Society are evolving. For our 2009 financial statements, the existing accounting standards for not-for-profit organizations will be used as required by the CICA's Accounting Standards Board.
33. LAWPRO's adoption of IFRS means the existing combination of the E&O Fund with LAWPRO will not be appropriate. It is necessary therefore, to establish a new reporting regime for the E&O Fund.

E&O Fund and Investment in LAWPRO

34. As the E&O Fund is in fact a separate fund of the Law Society, like the General Fund and Compensation Fund, it makes most sense for it to be included in the Law Society's regular financial reporting. Financial reporting based on the combination of these three funds, combining the General Fund, the Compensation Fund and the E&O Fund into one entity report, will present a more accurate and comprehensive picture of Law Society operations. One consequence of this format is that the Law Society's investment in LAWPRO will be separately disclosed in the financial statements.
35. LAWPRO took over the underwriting of the mandatory professional liability insurance program in 1990. To begin LAWPRO, the E&O Fund advanced \$5 million for shares of LAWPRO in 1990. In 1994, the then Ontario Insurance Commission regulatory test determined that the Society needed to fund LAWPRO with about \$50 million in capital. The Law Society's Insurance Report recommended that the \$50 million in capital be raised by increasing each member's annual fee by a levy of \$600 per year for four years.
36. In the period 1995 to 1997, the Society levied, through its General Fund, \$34.5 million and transferred this amount to LAWPRO.
37. In 1997, LPIC determined its actual capital needs to be \$30.6 million, not the \$34.5 million transferred, and returned the difference of \$3.9 million to the Society's E&O Fund. The \$3.9 million has remained in the Society's E&O Fund, administered by LAWPRO, to the present day. The \$3.9 million was correctly returned to the Law Society by LAWPRO, however technically it was due back to the General Fund not the E&O Fund.
38. When the Society implements a single set of entity financial statements combining the operations of the General, Compensation and E&O Funds in 2009, adjusting entries will be made in the records of the E&O Fund to reflect the Society's investment in LawPRO and the amount due from the E&O Fund to the General Fund (\$3.9 million).
39. At December 31, 2009 the Society's balance sheet will report the Society's investment in LAWPRO at \$35.6 million, which consists of the original share purchase of \$5.0 million and the contributed capital of \$30.6 million. The equivalent balances will appear in the shareholders equity section LAWPRO's balance sheet.
40. The \$3.9 million due from the E&O Fund to the General Fund will be available for the Law Society's 2010 budget purposes.

Governance

41. This change in financial reporting will also have governance implications as the stand-alone E&O Fund will no longer be reviewed by the LAWPRO board prior to being sent to the Law Society. Starting with the third quarter, the financial information for the E&O Fund will be provided by the LAWPRO finance department for inclusion in the Law Society's financial statements. The auditors will audit the new combined financial statements for the Law Society entity for the 2009 financial year. LAWPRO's quarterly and annual financial statements will continue to be reviewed by the LAWPRO board prior to being provided to the Law Society's Audit Committee.

42. Our auditors and LAWPRO were both at the Committee meeting and are both in agreement with the proposed new presentation. The attached proposed financial information is unaudited and is for illustrative purposes. Supplemental statements/notes to the financial statements will also be prepared at year end providing more detail on each of the Funds and subsidiaries.

THE LAW SOCIETY OF UPPER CANADA

Balance Sheet

Pro Forma and Unaudited

Stated in thousands of dollars

As at June 30		2009	2008
Assets			
Current assets			
1	Cash	7,472	7,609
2	Short-term investments	41,231	61,935
3	Cash and short-term investments	48,703	69,544
4	Accounts receivable	7,271	8,248
5	Prepaid expenses	335	159
6	Total current assets	56,309	77,951
7	Investment in subsidiary	35,642	35,642
8	Portfolio investments	82,552	88,834
9	Capital assets	18,119	20,022
10	Total Assets	192,622	222,449
Liabilities and Fund Balances			
Current Liabilities			
11	Accounts payable and accrued liabilities	12,868	8,356
12	Deferred revenue	30,755	48,286
13	Total current liabilities	43,623	56,642
14	Premium stabilization fund	7,650	22,649
15	Provision for unpaid grants/claims	14,822	14,005
16	Unclaimed trust funds	1,874	1,769
17	Total Liabilities	67,969	95,065
Fund Balances			
18	General fund	10,163	7,991
Restricted funds			
19	Errors and omissions insurance	60,243	64,110
20	Compensation	19,711	20,483
21	Capital allocation	4,864	4,130
22	Invested in capital assets	18,119	20,022
23	Other restricted funds	878	484
24	Working capital reserve	10,675	10,675
25	Total Fund Balances	124,653	127,384
26	Total Liabilities and Fund Balances	192,622	222,449

THE LAW SOCIETY OF UPPER CANADA

Statement of Revenues and Expenses

Pro Forma and Unaudited

Stated in thousands of dollars

Six months ended June 30, 2009

	2009			2008		
	General fund	Restricted funds	Total	General fund	Restricted funds	Total
Revenues						
2 Annual fees and levies	19,396	82,454	101,850	17,999	79,373	97,372
3 Professional development and competence	5,556	-	5,556	9,267	-	9,267
3 Investment income	636	3,281	3,917	667	2,057	2,724
4 Other	2,660	256	2,916	2,887	85	2,972
5 Total revenues	28,248	85,991	114,239	30,820	81,515	112,335
Expenses						
6 Professional regulation	7,783	-	7,783	7,195	-	7,195
7 Professional development and competence	7,110	-	7,110	7,308	-	7,308
8 Administrative	3,594	-	3,594	3,627	-	3,627
9 Other	3,184	-	3,184	3,415	-	3,415
10 Client service centre	2,544	-	2,544	2,406	-	2,406
11 Facilities	2,007	-	2,007	1,856	-	1,856
12 Policy and legal services	1,112	-	1,112	1,037	-	1,037
13 Communications	680	-	680	640	-	640
14 Equity	603	-	603	477	-	477
15 Tribunals	442	-	442	412	-	412
16 Errors and omissions insurance	-	71,519	71,519	-	71,343	71,343
17 Compensation	-	5,551	5,551	-	4,862	4,862
18 Capital allocation fund	-	765	765	-	1,100	1,100
19 Invested in capital assets - amortization	-	1,373	1,373	-	1,484	1,484
20 County libraries fund	-	5,286	5,286	-	4,322	4,322
21 Other restricted funds	-	157	157	-	110	110
22 Total expenses	29,059	84,651	113,710	28,373	83,221	111,594
23 (Deficit) surplus	(811)	1,340	529	2,447	(1,706)	741

THE LAW SOCIETY OF UPPER CANADA**Statement of Changes in Fund Balances***Pro Forma and Unaudited**Stated in thousands of dollars**Six months ended June 30, 2009*

	2009			2009								2008	
	General Fund			Restricted Funds									
	Lawyers	Paralegals	Total	Errors and omissions insurance	Compensation	Capital allocation	Invested in capital assets	County libraries	Other restricted	Working capital reserve	Total	Total	Total
1 Fund balances, beginning of year	3,950	1,249	5,199	63,708	19,868	4,772	19,492	-	410	10,675	118,925	124,124	126,643
2 Revenues	26,847	1,401	28,248	73,913	5,394	857	-	5,286	541	-	85,991	114,239	112,335
3 Expenses	27,699	1,360	29,059	71,519	5,551	765	1,373	5,286	157	-	84,651	113,710	111,594
4 Surplus (deficit)	(852)	41	(811)	2,394	(157)	92	(1,373)	-	384	-	1,340	529	741
Interfund transfers													
5 Errors and omissions Insurance	5,859	-	5,859	(5,859)	-	-	-	-	-	-	(5,859)	-	-
6 Compensation	-	-	-	-	-	-	-	-	-	-	-	-	-
7 Working capital reserve	-	-	-	-	-	-	-	-	-	-	-	-	-
8 Asset capitalization	-	-	-	-	-	-	-	-	-	-	-	-	-
9 County libraries	-	-	-	-	-	-	-	-	-	-	-	-	-
10 Transfer to capital allocation fund	-	-	-	-	-	-	-	-	-	-	-	-	-
11 Repayable allowance	(100)	-	(100)	-	-	-	-	-	100	-	100	-	-
12 Special projects	16	-	16	-	-	-	-	-	(16)	-	(16)	-	-
13 Total interfund transfers	5,775	-	5,775	(5,859)	-	-	-	-	84	-	(5,775)	-	-
14 Fund balances, end of period	8,873	1,290	10,163	60,243	19,711	4,864	18,119	-	878	10,675	114,490	124,653	127,384

FOR INFORMATION

AUDITOR PLANNING

43. Our auditors, Deloitte & Touche LLP were at the meeting to communicate with the Committee on planning the audit for the 2009 financial year.

LITIGATION REPORT

44. A copy of the latest litigation report provided to the Litigation Committee by the Society's Senior Counsel, Legal Affairs was provided to the Committee for information.

BENCHER EXPENSES AND REIMBURSEMENT

45. A schedule of bencher expenses and remuneration paid for the six months ended June 30, 2009 was reviewed by the Committee.

INVESTMENT COMPLIANCE REPORTING

46. Compliance Statements for the General Fund and Compensation Fund portfolios as at June 30, 2009 are attached for information.

STATEMENT OF INVESTMENT COMPLIANCE SHORT TERM

As at June 30, 2009

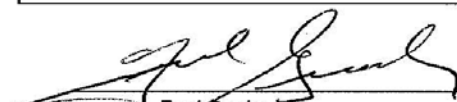
Objectives:

- the capital value is preserved
- the investments are liquid and investment grade
- investment income is maximized given the quality and liquidity constraints

COMPENSATION FUND

GENERAL FUND

Investment Parameters	Guidelines for Both	Portfolio	Compliance	Portfolio	Compliance
1. Asset Mix					
Federal & provincial treasury bills	Allowed	0%	Yes	31%	Yes
Bankers acceptances	Allowed	40%	Yes	51%	Yes
Commercial paper	Allowed	0%	Yes	0%	Yes
Investment manager Money Market Fund	Allowed	0%	Yes	0%	Yes
Premium Savings Account	Allowed	50%	Yes	16%	Yes
FGP S/T Investment Fund	Allowed	10%	Yes	2%	
2. Quality Requirements					
Commercial paper rating	Min. R1	N/A	N/A	N/A	N/A
Liquidity	Max. term to maturity of 365 days	Yes	Yes	Yes	Yes
3. Quantity Restrictions					
Commercial paper of a single corporate issuer	Max. 5% of Fund	None	Yes	None	Yes
4. Other Restrictions					
Equity securities	None	None	Yes	None	Yes
Direct investments in:					
... resource properties	None	None	Yes	None	Yes
... mortgages and mortgage-backed securities	None	None	Yes	None	Yes
... real estate	None	None	Yes	None	Yes
... venture capital financings	None	None	Yes	None	Yes
Derivatives	None	None	Yes	None	Yes



Fred Grady
Manager of Finance

**STATEMENT OF INVESTMENT COMPLIANCE
LONG TERM
As at JUNE 30, 2009**

Objectives:

- the capital value is preserved
- generate a stable source of income to assist the Law Society in funding its programs.

COMPENSATION FUND

GENERAL FUND

Investment Parameters		Guidelines	Portfolio Compliance		Portfolio Compliance	
1. <u>Asset Mix</u>						
Cash and Short-Term	0 - 20%	1%	Yes	1%	Yes	
Equity investments	5 - 20%	17%	Yes	18%	Yes	
Bonds	60 - 95%	82%	Yes	81%	Yes	
2. <u>Quality Requirements</u>						
Bonds	Min. BBB	Min. BBB	Yes	Min. BBB	Yes	
3. <u>Quantity Restrictions</u>						
Equities:						
single holding	Max. 10%	None	Yes	None	Yes	
weight in portfolio > weight in S&P/TSX Composite Index	Varies	None	Yes	None	Yes	
derivatives etc.	None	None	Yes	None	Yes	
Non-Canadian or U.S.	None	None	Yes	None	Yes	
Bonds:						
single security or issuer (non-government)	Max. 10%	None	Yes	None	Yes	
corporate issues	Max 50%	44%	Yes	40%	Yes	
provincial govt. issues	Max 60%	7%	Yes	None	Yes	
municipal issues	Max 10%	None	Yes	None	Yes	
foreign issues	Max 10%	None	Yes	None	Yes	
BBB issues	Max. 10%	1%	Yes	None	Yes	


 Fred Grady
 Manager of Finance

**The Law Society of Upper Canada
Compensation Fund
Manager: Foyston, Gordon & Payne Inc.
Compliance Report
(Period ending June 30, 2009)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	10%	20%	Y
Bonds	60%	77%	95%	Y
Total Fixed Income	80%	87%	95%	Y
North American Equity	5%	13%	20%	Y
Total Equity	5%	13%	20%	Y
Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.				Y
Max. 10% in BBB rated bonds.				Y
Max. 100% in Federal government or Federal government guaranteed bonds.				Y
Max. 50% in Provincial government and Provincial government guaranteed bonds.				Y
Max. 10% in Municipal bonds.				Y
Max. 50% in Corporate issues.				Y
Max. 10% in non-Government issuers.				Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer or Canadian issuer in a foreign currency.				Y

*If policy not complied with, comment on specifics.

July 20, 2009
Date:



Stephen P. Copeland
Portfolio Manager

**The Law Society of Upper Canada
General Fund
Manager: Foyston, Gordon & Payne Inc.
Compliance Report
(Period ending June 30, 2009)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	10%	20%	Y
Bonds	60%	77%	95%	Y
Total Fixed Income	80%	87%	95%	Y
North American Equity	5%	13%	20%	Y
Total Equity	5%	13%	20%	Y
Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.				Y
Max. 10% BBB rated bonds.				Y
Max. 100% in Federal government or Federal government guaranteed bonds.				Y
Max. 50% in Provincial government and Provincial government guaranteed bonds.				Y
Max. 10% in Municipal bonds.				Y
Max. 50% in Corporate issues.				Y
Max. 10% in non-Government issuers.				Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer or Canadian issuer in a foreign currency.				Y
Bond portfolio duration 1 to 4 years.				Y

*If policy not complied with, comment on specifics.

July 20, 2009

Date:



Stephen P. Copeland
Portfolio Manager

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

- (1) Copy of LibraryCo Inc. Financial Report for the 6 months ended June 30, 2009.
(pages 26 – 34)
- (2) Copy of the Report to the Audit Committee of The Law Society of Upper Canada –
September 9, 2009.
(pages 36 – 54)

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

REPORTS FOR INFORMATION

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

- Professor Fiona Kay Studies
- Equality Series Calendar 2009 - 2010

Access to Justice Committee

- Update on Ontario Civil Legal Needs Project

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

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Paul Copeland
Mary Louise Dickson
Avvy Go
Susan Hare
Doug Lewis
Dow Marmur
Judith Potter
Linda Rothstein
Beth Symes

Purpose of Report: Information

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

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on September 10, 2009. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson, Avvy Go, Dow Marmur, Judith Potter and Beth Symes participated. Nathalie Boutet, representative of the Association des juristes d'expression française de l'Ontario. Staff member Josée Bouchard attended.

FOR INFORMATION

PROFESSOR FIONA KAY STUDIES

Transitions Study

2. Professor Fiona Kay, Queen's University, received a grant from the Social Sciences and Humanities Research Council of Canada and the Law School Admissions Council to undertake a 20 year follow-up study to three surveys of the profession conducted in 1990, 1996 and 2002. The *Transitions* study is a longitudinal study of Ontario lawyers. The first survey took place in 1990 and involved a 15-year cohort of lawyers (lawyers called to the bar between 1975 and 1990). This cohort was purposely selected because it represented the first cohort of law graduates where the number of women was sufficiently sizeable to enable statistical analyses. The sample was stratified to include 50% men and 50% women, and also included a stratum of law graduates who had left law practice.

3. The study focuses on job transitions across careers, including transitions between sectors of practice, full and part-time work, across areas of law, promotions and mobility routes, as well as departures (and re-entries) to the practice of law. As such the questionnaires include an array of questions intended to tap work histories, family circumstances, work conditions and career satisfaction. The study has produced several reports over the years to the Law Society and been instrumental in shaping policy recommendations.
4. The *Transitions* study is about to become a 20-year follow up study in 2009. The original cohort received was surveyed in 1990, 1996, and 2002. The response rate to each of these surveys was excellent – approximately 70% on each ‘panel.’ The fourth panel is to take place in the fall of 2009.
5. Each ‘panel’ has explored new themes in addition to the work histories and life course dynamics. For example, the 2002 survey also explored mentorship across legal careers. The 2009 survey will integrate new questions on pro bono work, social and community participation, family responsibilities (including parenting and elder care), and general well-being.
6. The total number of individuals to be surveyed in this fourth panel is 743 (all individuals who had responded to the prior survey conducted in 2002).
7. The project is funded by the Social Sciences and Humanities Research Council of Canada and the Law School Admissions Council. Professor Fiona Kay at Queen’s University is the Principal Investigator.
8. The Law Society of Upper Canada is not asked to fund the project, but is asked for assistance in providing the names and addresses of members involved in this unique study. It is anticipated that the survey will be conducted in the fall 2009.

Career Diversity Study

9. Professor Kay also received funding to undertake a second study that will examine the factors leading to departures from law practice as well as the different conditions that operate either as barriers to or facilitators of re-entry to law practice following a period of absence.
10. The study consists of a questionnaire that includes the following topics:
 - a. education and professional training;
 - b. work history (key transitions prior to departure from practice);
 - c. duration of absence from the practice of law and activity (occupation) during this span;
 - d. mentoring and networking (support, networking strategies, and professional development);
 - e. returning to practice (intentions, points of re-entry, strategies, preparation, and job-seeking tactics);
 - f. resources to enable re-entry to practice (useful as identified by respondents);
 - g. family and household responsibilities;
 - h. demographic information.

11. The survey will consist of a sample of newer entrants (individuals called to the bar as of 1990 to 2009), spanning nearly twenty years of calls to the Ontario Bar. Approximately 5000 members will be surveyed. It is expected that the survey will be conducted in the fall 2009. The Law Society of Upper Canada's assistance is requested to provide names and addresses for inclusion in the study.

PUBLIC EDUCATION EQUALITY SERIES CALENDAR
2009 - 2010

12. The following dates for Public Education Equality Series events are tentative:
- a. Louis Riel Day Reception - November 16, 2009
 - i. Convocation Hall - 6:00 - 8:00 p.m.
 - b. Women's Law Association Mentoring Committee & Law Society Panel Discussion: Practice Management and Business Development for Women Lawyers – Date TBD
 - i. Lamont Learning Centre (date TBD)
 - c. Judicial Appointments Advisory Committee Information Session and Networking Event - November 19, 2009 (tentative)
 - i. Lamont Learning Centre
 - d. Canadian Association of Black Lawyers (CABL) & Law Society Practice Management CLE - Date in November to be determined with CABL.
 - i. Lamont Learning Centre
 - e. Rule Of Law Series Event - International Human Rights Day - December 9, 2009
 - i. Lamont Learning Centre 4:00 - 6:00 p.m.
 - ii. Convocation Hall 6:00 - 8:00 p.m.
 - f. Access Awareness - Disability Issues and Law Forum
 - i. Date and time for late January to be determined with external partners
 - g. Black History Month - February 10, 2010
 - i. Lamont Learning Centre 4:00 - 6:00 p.m.
 - ii. Convocation Hall 6:00 - 8:00 p.m.
 - h. International Women's Day - March 1 or 8, 2010
 - i. Lamont Learning Centre (time to be determined)
 - ii. Convocation Hall 6:00 - 8:00 p.m. (reception will depend on time of panel discussion or format of event)
 - i. Rule Of Law Series - March 22 or 24, 2010
 - i. Lamont Learning Centre 4:00 - 6:00 p.m.
 - ii. Convocation Hall 6:00 - 8:00 p.m.
 - j. Holocaust Memorial Day - April 12, 2010
 - i. Lamont Learning Centre 4:00 - 6:00 p.m.
 - ii. Convocation Hall 6:00 - 8:00 p.m.

- k. Asian Heritage Month - May 10, 2010
 - i. Lamont Learning Centre 4:00 - 6:00 p.m.
 - ii. Convocation Hall 6:00 - 8:00 p.m.
- l. National Aboriginal Day - June 14, 2010
 - i. Lamont Learning Centre 4:00 - 6:00 p.m.
 - ii. Convocation Hall 6:00 - 8:00 p.m.
- m. Pride Week - June 21, 2010
 - i. Lamont Learning Centre 4:00 - 6:00 p.m.
 - ii. Convocation Hall 6:00 - 8:00

Report to Convocation
September 24, 2009

Access to Justice Committee

Access to Justice Committee
Marion Boyd, Co-Chair
Paul Schabas, Co-Chair
Avvy Go, Vice-Chair
Paul Dray
Susan Elliott
Glenn Hainey
Susan McGrath
Julian Porter
Jack Rabinovitch
William Simpson
Catherine Strosberg
Bonnie Tough

Purpose of Report: Information

Prepared by the Equity Initiatives Department
(Marisha Roman, Aboriginal Initiatives Counsel - 416-947-3989)

COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on September 9, 2009. Committee members Marion Boyd (Co-Chair), Paul Schabas (Co-Chair), Avvy Go (Vice-Chair), Paul Dray, Glenn Hainey, Susan McGrath, Julian Porter, William Simpson, and Catherine Strosberg participated. Susan Elliott and Jack Rabinovitch attended by telephone. Carl Fleck attended as a guest. Staff member Marisha Roman attended.

FOR INFORMATION

ONTARIO CIVIL LEGAL NEEDS PROJECT

2. On June 26, 2008, Convocation approved the Law Society's participation in the Ontario Civil Legal Needs Project, as well as the contribution of funds and staff resources to manage the project. The Law Society is providing support totaling \$150,000, with \$120,000 in financial support and \$30,000 in in-kind support. The financial support was confirmed at the November 27, 2008 meeting of Convocation.
3. The Law Society's partners in the Project, Pro Bono Law Ontario and Legal Aid Ontario, are contributing \$75,000 and \$50,000, respectively. Through its Major Grants Committee, the Law Foundation of Ontario is contributing \$60,000.
4. The total budget for the Project is \$305,000.
5. The Project Steering Committee members include Marion Boyd as representative of The Law Society, Lorne Sossin as representative of Pro Bono Law Ontario, and John McCamus as representative for Legal Aid Ontario. The Honourable Roy McMurtry is the chair.
6. Through a request for proposals (RFP) process, Environics Research Group was selected by the Steering Committee as the research consulting firm for Phases I and II of the Project. Phase I is a telephone survey of 2,000 low- and middle-income Ontarians in French and English. Phase II is a series of focus groups with legal service and information providers as well as legal service users throughout Ontario. .
7. The Project remains on schedule. Phase I was completed by June 30 and Phase II was completed by August 30.
8. The Steering Committee received the topline results report for Phase I at its August 25 meeting. It awaits the final report and analysis from Environics Research Group on the findings of Phases I and II.

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 29th day of October, 2009

Treasurer