

MINUTES OF CONVOCATION

Thursday, 22nd April, 2004
9:00 a.m.

PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Aaron, Alexander, Backhouse, Banack, Bobesich, Bourque, Champion, Carpenter-Gunn, Caskey, Cass, Chahbar, Cherniak, Coffey, Copeland, Curtis, Dickson, Doyle, Dray, Ducharme, Eber, Elliott, Feinstein, Filion, Finkelstein, Finlayson, Furlong, Gold, Gotlib, Gottlieb, Harris, Heintzman, Hunter, Krishna, Lawrence, Legge, MacKenzie, Murphy, Murray, O'Brien, O'Donnell, Pattillo, Pawlitza, Porter, Potter, Ross, Ruby, Silverstein, Simpson, Swaye, Symes, Warkentin and Wright.

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Secretary: Katherine Corrick

The reporter was sworn.

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MOTION – DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Banack, seconded by Ms. Dickson that the Draft Minutes of Convocation of March 25, 2004 be confirmed.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

Re: Candidates for Call to the Bar

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Professional Development and Competence asks leave to report:

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 22nd, 2004:

Yeon Yi Cha	Bar Admission Course
Christian Jacques Deslauriers	Bar Admission Course
Adrian Mark Di Giovanni	Bar Admission Course
Ian William Kent Furlong	Bar Admission Course
Stella Harmantas	Bar Admission Course
Sadeka Hedaraly	Bar Admission Course
Bobbette Marcia Jones-Keita	Bar Admission Course
Dzovag Ani Kevork	Bar Admission Course
Ashfaq Abdulrazak Husain Khalfan	Bar Admission Course
Kikelomo Olabis Lawal	Bar Admission Course
Paola Dorothee Ng Sui Hing	Bar Admission Course
Sarah Shaikh	Bar Admission Course
Peter Roland Erasmus Stieda	Bar Admission Course
Sophia Loraine Williams	Bar Admission Course
Peter Yoo	Bar Admission Course

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

B.1.4. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 22nd, 2004:

Malgorzata Aleksandra Maria Bawolska	Province of British Columbia
Lynette Alyssa Corbett	Province of Alberta
Dana Jodene Goodfellow	Province of British Columbia
Samuel Nathaniel Mason	Province of Alberta
Estella Rhona Namakula Muyinda	Province of Manitoba
Stephen Gregory Nicol	Province of Nova Scotia

ALL OF WHICH is respectfully submitted

DATED this the 22nd day of April, 2004

It was moved by Mr. Hunter, seconded by Mr. Simpson that the Report of the Director of Professional Development & Competence setting out the candidates for the Call to the Bar, be adopted.

Carried unanimously

ROLL-CALL VOTE

Aaron	For	Legge	For
Alexander	For	MacKenzie	For
Backhouse	For	Murray	For
Banack	For	O'Donnell	For
Bobesich	For	Pattillo	For

Bourque	For	Pawlitza	For
Campion	For	Porter	For
Carpenter-Gunn	For	Potter	For
Caskey	For	Ross	For
Chahbar	For	Silverstein	For
Cherniak	For	Simpson	For
Coffey	For	Swaye	For
Curtis	For	Symes	For
Dickson	For	Warkentin	For
Dray	For	Wright	For
Eber	For		
Elliott	For		
Feinstein	For		
Filion	For		
Finkelstein	For		
Finlayson	For		
Gotlib	For		
Harris	For		
Heintzman	For		
Hunter	For		

It was moved by Mr. Campion, seconded by Mr. Finkelstein that a committee be struck with five members, including Mr. Aaron, to review the policy that a roll call vote be done at the request of any bencher.

Withdrawn

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Mr. Ruby then presented them to Mr. Justice Donald R. Cameron to sign the rolls and take the necessary oaths.

Yeon Yi Cha	Bar Admission Course
Christian Jacques Deslauriers	Bar Admission Course
Adrian Mark Di Giovanni	Bar Admission Course
Ian William Kent Furlong	Bar Admission Course
Stella Harmantas	Bar Admission Course
Sadeka Hedaraly	Bar Admission Course
Bobbette Marcia Jones-Keita	Bar Admission Course
Dzovag Ani Kevork	Bar Admission Course
Ashfaq Abdulrazak Husain Khalfan	Bar Admission Course
Kikelomo Olabis Lawal	Bar Admission Course
Paola Dorothee Ng Sui Hing	Bar Admission Course
Sarah Shaikh	Bar Admission Course
Peter Roland Erasmus Stieda	Bar Admission Course
Sophia Loraine Williams	Bar Admission Course
Peter Yoo	Bar Admission Course
Malgorzata Aleksandra Maria Bawolska	Transfer, Province of British Columbia
Lynette Alyssa Corbett	Transfer, Province of Alberta
Dana Jodene Goodfellow	Transfer, Province of British Columbia
Samuel Nathaniel Mason	Transfer, Province of Alberta
Estella Rhone Namakula Muyinda	Transfer, Province of Manitoba
Stephen Gregory Nicol	Transfer, Province of Nova Scotia

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REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Ruby presented the Report of the Finance & Audit Committee.

Paula Jesty and Sam Persaud of Deloitte & Touche, LLP were present in Convocation.

Finance and Audit Committee
 April 8, 2004

Report to Convocation

Purpose of Report: Decision
 Information

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

THE REPORT

1. The Finance and Audit Committee (“the Committee”) met on April 8, 2004. Committee members in attendance were: Clay Ruby (c.), Abdul Chahbar (v.c.), Peter Bourque, Andrew Coffey, Paul Dray, Allan Lawrence, Ross Murray, Laurie Pattillo, Alan Silverstein, Gerry Swaye, Beth Symes and Bradley Wright. Michelle Strom and Young Kim represented LawPro. Suzan Hebditch and Gavin MacKenzie represented LibraryCo Inc. David Ross, Paula Justy and Sam Persaud represented Deloitte & Touche LLP. Staff attending were Fred Grady, Ray White and Andrew Cawse.

2. The Committee is reporting on the following matters:

For Decision

- General Fund audited annual financial statements
- Lawyers Fund for Client Compensation audited annual financial statements
- Errors and Omissions Insurance Fund audited combined annual financial statements
- Appointment of Auditor

For Information

- Lawyers’ Professional Indemnity Company audited annual financial statements
- LibraryCo Inc. audited annual financial statements
- Investment Compliance Reports.
- Administration correspondence (in camera)

GENERAL FUND AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2003**Request to Convocation**

Convocation is requested to approve the annual financial statements for the General Fund.

3. The draft, audited annual financial statements for the General Fund for the year ended December 31, 2003 with accompanying management analysis are attached (page 5).

LAWYERS FUND FOR CLIENT COMPENSATION AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2003**Request to Convocation**

Convocation is requested to approve the annual financial statements for the Compensation Fund.

4. The draft, audited annual financial statements for the Compensation Fund for the year ended December 31, 2003 with accompanying management analysis are attached (page 19).

ERRORS AND OMISSIONS INSURANCE FUND AUDITED COMBINED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2003**Request to Convocation**

Convocation is requested to approve the combined annual financial statements for the Errors and Omissions Fund.

5. The draft, audited combined annual financial statements for the Errors and Omissions Fund for the year ended December 31, 2003 with accompanying management analysis are attached (page 26). Ms. Michelle Strom, President of LawPro, will be in attendance to answer questions.

LAW SOCIETY AUDITOR**Request to Convocation**

Convocation is requested to approve the appointment of Deloitte & Touche LLP as Law Society auditors for the 2004 financial year.

6. Convocation appoints the Law Society auditors on the advice of the Finance & Audit Committee. This has been Deloitte & Touche's second year as Law Society auditor.

FOR INFORMATION:**LAWYERS' PROFESSIONAL INDEMNITY COMPANY AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2003**

7. The audited annual financial statements for the Lawyers' Professional Indemnity Company for the year ended December 31, 2003 are attached for information (page 37). Ms. Michelle Strom, President of LawPro, will be in attendance to answer questions.

LIBRARYCO INC. AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2003

8. The audited annual financial statements for LibraryCo Inc. for the year ended December 31, 2003 are attached for information (page 51). Ms. Suzan Hebditch, Executive Director of LibraryCo Inc., will be in attendance to answer questions.

INVESTMENT COMPLIANCE REPORTS

9. Investment Compliance Reports for the quarter ended December 31, 2003 for the General Fund and the Lawyers Fund for Client Compensation are attached (page 62). The Reports confirm there are no breaches in compliance.

SYSTEMS OF INTERNAL CONTROL (confidential)

10. A copy of the management letter from Deloitte & Touche LLP including the Law Society's response is attached for information (page 69).

ATTACHMENTS TO FINANCE AND AUDIT COMMITTEE REPORT

Law Society of Upper Canada
General Fund
Financial Statement Highlights
For the year ended December 31, 2003

The Society's General Fund comprises its unrestricted fund, funds restricted by Convocation for special purposes and endowment funds held in trust. The Capital Fund, which records transactions of a capital nature, is one of the funds restricted by Convocation. The Society's annual membership fee is based on the financial requirements of the restricted and unrestricted funds.

BALANCE SHEET

Cash and short-term investments

Cash and short-term investments have increased by approximately \$1.3 million from the 2002 year end to \$26.2 million. \$10 million will be invested in a new long-term portfolio in 2004. The short-term investments include government backed securities and money market instruments issued by major Canadian Banks.

Deferred revenue

Deferred revenue of \$1.9 million has decreased by \$2.6 million from 2002. It is predominantly 2004 membership fees received in 2003.

Unclaimed trust funds

Unclaimed trust funds continue to increase with the current balance at \$729,000. These are trust monies turned over to the Society by members who are unable to locate the person or persons to whom the monies are owed. By statute, the Society administers these funds, in perpetuity, with the net income from the funds transferred to the Law Foundation of Ontario annually. No claims have been made against the fund to date.

STATEMENT OF REVENUES AND EXPENSES

Law Society operations generated a surplus of \$3.9 million in 2003.

Membership fees

Membership fees for 2003 are \$33.8 million, 5% less than 2002 as a result of a reduction in the annual general membership levy from \$1,328 to \$1,209 (9%), offset by the net increase in membership numbers of approximately 1,000.

Professional development and competence

In 2003, the Professional Development and Competence Department fulfilled its primary objective of addressing member needs to fulfill minimum expectations for professional development as set out in the Competence Mandate. Achieving this objective can be measured by the continued expansion of Law Society competence products and service offerings and increasing attendance at post-call education (“PCE”) programs – the 38% increase in attendance in 2002 was followed by a 56% increase in attendance in 2003.

At \$11.2 million PD&C revenues have remained static with 2002. The registration cost for attending a program delivered electronically is significantly less than programs where physical attendance is required and in 2003 half the programs were presented electronically compared to none in 2002. This has improved program affordability, accessibility, relevance and flexibility. The Bar Admission Course enrolment and tuition fees were at the same levels as 2002.

The Law Society works co-operatively with other not-for-profit legal education providers in the provision of PCE products. We are able to tailor product lines to meet the demands of the market or adjust costs in the face of lower revenue expectations.

In 2003, increased participation in PCE resulted in increased variable costs particularly as developing flexible electronic delivery formats is more expensive than maintaining the more traditional learning formats. However Bar Admission Course expenses declined by more than 10% due to improvements in delivery resulting in total PD&C expenses of \$14.5 million being comparable on a year over year basis.

Professional Regulation

In 2003, the focus of the Professional Regulation Division was to analyse and improve its underlying business process, with a view to improve efficiency, effectiveness, transparency, accountability and timeliness. As planned, the Division’s business process report was completed. Resulting improvements included the development of a staff procedures manual, templates, targets and measures, and two new departments, Intake and also Monitoring and Enforcement. The remainder of the business process plan will be implemented in 2004 along with a case management system.

The increase in the expenditures for Professional Regulation from \$8.3 million in 2002 to \$9.0 million in 2003 was due to the above initiatives, divisional restructuring and the additional expenses incurred as a result of the increasing numbers of mortgage fraud investigations which are unusually resource intensive. The organizational changes made in 2003 are expected to lead to more predictable budget performance in future years, and close alignment with production targets. The reorganization, with the establishment of an enforcement staff is also expected to result in improved cost recoveries.

The Division’s objective is to respond to allegations of misconduct or incapacity on the part of lawyers, and to the extent that it is possible, to deter other lawyers from engaging in similar conduct. The Division will be working with PD & C to develop opportunities for support or education in practice areas which the regulatory function has identified as susceptible to problems.

Investment income

Investment income has increased to \$4.0 million from \$3.3 million because of increased principal balances over the year, improved returns and an increase of \$400,000 to \$3 million in the transfer of income from the Errors and Omissions Fund.

Other

The decrease in other expenses of \$1.4 million is attributable to non-recurring expenditures experienced in 2002 such as litigation and reorganization costs.

Law Society of Upper Canada
Financial Statement Management Highlights and Analysis
Lawyers Fund for Client Compensation
For the year ended December 31, 2003

The Lawyers Fund for Client Compensation has enjoyed a third consecutive year of moderate claims against the Fund. This has contributed to an increase of \$2.5 million in the Fund's year end balance from \$14.9 million to \$17.4 million.

BALANCE SHEET

Cash and short-term investments

The Compensation Fund's balance sheet continues to strengthen after revenues exceeded expenses for the third year. Cash and short-term investments decreased by \$4 million to \$8.2 million due to a transfer of \$5 million to portfolio investments. The Compensation Fund's short-term investments are invested in bankers acceptances, Government of Canada T-bills and cash.

Portfolio investments

The Compensation Fund's portfolio investments of \$19.8 million are invested in high quality fixed income (83%) and equity (17%) products with a long-term investment horizon. The market value of the portfolio is \$20.4 million.

Reserve for unpaid grants

Based upon the actuarial valuation of the grant reserve, the reserve for unpaid grants has decreased by \$800,000 to \$9.8 million.

STATEMENT OF REVENUES AND EXPENSES AND CHANGE IN FUND BALANCE

Revenues

Membership fees

The Compensation Fund's claim experience in recent years has permitted a decrease in membership fees declining from \$290 per member in 2002 to \$280 per member in 2003. This decrease was offset by an increase in the number of members, leading to static total membership fees of \$7.8 million.

Investment Income

The Compensation Fund's investment income in 2003 increased to \$1.3 million from \$542,000 because of capital gains and higher returns from the fixed income portfolio. 2002 investment income was reduced by a provision for decline in the value of equity investments of \$320,000.

Expenses

Grants

The net grants expense decreased from \$2.8 million in 2002 to \$1.7 million due to favourable developments on claims reported prior to 2003 and the resultant reduction in required reserves for these claims.

Other expenses

The Compensation Fund's operating expenses increased from 2002. In departments such as Spot Audit more complete staff complements allowed more complete development and implementation of departmental mandates.

MANAGEMENT DISCUSSION AND ANALYSIS

ERRORS AND OMISSIONS INSURANCE FUND

COMBINED STATEMENT OF REVENUE AND EXPENSES

In 2003, the Errors and Omissions Insurance Fund generated an excess of revenue over expenses of \$12.8 million, a decrease of \$5.5 million from 2002. Total expenses increased by \$2.1 million in 2003 and revenues decreased by \$3.4 million to \$103.2 million.

Members' Levies

Members' levies increased \$2.1 million in 2003 from \$75 million to \$77.1 million. While the base annual levy for the Ontario professional liability program dropped by \$200 to \$2,500 in 2003, the number of insured members continued to increase.

Other Insurance Premiums

Other insurance premiums increased to \$9.3 million from \$7.8 million in 2002 as a result of growth in non-mandatory programs including title and excess professional liability insurance.

Reinsurance Commissions

LAWPRO earns base commissions on that portion of premium ceded to reinsurers plus additional commissions for profitable results. The decrease of almost \$7.3 million noted in 2003 reflects the discontinuance of reinsurance treaties for the Ontario professional liability and title insurance programs. Because of the improved capital position paired with the unsettled reinsurance market in 2003, LAWPRO chose to assume the risks of these programs, rather than purchase reinsurance as had been done in prior years.

Investment Income

The Combined Fund generated \$13.7 million of investment income, an increase of \$0.2 million from the prior year. Typically, over 85% of the investment portfolio consist of debt securities. At year-end, the market value of the portfolio exceeded book value by almost \$10 million (2002 - \$2.2 million), largely attributable to recovery in LAWPRO's equity holdings.

Net Claims and Adjustment Expenses

The increase in net claims and adjustment expenses of approximately \$32.2 is principally due to the change in reinsurance arrangements described above.

Reinsurance Premiums

No reinsurance was purchased in 2003 for both the Ontario professional liability and title insurance lines of business. The insurance company continues to fully reinsure the excess professional liability insurance program.

General Expenses

The increase in general expenses of \$0.9 million from 2002 levels is primarily attributable to increased compensation and benefits related costs.

COMBINED BALANCE SHEET

Investments

Investment assets, inclusive of cash and cash equivalents, increased by \$27.3 million to \$329.1 million at December 31, 2003 largely a result of the change in reinsurance arrangements for 2003. These additional funds are held to pay future claims. Investment assets are managed in accordance with investment policy in a diversified, high quality portfolio.

Provision for Unpaid Claims and Adjustment Expenses and Reinsurer's Share of Provision

The reinsurer's share of the provision for unpaid claims and adjustment expenses decreased from \$133.1 million in 2002 to \$110.9 million in 2003. The decline is due to the transitional effects of ceding lesser portions of the Ontario professional liability program. The percentage ceded dropped in stages from 57% in 1995 to nil in 2003. The provision for unpaid claims, which represents the amount required to satisfy all obligations to claimants without offset for reinsurance, has increased from \$308.5 million in 2002 to \$311.8 million in 2003.

Surplus

The surplus has increased by \$12.8 million, the excess of revenue over expenses for the year.

LAWYERS' PROFESSIONAL INDEMNITY COMPANY

Management Discussion and Analysis

Income Statement

In 2003, the Company generated net income of \$7.5 million, a decrease of \$5.4 million over 2002.

Premiums earned

Premiums increased by \$3.6 million to \$86.4 million in 2003. Both the optional Excess and the TitlePLUS programs experienced growth in the year. In the core professional liability program, total premiums also increased despite a reduction in base rates.

Reinsurance ceded

Because of the Company's strong capital position paired with the unsettled reinsurance market in 2003, the Company chose to assume the risks of the core professional liability and TitlePLUS programs, rather than purchase reinsurance as it had done in prior years. Accordingly, reinsurance costs decreased by \$27 million in 2003.

The optional Excess program continues to be reinsured at 100%, removing exposure to the Company from claims in this program. The Company only assumes 10% of the risk from the program it manages for the Law Society of Newfoundland.

Net claims and adjustment expenses

While net incurred claims cost increased by \$32.1 million in 2003, this difference is principally due to the change in reinsurance arrangements described above. The 2002 figure is also net of an improvement in prior year loss estimates in the amount of \$5.2 million. The number of new claims reported in 2003 was marginally lower than that seen in 2002, but rising legal costs are expected to offset much of the benefit this may create.

General expenses

Overall, 2003 general expenses were generally consistent with the prior year, with rising personnel costs accounting for the bulk of the increase noted.

Commissions earned

In 2002, the Company earned reinsurance commissions of \$10.3 million consisting of commissions based on the total premiums ceded to reinsurers, plus additional commission for profitable results. The decrease of \$7.3 million in 2003 reflects the discontinuance of quota share treaties for the core professional liability and TitlePLUS programs.

Investment income

Income generated from investments in 2003 was relatively consistent with 2002. Investment income includes net capital losses of \$0.6 million realized on disposition of assets (2002 - \$1.2 million). At December 2003 the market value of the investment portfolio exceeds book value by \$9.0 million (2002 - \$0.5 million).

Provision for income taxes

Corporate tax rates dropped 2% from 2002, and this change is reflected in the 2003 tax expense.

Balance Sheet

Shareholders' equity increased by \$7.5 million, net income earned during the year.

Investments

Investment assets, inclusive of cash and short term deposits, increased by \$22.9 million to \$263.7 million at December 31, 2003. The increase was primarily the result of cash provided by operations and investment income generated by the portfolio. Investment assets are invested in accordance with investment policy approved by the Company's Board of Directors in a diversified, high quality portfolio consisting largely of fixed income securities and preferred shares which are matched for maturity to expected claims payments.

Part of the Company's portfolio includes equity investments in publicly traded companies, the values of which are subject to market volatility.

Provision for unpaid claims and adjustment expenses and Reinsurer's share of provision

The provision for unpaid claims represents the amount required to satisfy all of the Company's obligations to claimants without offset for reinsurance. This has increased by \$10.3 million. Reinsurance recoveries have declined by \$22.0 million and accordingly the net change in provision is \$32.3 million. These changes are the result of the addition of claims for the 2003 year, net of payments, during the year. The decline in the reinsurance recoveries reflects the reduced share of the Ontario program ceded, which decreased from 50% in 2000 to 0% in 2003.

The estimation of claims liabilities introduces processes that generate measurement uncertainty and are subject to variation. The Company attempts to ensure these estimates are prudently conservative.

Law Society of Upper Canada
Financial Statement Management Highlights and Analysis
LibraryCo Inc.
For the year ended December 31, 2003

LibraryCo Inc. is mandated to carry on the central management of the Ontario County and District Law Library system on a not-for-profit basis in accordance with the objectives of the *Blended System* framework for the purpose of developing and enhancing skills for the "competent lawyer" in Ontario.

STATEMENT OF REVENUES AND EXPENSES

Total revenues were consistent with 2002, approximating \$6.7 million. LibraryCo's short term financial plans include budgeting to utilize funds from the Reserve Fund. In 2003, \$112,000 (2002: \$23,000) was transferred from the Reserve Fund to offset the excess of operating expenses over revenues.

Revenues

The \$6.7 million total revenues in 2003 consisted of grants of \$5.8 million (2002: \$5.4 million) from the Law Society and \$850,000 (2002: \$1.3 million) from the Law Foundation of Ontario. The 2003 County Library levy collected by the Law Society was \$195 per member (2002: \$208) with membership numbers increasing and \$323,000 also being transferred from the General Fund's County Library restricted fund.

Expenses

Like 2002, expenses required for the operation of the 48 County and District law libraries make up \$6.4 million of the total \$6.8 million in expenses. These expenses are primarily for collections – traditional and electronic, personnel and operations. LibraryCo continues to balance the demand for materials from the various libraries and to provide education in the use of these materials. LibraryCo is also striving to maintain the balance between traditional and electronic resources and therefore to make reliable, relevant, current and historic legal information accessible to all County and District law libraries.

The mix of expenses is consistent with prior years. \$403,000 (2002: \$366,000) was spent on head office operations and administration of the library system. The position of Roving Law Librarian was in place for the full 2003 year.

BALANCE SHEET

There were no significant changes in balance sheet categories or values during the year. The Reserve Fund of \$1.7 million (2002: \$1.8 million) is restricted for County and District law library purposes as approved by the Board of Directors.

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

- (1) Copy of the draft, audited annual financial statements for the General Fund for the year ended December 31, 2003. (pages 5 - 18)
- (2) Copy of the draft audited annual financial statements for the Compensation Fund for the year ended December 31, 2003. (pages 19 – 25)
- (3) Copy of the draft audited combined annual financial statements for the Errors and Omissions Fund for the year ended December 31, 2003. (pages 26 – 36)
- (4) Copy of the audited annual financial statements for the Lawyers' Professional Indemnity Company for the year ended December 31, 2003. (pages 37 – 50)
- (5) Copy of the audited annual financial statements for LibraryCo Inc. for the year ended December 31, 2003. (pages 51 – 61)
- (6) Copy of the Investment Compliance Reports for the quarter ended December 31, 2003 for the General Fund and the Lawyers Fund for Client Compensation. (pages 62 – 68)

- (7) CONFIDENTIAL Copy of the management letter from Deloitte & Touche LLP including the Law Society's response.
(pages 69 – 77 in camera)

Re: Appointment of Auditor

It was moved by Mr. Ruby, seconded by Mr. Chahbar that Convocation approve the appointment of Deloitte & Touche LLP as Law Society auditors for the 2004 financial year.

Carried

ROLL-CALL VOTE

Aaron	Against	Krishna	For
Alexander	For	Legge	For
Backhouse	For	MacKenzie	For
Banack	For	O'Brien	For
Bobesich	For	O'Donnell	For
Bourque	For	Pattillo	For
Campion	For	Pawlitza	For
Carpenter-Gunn	For	Porter	For
Caskey	For	Potter	For
Chahbar	For	Ross	For
Cherniak	For	Ruby	For
Coffey	For	Silverstein	For
Curtis	For	Simpson	For
Dickson	For	Swaye	For
Doyle	For	Symes	For
Dray	For	Warkentin	For
Ducharme	For	Wright	For
Eber	For		
Feinstein	For		
Filion	For		
Finkelstein	For		
Gotlib	For		
Gottlieb	Against		
Harris	For		
Heintzman	For		
Hunter	For		

Vote: 41 For; 2 Against

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Re: 2003 Audited Financial Statements

It was moved by Mr. Ruby, seconded by Mr. Chahbar that Convocation approve the annual financial statements for the General Fund, Lawyers Fund for Client Compensation and the Errors and Omissions Insurance Fund and accept the annual financial statements for LAWPRO and LibraryCo.

Carried unanimously

ROLL-CALL VOTE

Aaron	For	Krishna	For
Alexander	For	Legge	For
Backhouse	For	MacKenzie	For
Banack	For	O'Brien	For
Bobesich	For	O'Donnell	For
Bourque	For	Pattillo	For
Campion	For	Pawlitza	For
Carpenter-Gunn	For	Porter	For
Caskey	For	Potter	For
Chahbar	For	Ross	For
Coffey	For	Ruby	For
Curtis	For	Silverstein	For
Dickson	For	Simpson	For
Doyle	For	Swaye	For
Dray	For	Symes	For
Ducharme	For	Warkentin	For
Feinstein	For	Wright	For
Filion	For		
Finkelstein	For		
Gotlib	For		
Gottlieb	For		
Harris	For		
Heintzman	For		
Hunter	For		

ITEMS FOR INFORMATION

- Lawyers Professional Indemnity Company Audited Financial Statements
- LibraryCo Inc. Audited Financial Statements
- Investment Compliance Reports

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

The Professional Regulation Committee Report was deferred.

Professional Regulation Committee
April 22, 2004

Report to Convocation

Purposes of Report: Decision and Information

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

OVERVIEW OF POLICY ISSUE

PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT ON LAW FIRM NAMES AND LETTERHEAD

Request to Convocation

1. Convocation is requested to approve amendments to Rules of Professional Conduct 3.02 and 3.03 that will
 - permit descriptive or trade names and the names of lawyers qualified in non-Canadian jurisdictions in an Ontario law firm name, and
 - permit an Ontario lawyer to use a title relating to his or her membership in a non-Canadian bar on letterhead.
2. Convocation is also requested to approve criteria that staff will use to provide pre-approval guidance to members on their proposed firm names.
3. The amended rules appear on pages 10 and 14. The criteria appear at page 12.

Summary of the Issue

4. A working group of the Professional Regulation Committee (“the Committee”) was struck to review issues related to the law firm names and letterhead rules. Based on a report from the working group, the Committee is proposing amendments to these rules.
5. The amended firm name rule will permit descriptive and trade names. If lawyers’ names are used in a firm name, the names are now restricted to the names of lawyers
 - qualified to practice law in Ontario or another jurisdiction in Canada or outside of Canada where the firm carries on its practice, and
 - who are current members of the firm, who were members of the firm but are now retired from the practice of law, or who were members of the firm but are deceased.
6. To assist lawyers in complying with the amended rule, the Committee is proposing that Convocation approve criteria for use by Law Society staff who will provide advice to members on whether proposed firm names conform to the amended rule. The availability of this service would be communicated to the profession with notice of the amendments.
7. The amended letterhead rule will permit a lawyer in an Ontario law practice to use his or her designation arising from membership in a non-Canadian bar (e.g. Attorney at Law) as long as he or she also uses the designation for the practice of law in Ontario (e.g. Barrister & Solicitor).

8. Housekeeping amendments to both the firm name and letterhead rules will provide the French language versions of the limited liability partnership and professional corporation designations.
9. The Committee wishes to thank Paul Perell, who assisted the Committee in preparing the proposed amendments in this report.

THE REPORT

Terms of Reference/Committee Process

10. The Committee met on April 8, 2004. Committee members in attendance were Carole Curtis (Vice-Chair), Mary Louise Dickson, Sy Eber, Gordon Finlayson, Patrick Furlong, Ross Murray, Tracey O'Donnell (by telephone) and Laurie Pattillo. Staff attending were Naomi Bussin, Leslie Cameron, Zeynep Onen, Jim Varro and Andrea Waltman.
11. The Committee is reporting on the following matters:
 - For Decision
 - Proposed amendments to Rules of Professional Conduct 3.02 and 3.03 on law firm names and letterhead.
 - For Information
 - Professional Regulation Division Quarterly Report (January – March 2004)

PROPOSED AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT* ON LAW FIRM NAMES AND LETTERHEAD

A. *INTRODUCTION AND BACKGROUND*

12. A working group of the Committee¹ was formed in June 2002 to review the firm name and letterhead rules², in light of a number of developments in the profession here and abroad. The working group considered relevant issues, and these issues and related questions were highlighted in material prepared for a call for input from the profession in the spring of 2003. This material appears at Appendix 1.

B. *OVERVIEW OF THE ISSUES*

Law Firm Names

13. The Committee considered a number of issues arising from the working group's review and the results of the call for input.³ The issues included the following:
 - a. Many law firm names only include the names of deceased or retired lawyers. The name of the lawyer or lawyers in many firm names is unrelated to the identities of the lawyers who currently work in the firm. Many of the large Toronto firms' names have effectively become trade names. These names have market recognition and goodwill attached to them and some have evolved to reflect names commonly used in the legal services marketplace.⁴

¹ Marilyn Pilkington (chair), Tom Carey, Avvy Go and Stephen Bindman. As a result of the benchers election in May 2003, the Committee's working group was effectively disbanded. Policy and Regulatory staff continued with an examination of the issues following the call for input, discussed the options and, at the direction of the Committee's chair, reported suggested amendments to the Committee.

² Rules 3.02 and 3.03. Copies of the current rules appear on page 62 and following.

³ A summary of the respondents' comments without attribution (fewer than 10 responses were received) appears at Appendix 2. The majority of respondents did not support changes to the firm name rule. The minority who supported changes said that trade names should be permitted. A majority of respondents thought that the letterhead rule should be amended, primarily to expand the information that may be included on letterhead.

⁴ Examples include Torys LLP, Lerner LLP and Goodmans LLP.

- b. National and international developments are leading to an examination of how lawyers are regulated (see material on this subject included in the call for input material at Appendix 1). As transborder practice increases and rules are formulated around mobility of lawyers and global trade in legal services, the uniformity of a law firm name domestically and internationally is likely to become increasingly important, especially where competition in certain sectors of legal practice is more intense, and firms seek recognition in the global marketplace. The question is whether permitting an Ontario law firm name to include the names of lawyers who are qualified to practice law in a non-Canadian jurisdiction where the law firm is also located poses any risks to the public.
- c. The primary risk to the public in not confining a firm name to the names of lawyers appears to be that of misleading or offensive terms, which is also the primary concern with lawyer advertising generally. The manner in which this risk is addressed in less restrictive rules requires careful consideration. It would appear that at a minimum, such rules should prohibit
- names that are misleading about the identity of who is practicing law,
 - names that create uncertainty around who controls the law practice,
 - names that are misleading about the type of legal services offered by the firm, and
 - names that are offensive or negatively impact on the administration of justice
- d. Other jurisdictions' rules are less restrictive than those of the Law Society. Other Canadian law societies permit descriptive or trade names within a regulatory framework.⁵ For example,
- i. British Columbia's firm name rule in Chapter 14 of its Rules is cast in general principles that relate to a prohibition on misleading or unprofessional advertising:
- Content and format of marketing activities
4. Any marketing activity undertaken or authorized by a lawyer must not be:
- (a) false,
- (b) inaccurate,
- (c) unverifiable,
- (d) reasonably capable of misleading the recipient or intended recipient, or
- (e) contrary to the best interests of the public or to the maintenance of a high standard of professionalism.
- ...
- Firm name
9. A lawyer shall not use a firm name which violates Rule 4(e) of this Chapter.
- ii. Alberta gives examples of what would offend its permissible trade name rule:
- While the use of a trade name is not improper, it must be carefully selected to avoid any misconception on the part of the public. For example, "University Legal Clinic" would be unacceptable because it implies a connection with another institution. A geographical trade name is improper if it leads a reasonable person to erroneously conclude that the law office is a public agency, or is the only law office available in that area or locality, or if the name misleads the public in another respect.
- iii. Manitoba in Chapter 14 of its Rules permits both "lawyer" names and "descriptive or trade" names, with the overriding prohibition on misleading names:

⁵ See Appendix 1 material at page 65 and following for additional information about rules in these jurisdictions.

Firm Names and Letterhead

9. The lawyer shall not use a firm name or letterhead that could mislead the public.

...

11. The lawyer shall carry on the practice of law only under:

- (a) the lawyer's name;
- (b) the names of existing or former partners or associates;
- (c) the name of the original or founding partner or partners or associates;
- (d) any combination of the foregoing; or
- (e) a descriptive or trade name, provided:
 - (i) the name or a similar descriptive or trade name is not in use elsewhere in Canada;
 - (ii) that by use of the name, the lawyer or firm could not mislead members of the public into believing erroneously that the lawyer or firm is associated or affiliated elsewhere in Canada with other firms or the members thereof; and
 - (iii) the name is authorized by the federal or provincial government by statute or regulation, or the lawyer is the sole member of, a partner in, or an associate or employee of, the firm carrying on the practice of law under that name.

- iv. Nova Scotia's rule in Part 9 of its Legal Ethics and Professional Conduct Handbook uses the phrase "business names":

Firm Names

51C (1) A lawyer may practice under the firm name of the lawyer, present or former members of the firm, or a business name so long as the name is in good taste, dignified and professional.

Letterhead

- 14. Similar to one of the issues relevant to firm names, the Committee acknowledged that cross-border practice situations will inevitably require a formalized response from the Society as members question what they are permitted to include on their letterhead. Some lawyers have already made these inquiries of the Law Society's Advisory Services.
- 15. For example, where an Ontario member is also called in New York, and wishes to use the phrase "Attorney and Counsellor at Law" on his or her letterhead, the existing rule permits the lawyer to indicate membership in another bar, but does not permit this title.
- 16. If a title relating to membership in a non-Canadian bar was permitted, the risk of confusing or misleading the public about a lawyer's qualifications to provide advice on domestic law could be addressed by requiring that the Ontario lawyer also indicate a title commonly used by Ontario lawyers. This would provide the necessary transparency for the public.

C. THE PROPOSALS

Law Firm Names

17. The Committee is proposing that amendments be made to the firm name rule that would permit descriptive and trade names and would incorporate the component of international practice. Based on the issues and developments described above, the Committee determined that with appropriate regulation, the prohibition on business or trade names and the names of non-Canadian lawyers in law firm names is unnecessary for protection of the public.
18. The Committee concluded that as long as the law firm is identified as an Ontario law practice, there appears to be no risk to the public, for example, in permitting the name of New York lawyers in the Ontario practice name if the firm has a New York office.
19. The use of non-Canadian lawyers' names is related to foreign legal consultants. Lawyers in Ontario who are also qualified in a non-Canadian jurisdiction (e.g. New York) are now permitted to practice both Ontario law and, as a foreign legal consultant (FLC) in Ontario, the law of the foreign jurisdiction. If the lawyer is carrying on his or her FLC practice under the banner of a New York FLC firm in Ontario (and also maintains a New York office), the current rule requires that the lawyer's Ontario law practice must use a name that conforms to the firm name rule (i.e. restricted to the names of Ontario or Canadian lawyers).
20. The proposed amendment would permit the lawyer to use the New York firm name for both the FLC practice and the Ontario law practice, as long as both practices were identified. By-Law 39 on Foreign Legal Consultants does not appear to require amendment if this change is made to the rule. Section 12 of the By-Law speaks only indirectly to firm names, but acknowledges in s.12 (2) the dual role of a member who is also an FLC:

Marketing of Services

12. (1) A person who is licensed as a foreign legal consultant shall, when advertising or otherwise marketing his or her services as a foreign legal consultant, refer to him or herself as a foreign legal consultant, state the jurisdiction in respect of the law of which he or she is qualified to give legal advice in Ontario and state the professional title applicable to him or her in that jurisdiction.

Same

(2) A person, other than a member, who is licensed as a foreign legal consultant shall not, when advertising or otherwise marketing his or her services as a foreign legal consultant, use any designation or make any representation from which a person might reasonably conclude that the foreign legal consultant is a member.

21. Housekeeping amendments to add the French language equivalents for limited liability partnership and professional corporation designations are also proposed.
22. The following are the proposed amendments to rule 3.02:

3.02 LAW FIRM NAME

Permissible Names

- 3.02 (1) A law firm name ~~may include only the~~ shall not include any name that is not
 (a) a names of persons who are a current, a retired from practice, or a deceased member of the firm who is or was qualified to practice law
 (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or

~~(ii) , if retired or deceased, were qualified to practise law in Ontario or in any other province or territory of Canada where the firm carries on its practice in a jurisdiction outside of Canada where the law firm carries on its practice, or~~

(b) _____ a descriptive or trade name that is in keeping with the dignity, integrity, independence, and role of the legal profession in a free and democratic society and in the administration of justice.

~~(2) _____ A law firm name may consist of or include the names of lawyers who were members of the firm but who are deceased or retired from the practice of law.~~

~~(3) (2) A lawyer who purchases a practice may, for a reasonable length of time, use the words “Successor to _____” in small print under the lawyer's own name.~~

Restrictions

~~(4) (3) The name of a law firm shall not include a trade name, a commercial name, or a figure of speech. A law firm name shall not include a descriptive or trade name that is misleading about~~

(a) the identities, responsibilities, or relationships of the lawyers practicing under the firm name, or

(b) the association or relationship of the law firm with other lawyers or non-lawyers.

~~(5) (4) The name of a law firm shall not include the use of phrases such as “John Doe and Associates,” “John Doe and Company,” or “John Doe and Partners” unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm.~~

~~(6) (5) When a lawyer retires from a law firm to take up an appointment as a judge or master or to fill any office incompatible with the practice of law, the lawyer's name shall not be ~~deleted~~ included in ~~from~~ the firm name.~~

~~(7) (6) A lawyer or law firm may not acquire and use a firm name unless the name was acquired along with the practice of a deceased or retiring member who conducted a practice under the name.~~

Limited Liability Partnership

~~(8) (7) If a law firm practices as a limited liability partnership, the phrases “limited liability partnership” “société à responsabilité limitée” or the letters “LLP,” “L.L.P.” or “s.r.l.” shall be included as the last words or letters in the firm name.~~

Professional Corporation

~~(9) (8) If a lawyer practices law through a professional corporation, the name of the corporation shall include the words “Professional Corporation” or “Société professionnelle”.~~

Criteria for Guidance to Members

23. To assistance members in complying with the amended rules, the Committee is proposing that Convocation adopt criteria that Law Society staff may use to provide advice to members on whether proposed firm names conform to the amended rule. The availability of this service would be communicated to the profession with notice of the amendments.

24. In the Committee’s view, this will also permit the Society to monitor developments in response to and members’ compliance with the rule amendments. Convocation’s approval of the criteria is therefore an important feature of this initiative.

25. The criteria are as follows:

Criteria with respect to misleading names:

1. If a firm name is a trade name, it must conform with rule 3.02 if it includes proper names.
2. A firm name may not include the names of non-lawyers.
3. A firm name may not include language that would imply a connection to a specific geographic location.
4. A firm name may not include language that would imply a connection with a government agency or with a public or charitable legal services organization (i.e. legal clinic).
5. A firm name may not include language that would imply a connection with another non-legal corporate entity.
6. A firm name may not include language that would imply a connection with a cultural, racial, ethnic or religious group or organization.
7. A firm name may not contain language that would imply a connection with another existing law firm, if such is not the case.
8. A firm name may not contain language that would imply a connection with any other entity or organization not already enumerated (e.g. University Legal Clinic, Osgoode Hall Law Office, etc.).
9. A firm name may not include language that would imply that the firm was the only or the best law firm (e.g. "The" Law Corporation).
10. A firm name may not include language that would imply a comparison between the services performed by that firm and other firms (e.g. Best Law Firm, Greatest Law Firm, etc.).
11. A firm name may not contain language that would be misleading as to the number of lawyers practicing with the firm, or their status in the firm.
12. A firm name may not include language that would imply the existence of a partnership, association or affiliation between lawyers when no such relationship exists (i.e. two sole practitioners who share office space carrying on business under a common firm name).

Criteria based on statutory prohibitions:

13. A firm name may not include language that is specifically prohibited by statute (e.g. *Business Names Act, Business Corporations Act, Ontario Human Rights Act, Partnerships Act, Patent Act, Trade-marks Act, Copyright Act*).

General criteria:

14. A firm name may not include language that is demeaning, degrading or derogatory.

Other Considerations

26. An issue related to the proposed amendments is the manner in which lawyers identify themselves to the Law Society for the purpose of the members' database. The correctness of a member's name and the ability to determine the place of and contact information for his or her practice are important to a number of the Society's regulatory processes, including complaints and discipline.
27. The proposed amendments to the firm name rule may require additional internal processes to ensure that the Society can link a lawyer's name as it appears in the members' database to the practice name under which the lawyer offers services to the public.

Letterhead

28. The Committee is proposing that amendments be made to the letterhead rule that would permit a lawyer in an Ontario law practice to use his or her designation arising from membership in a non-Canadian bar (e.g. Attorney at Law) as long as he or she also uses the designation for the practice of law in Ontario (e.g. Barrister & Solicitor).
29. Similar to the firm name rule, two housekeeping amendments to the letterhead rule are also proposed to provide for the French versions of the limited liability partnership and professional corporation designations.

30. The following are the proposed changes to the letterhead rule:

3.03 LETTERHEAD

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

- (a) the name of the lawyer or law firm,
- (b) a list of the members of any law firm, including counsel practising with the firm,
- (c) the words “barrister,” “barrister at law,” “barrister and solicitor,” “lawyer,” “law office,” “solicitor,” “solicitor-at-law,” or the plural, where applicable,
- (d) the words “notary” or “commissioner for oaths” or both, where applicable,
- (e) the words “patent and trade mark agent,” where applicable,
- (f) a statement that a member of the law firm is qualified to practise law in another named jurisdiction, along with his or her title in that jurisdiction, such as “attorney” or “attorney at law”,
- (g) a statement that a member of the law firm is certified by the Law Society as a specialist in a specified field,
- (h) the phrases “limited liability partnership” or “société à responsabilité limitée or the letters “LLP,” “L.L.P.” or “s.r.l.” where applicable,
- (i) the words “Professional Corporation”, or “Société professionnelle.” where applicable,
- (j) the phrase “multi-discipline practice” or “multi-discipline partnership” where applicable,
- (k) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice,
- (l) a logo,
- (m) reference to an affiliation, and
- (n) advertising permitted under rule 3.05.

(2) A lawyer or law firm that practises in the industrial property field may show the names of patent and trade-mark agents who are identified as such but who are not lawyers.

(3) A lawyer or law firm may place after the names on its letterhead degrees from *bona fide* universities and post secondary institutions including honorary degrees, professional qualifications such as the designations of P.Eng., C.A., and M.D., and recognized civil and military decorations and awards, and, where the firm is a multi-discipline practice, a list of partners and associates who are non-lawyers identified as such and their designations, if any.

(4) Where a lawyer's letterhead or office signs includes a statement under subrule (1), paragraph (f) that a member of the law firm is qualified to practise law in another named jurisdiction, it shall also include the words “barrister,” “barrister at law,” “barrister and solicitor,” “lawyer,” “law office,” “solicitor,” “solicitor-at-law,” or the plural, where applicable.

INFORMATION

REPORT FROM THE PROFESSIONAL REGULATION DIVISION

31. The Professional Regulation Division's Quarterly Report, 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 January to March 2004. A separately bound version of the Quarterly Report with colour graphs and charts will be available at Convocation for those who wish to receive a copy.

(see Report in Convocation file)

APPENDIX 1

Professional Regulation Committee
Working Group on Firm Name and Letterhead
Rules of Professional Conduct
March 2003

Information for Call for Input

Prepared by the Policy Secretariat

I. INTRODUCTION

The Law Society's Professional Regulation Committee, through a working group, is reviewing the Rules of Professional Conduct governing law firm names and letterhead to determine if they should be made less restrictive and if so, what form the revised rules should take. The Committee is seeking input from the profession through a series of questions that appear at the end of this paper.

Subrules 3.02(1) and (4) confine the firm name to the name of a person (i.e. lawyer, deceased lawyer, etc). Other parts of rule 3.02 deal with the form of the firm name. The rule in its entirety appears at Appendix 1. Rule 3.03, at Appendix 2, contains an exclusive but extensive list of what may appear on a lawyer's letterhead. Some items (e.g. "LLP" and "Professional Corporation") are required by the relevant legislation.

In effort to compare the Society's firm name rule with other Canadian regulators, excerpts from five other law society's rules are presented in Appendix 3. All are less restrictive than Ontario's rule and some permit trade names.

Appendix 4 contains information on current issues that may bear on rules such as those on firm names or letterhead. They include national and international developments on transborder practice within and outside of Canada. Brief comment is also provided on constitutional issues relating to advertising regulation.

II. THE LAW SOCIETY'S REGULATORY CONTEXT

The Firm Name Rule

The current rule is premised on the need for transparency around who is providing legal services. It may also promote the notion, through the use of the professionals' names, that the lawyers are independent practitioners of law. The specific prohibition on trade names appears to have been driven by the need to distinguish lawyers as professionals from those engaged in a business or trade. The primary purpose of a firm name is to identify a practice of law to the public. It also relates to a firm's marketing of its services. Indeed, the Society's current regulation of firm names in the Rules falls within the general subject of "making legal services available". The Law

Society has accepted that advertising, of which a firm name is a component, has a promotional aspect and is used to increase the business of the law firm (i.e. the provision of professional legal services to the public).

The name of a law firm, however, must be distinguished from how a law practice is identified to the public. By-Law 34 on Professional Corporations illustrates this point. The By-Law incorporates the features of the firm name rule for regulation of registered names of law practices incorporated under the Business Corporations Act. These names, in keeping with the firm name rule, do not include phrases such as “Barristers & Solicitors”, “Law Office of...”, or “..., Lawyers”, although these have historically formed part of the identification of a law firm. Technically, these descriptive phrases are advertising features that lawyers use on letterhead (discussed below) and in signs and advertisements, and are not part of the law firm name.

One of the risks – perhaps the primary risk - in liberalizing firm name regulation is that some names may be misleading or offensive, which is, in essence, the concern with lawyer advertising generally. The current rule addresses the risk but is restrictive. A number of assumptions about the need for such regulation can be drawn from the current rule. They include the following:

1. The public should not be misled as to who is practicing law.
2. As noted above, a name permitted under the firm name rule would not, of itself, identify a partnership of lawyers as a law practice. The issue of who practices law relates more directly to knowledge that a non-lawyer entity separate from the lawyers is not controlling the practice i.e. the independence of the lawyers is maintained.
3. The public should not be misled about the type of legal services offered by the firm.
4. The public should not be confused or misled about where the law firm practices.
5. The public should not be misled about the number of lawyers practising in the firm.
6. The name should not be offensive or negatively impact on the administration of justice.

Apart from the Society’s rules, the regulations under the Business Names Act, relevant to partnerships, prescribe what may appear in a registered name. For example, the name cannot include language that is contrary to public policy, including scandalous, obscene or immoral words or expressions.

The Letterhead Rule

Because the list of permissible inclusions on letterhead in rule 3.03 is so extensive, changes that may be made to the firm name rule may not impact significantly on the letterhead rule. However, cross-border practice situations may create some issues. For example, if the firm name relates to a practice that is carried on in a Canadian and American jurisdiction, some members of the firm may wish to identify themselves exclusively by their designation in the foreign bar (e.g. “attorney-at-law” in United States jurisdictions).

Consider the circumstance where a member, who, for example, is called in Ontario, British Columbia and New York, and states so on the letterhead, wishes to use the phrase “Attorney and Counsellor at Law” exclusively (i.e. without indicating “barrister and solicitor”), even though the principal practice is in Ontario. The issue is whether this would confuse or mislead the public in the Canadian jurisdictions as to the status of the lawyer in Canada. The current rule permits an Ontario lawyer to indicate on his or her letterhead membership in another bar other than Ontario, but the issue is whether this should be done without also indicating a designation commonly used by a member of the Ontario bar.

III. QUESTIONS AROUND MORE LIBERAL RULES

While the Law Society must approach its regulatory mandate from the perspective of the public interest, that perspective should be informed by current developments and by careful consideration of what is in fact in the public interest. To that end, the following questions are posed:

1. Should the Society amend the rule to make it less restrictive and permit a range of forms for firm names?
2. What factors, apart from those noted above, should inform a less restrictive rule to ensure that names are not misleading or confusing? For example,

- a. Should trade names generally be permitted?
- b. Should the Society be concerned with
 - i. terms that impart a qualitative assessment (e.g. Top Flight Legal Offices)
 - ii. terms that are used primarily to gain prominence (e.g. AAAAA Law Office)
 - iii. terms that suggest control by or close connection with non-lawyers (e.g. Global Multinational Business Corporation Law Offices)
 - iv. terms that suggest an entity connected with a particular community (e.g. Anglo Lawyers, LLP)
 - v. terms that denote a particular geographic location (Central Toronto Lawyers, Professional Corporation)?
3. Should there be any restriction on the use of a foreign lawyer's name in the firm name if the firm carries on business, for example, in the United States and Canada?
4. What items in addition to those listed in rule 3.03 should be permitted on letterhead?

The Committee welcomes your written comments on these questions and any additional views that you may have on the subject. Please send your comments to the Society on or before May 30, 2003 by e-mail to jvarro@lsuc.on.ca, by fax to 416-947-7623 or by mail to:

Secretary, Professional Regulation Committee
 Policy and Legal Affairs, Law Society of Upper Canada
 Osgoode Hall, 130 Queen Street West
 Toronto, Ontario
 M5H 2N6

Appendix 1

LAW SOCIETY OF UPPER CANADA
 RULES OF PROFESSIONAL CONDUCT 3.02

Permissible Names

3.02 (1) A law firm name may include only the names of persons who are qualified to practise law in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or who, if retired or deceased, were qualified to practise law in Ontario or in any other province or territory of Canada where the firm carries on its practice.

(2) A law firm name may consist of or include the names of lawyers who were members of the firm but who are deceased or retired from the practice of law.

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

Restrictions

(4) The name of a law firm shall not include a trade name, a commercial name, or a figure of speech.

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

(6) When a lawyer retires from a law firm to take up an appointment as a judge or master or to fill any office incompatible with the practice of law, the lawyer's name shall be deleted from the firm name.

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

Limited Liability Partnership

(8) If a law firm practices as a limited liability partnership, the phrase “limited liability partnership” or the letters “LLP” shall be included as the last words or letters in the firm name.

Professional Corporation

(9) If a lawyer practices law through a professional corporation, the name of the corporation shall include the words “Professional Corporation”.

Appendix 2

LAW SOCIETY OF UPPER CANADA
RULES OF PROFESSIONAL CONDUCT 3.03 AND 3.05

Letterhead

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

- (a) the name of the lawyer or law firm,
- (b) a list of the members of any law firm, including counsel practising with the firm,
- (c) the words “barrister,” “barrister at law,” “barrister and solicitor,” “lawyer,” “law office,” “solicitor,” “solicitor-at-law,” or the plural, where applicable,
- (d) the words “notary” or “commissioner for oaths” or both, where applicable,
- (e) the words “patent and trade mark agent,” where applicable,
- (f) a statement that a member of the law firm is qualified to practise law in another jurisdiction,
- (g) a statement that a member of the law firm is certified by the Law Society as a specialist in a specified field,
- (h) the phrase “limited liability partnership” or the letters “LLP,” where applicable,
- (i) the words “Professional Corporation”, where applicable,
- (j) the phrase “multi-discipline practice” or “multi-discipline partnership” where applicable,
- (k) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice,
- (l) a logo,
- (m) reference to an affiliation, and
- (n) advertising permitted under rule 3.05.

(2) A lawyer or law firm that practises in the industrial property field may show the names of patent and trademark agents who are identified as such but who are not lawyers.

- (3) A lawyer or law firm may place after the names on its letterhead degrees from bona fide universities and post secondary institutions including honorary degrees, professional qualifications such as the designations of P.Eng., C.A., and M.D., and recognized civil and military decorations and awards, and, where the firm is a multi-discipline practice, a list of partners and associates who are non-lawyers identified as such and their designations, if any.

...

General Practice

- 3.05 (1) A lawyer or law firm may state that the lawyer or law firm is in general practice if such is the case.

Restricted Practice

- (2) A lawyer may state that the lawyer is a specialist in a particular area of the law only if the lawyer has been so certified by the Society.

- (3) A lawyer may state that the lawyer's practice is restricted to a particular area or areas of the law or may state that the lawyer practises in a certain area or areas of the law if such is the case.

- (4) A law firm may state that it practises in certain areas of the law or that it has a restricted practice if such is the case.

- (5) A law firm may specify the area or areas of law in which particular members practise or to which they restrict their practice.

Multi-discipline Practice

- (6) A lawyer of a multi-discipline practice may state the services or the nature of the services provided by non-lawyer partners or associates in the practice.

Appendix 3

RULES OF OTHER LAW SOCIETIES IN CANADA

British Columbia

British Columbia's firm name rule is cast in general principles that relate to a prohibition on misleading or unprofessional advertising. Its rule is found in Chapter 14 on marketing of legal services.

Content and format of marketing activities

4. Any marketing activity undertaken or authorized by a lawyer must not be:

- (a) false,
- (b) inaccurate,
- (c) unverifiable,
- (d) reasonably capable of misleading the recipient or intended recipient, or
- (e) contrary to the best interests of the public or to the maintenance of a high standard of professionalism.

...

Firm name

9. A lawyer shall not use a firm name which violates Rule 4(e) of this Chapter.

The following are examples of some Ethics Committee Opinions on firms names based on the considerations in the rules.

Ethics Committee Opinion - October 1, 1998

7. CHAPTER 14: WHETHER FIRM MAY TAKE ITS NAME FROM AN AREA OF LAW

The Committee considered whether a firm may take its name from an area of law. The Committee noted that there are currently lawyer referral offices, operated by lawyers, using the names “Impaired Driving Office” and “Criminal Defence Office.” There has been interest expressed by other lawyers about calling their law firms after an area of law.

In the Committee’s opinion it would be contrary to Rule 4(d) and Rule 4(e) of Chapter 14 of the Professional Conduct Handbook for a lawyer to operate a firm named after a particular area of law and bearing no other distinguishing features. The use of such names has the potential to mislead the public into believing that the office has some official accreditation not shared by other offices providing similar services. The Committee was of the view that it is not material whether such an office is operating as a traditional law firm or is only providing referrals to other lawyers.

Ethics Committee Opinion B March 28, 2001

9. CHAPTER 14, RULE 4: WHETHER FIRM MAY TAKE ITS NAME FROM SOMETHING THAT OCCURS IN THE AREA OF LAW IN WHICH THE FIRM PRACTISES

The Committee considered whether it is proper for a firm to use a name taken from the area of law in which the firm practices and that includes a statement of the firm’s preferred area of practice. Examples of the use of such a name would be “Legacy Tax and Trust Lawyers,” “Indictment Criminal Lawyers,” or “Bylaw Municipal Lawyers.”

The Committee noted that one of its previous opinions concluded that a firm may not use a firm name taken from a particular area of law and bearing no other distinguishing features. Examples of such names would be “Environmental Law Firm” or “Criminal Law Firm.” The Committee was of the view that this new question is a different question than the one addressed by the Committee previously, and declined to consider it at this time.

Ethics Committee Opinion- March 7, 2002

7. CHAPTER 14, RULE 4: WHETHER FIRM MAY TAKE ITS NAME FROM SOMETHING THAT OCCURS IN THE AREA OF LAW IN WHICH THE FIRM PRACTICES

The Committee was asked whether it is proper to use the name “Legacy Advisors Law Corporation.” The Committee did not have an objection to the use of this name.

Alberta

Alberta’s rule focusses on a name that is not misleading. The guidance is found in the commentary on proper firm names (relevant portions are shown below). Trade names are permitted.

CHAPTER 5

Accessibility and Advertisement of Legal Services

STATEMENT OF PRINCIPLE

The profession has a duty to ensure that the public has information regarding the nature and availability of legal services and access to the legal system.

RULES

2. A lawyer must not make a representation to the public, through advertisement or otherwise, that is false, inaccurate or misleading in any respect.

COMMENTARY

2.2

Rule #2 -- Firm names, trade names and letterhead: The status of a person or entity practising law or associated with a firm must not be misrepresented in a firm name or on letterhead. For example, the use by a sole practitioner of the phrase "and Company" or "and Associates" after the lawyer's surname is misleading.

...

While the use of the names of persons no longer practising with a firm is ethically permissible in accordance with the foregoing, the firm must also consider any applicable legal requirements (such as those relating to consent) before proceeding.

The letterhead of a firm may list the names of extraprovincial lawyers associated with the firm who have not been admitted to practise law in Alberta so long as this fact, together with the jurisdiction in which such lawyers are authorized to practise, are indicated on the letterhead. Similarly, a firm's letterhead may list persons who are not lawyers (such as office managers, in-house accountants, students-at-law and patent and trademark agents) provided that they are employed by the firm. Again, however, the position or status of these persons must be clearly stated.

While the use of a trade name is not improper, it must be carefully selected to avoid any misconception on the part of the public. For example, "University Legal Clinic" would be unacceptable because it implies a connection with another institution. A geographical trade name is improper if it leads a reasonable person to erroneously conclude that the law office is a public agency, or is the only law office available in that area or locality, or if the name misleads the public in another respect.
(Emphasis added)

Saskatchewan

Saskatchewan's rules around firm names are not rules of conduct but are rules (similar to the Law Society of Upper Canada's by-laws) made under the governing statute. They are similar to British Columbia's conduct rules.

Part 19

Marketing of Legal Services

1601. (1) Subject to these Rules, a member may initiate contact with a potential client.

(2) Any marketing activity undertaken or authorized by a member must not be:

- (a) false,
- (b) inaccurate,
- (c) reasonably capable of misleading the recipient or intended recipient, or
- (d) undignified, in bad taste, offensive or otherwise inimical to the best interests of the public or the members, or tending to harm the standing of the legal profession.

...

Firm name

1606. A member shall not use a firm name which violates subrule 1601(2)(c) or (d).

Manitoba

Firm names are dealt with in Chapter 14 on Advertising, Solicitation and Making Legal Services Available in commentary to the rule on making legal services available, and include reference to rules made under the governing statute on firm names and letterhead (rules 147 and 149). Rules 147 and 149 mirror what appears in Chapter 14. Like Alberta, Manitoba specifically discusses trade names.

Firm Names and Letterhead

9. The lawyer shall not use a firm name or letterhead that could mislead the public.

...

11. The lawyer shall carry on the practice of law only under:

- (a) the lawyer's name;
- (b) the names of existing or former partners or associates;
- (c) the name of the original or founding partner or partners or associates;
- (d) any combination of the foregoing; or
- (e) a descriptive or trade name, provided:
 - (i) the name or a similar descriptive or trade name is not in use elsewhere in Canada;
 - (ii) that by use of the name, the lawyer or firm could not mislead members of the public into believing erroneously that the lawyer or firm is associated or affiliated elsewhere in Canada with other firms or the members thereof; and
 - (iii) the name is authorized by the federal or provincial government by statute or regulation, or the lawyer is the sole member of, a partner in, or an associate or employee of, the firm carrying on the practice of law under that name.

Nova Scotia

Nova Scotia, like Saskatchewan, has covered this topic in regulations under the governing act. Nova Scotia permits business names.

Part 9 - Advertising

Firm Names

51C (1) A lawyer may practice under the firm name of the lawyer, present or former members of the firm, or a business name so long as the name is in good taste, dignified and professional.

Appendix 4

INFORMATION ON INTERNAL TRADE, WORLD TRADE ORGANIZATION DEVELOPMENTS AND CONSTITUTIONAL LAW ISSUES

A. Agreement on Internal Trade

All Canadian provinces signed the Agreement on Internal Trade, effective July 1, 1995, which is designed to reduce barriers to the movement of persons, goods, services and investments within Canada. Relevant parts for this discussion appear in Chapters 1 and 7 (Operating Principles and Labour Mobility respectively). Relevant excerpts appear below.

Article 100: Objective

It is the objective of the Parties to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. All Parties recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal.

Article 101: Mutually Agreed Principles

1. This Agreement applies to trade within Canada in accordance with the chapters of this Agreement.
2. This Agreement represents a reciprocally and mutually agreed balance of rights and obligations of the Parties.
3. In the application of this Agreement, the Parties shall be guided by the following principles:
 - a) Parties will not establish new barriers to internal trade and will facilitate the cross-boundary movement within Canada;
 - b) Parties will treat persons, goods, services and investments equally, irrespective of where they originate in Canada;
 - c) Parties will reconcile relevant standards and regulatory measures to provide for the free movement of persons, goods, services and investments within Canada; and
 - d) Parties will ensure that their administrative policies operate to provide for the free movement of persons, goods, services and investments within Canada.
4. In applying the principles set out in paragraph 3, the Parties recognize:
 - a) the need for full disclosure of information, legislation, regulations, policies and practices that have the potential to impede an open, efficient and stable domestic market;
 - b) the need for exceptions and transition periods;
 - c) the need for exceptions required to meet regional development objectives in Canada;
 - d) the need for supporting administrative, dispute settlement and compliance mechanisms that are accessible, timely, credible and effective; and
 - e) the need to take into account the importance of environmental objectives, consumer protection and labour standards.

Article 102: Extent of Obligations

1. Each Party is responsible for compliance with this Agreement:
 - a) by its departments, ministries and similar agencies of government;
 - b) by its regional, local, district or other forms of municipal government, where provided by this Agreement; and
 - c) *by its other governmental bodies and by non-governmental bodies that exercise authority delegated by law, where provided by this Agreement.*

For greater certainty, "other governmental bodies" includes Crown corporations.
2. Each Party shall adopt and maintain measures to ensure the compliance referred to in paragraph 1.

703 Extent of Obligations

1. For the purposes of Article 102(1)(b) and (c) (Extent of Obligations), each Party shall, through appropriate measures, seek compliance with this Chapter by:
 - (a) its regional, local, district and other forms of municipal government; and
 - (b) *its other governmental bodies and by non-governmental bodies that exercise authority delegated by law, as described in Annex 703.1.*

Annex 703.1

Non-Governmental Bodies that Exercise Authority Delegated by Law

For the purposes of Article 703(1)(b), "*non-governmental bodies that exercise authority delegated by law*" means any organization, institution, corporation or association to whom authority has been delegated by provincial or federal statute to set or implement measures related to:

- (a) the establishment of occupational standards or requirements for licensing, certification or registration;
- (b) the assessment of the qualifications of workers against established occupational standards or requirements for licensing, certification or registration; or
- (c) the official recognition that an individual meets established occupational standards or requirements for licensing, certification or registration.

(Emphasis added)

It would appear that provincial law societies are "non-governmental bodies that exercise authority delegated by law" described above.

B. NAFTA

Chapter 12 of the North American Free Trade Agreement (NAFTA) deals with cross-border trade in services. Article 1210 reads:

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to provide a service;
- (b) is not more burdensome than necessary to ensure the quality of a service; and
- (c) does not constitute a disguised restriction on the cross-border provision of a service.

...

5. Annex 1210.5 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Annex 1210.5 includes the following provisions:

Development of Professional Standards

2. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

3. The standards and criteria referred to in paragraph 2 may be developed with regard to the following matters:

- (a) education - accreditation of schools or academic programs;
- (b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;
- (c) experience - length and nature of experience required for licensing;
- (d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
- (e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;
- (f) scope of practice - extent of, or limitations on, permissible activities;
- (g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and
- (h) consumer protection - alternatives to residency requirements, including bonding, professional liability insurance and client restitution funds, to provide for the protection of consumers.

NAFTA also deals with foreign legal consultants (FLCs). Beginning in 1993, Canada, the United States and Mexico sent representatives from their professional bodies/representative legal organizations to negotiate an international agreement on FLCs. In June 1998, the parties signed a joint recommendation, including a model rule, but their respective governments have not yet ratified the recommendations and there are no indications when, if at all, this might occur.

The Law Society recently adopted a regulatory scheme which will appear in a by-law, codifying a number of features of the process currently in place for registration of FLCs in Ontario.

C. GATS

Under the auspices of the WTO, the GATS (General Agreement on Trade in Services) came into force on January 1, 1995. It is described as an integrated framework for addressing issues related to cross-border trade, investment and movement of services providers.

The GATS talks through the WTO include discussion on trade in legal services, part of which will deal with restrictions on trade and related domestic rules. The "Working Party on Domestic Regulation" has already drafted rules (also called "disciplines") for the accounting profession. The accounting disciplines, which have been discussed as the basis for those for the legal profession, include licensing requirements, one of which covers firm names. The requirement is that use of firm names must not be restricted, except in fulfilment of a "legitimate objective". The legitimate objectives are defined as the protection of consumers (which includes all users of legal services and the public generally), the quality of the service, professional competence and the integrity of the profession.

A March 2001 GATS paper outlines the results of consultations held to date with Canadian national professional organizations, including the Federation of Law Societies and the Canadian Bar Association, on the relevance and applicability of the accounting disciplines.

The organizations were asked to assess the relevance and applicability of each of the disciplines; whether the requirements are currently applied; whether they could be adopted if not currently applied; and, to explain the reasons why they were not deemed relevant or applicable. No specific elements of the accountancy disciplines were found to be irrelevant to their current practices or non-applicable in general to their respective profession. One issue raised was that "consumer protection and the integrity of the profession must be recognized as paramount considerations in regulating the profession."

D. Constitutional Law Issues

Under section 2(b) of the Charter, freedom of expression is guaranteed, subject only the provisions of section 1 of the Charter.⁶ In *Royal College of Dental Surgeons of Ontario v. Rocket*⁷, the Supreme Court of Canada found that Section 2(b) includes commercial speech such as advertising (on the basis that advertising aims to convey a meaning and involves more than economic interests, which were not intended to be protected). In *Rocket*, the Court said that professional bodies have a heavy duty to adopt appropriate regulations which do not unduly restrict the freedom of expression of their members.

The Supreme Court of Canada has not considered a case where the Rules of Professional Conduct of the Law Society on lawyer advertising are in issue. Some years ago, two Ontario lawyers brought an action challenging the Society's firm name rule, which included an argument under s. 2(b) of the Charter. At both trial and appeal levels in Ontario, the courts found no merit to the Charter argument based on section 2(b) and the lawyers' application for leave to appeal to the Supreme Court of Canada was dismissed. This case was disposed of at the Court of Appeal before the Supreme Court's consideration of *Rocket* in 1990. If a firm name is considered an adjunct to advertising, a question is how *Rocket* might be applied in the context of the Society's rules.

APPENDIX 2

SUMMARY OF MEMBER RESPONSES (WITHOUT ATTRIBUTION) TO CALL FOR INPUT ON AMENDING THE FIRM NAME AND LETTERHEAD RULES

Firm Names

1. Given that the purpose of the Society's Rules is to protect the public, the current rule on firm names, permitting use of a living or deceased lawyer's name, does not advance the Society's objectives. It is not

⁶ "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

⁷ [1990] 2 S.C.R. 232.

clear that the public interest is served and protected by a firm name consisting only of the name of a deceased partner.

2. The current firm name form is becoming less capable of accurately conveying information to the public. In some cases a trade name could describe a law firm to the public more accurately. Using MDPs as an example, the current rule has the effect of obscuring the closely integrated workings of an MDP and may mislead the public into thinking that work was performed by the law firm independently of the other branches of the MDP. A trade name would accurately convey the firm position as part of an MDP. The public would receive a truer impression of how the work is performed and be better able to associate the work done by the MDP with the goodwill of that MDP as a whole.
3. In many fields, including intellectual property, it is increasingly important for firms to become national to be competitive. Trade names for law firms are allowed in many provinces, and it would be beneficial to Ontario firms to have the same freedom to market themselves and compete more effectively on the national level.
4. There has been some drift to trade names, as can be seen by use of such names as Gowlings, where the firm has moved beyond the traditional use of a partner's name.
5. The restriction on firm names (limited to that of the lawyer's name) is justified. It seems foolish that at a time when the profession faces problems with its image that we would allow firms to call themselves "AAAAA Advocats" or "Acme Law Firm".
6. Rule 3.02(8), in addition to what already appears, should reflect what appears in section 44.3(3) of the Partnerships Act, in particular, the phrases and letters "société à responsabilité limitée", "L.L.P." or "s.r.l.". For limited liability partnerships that practice in both Quebec and Ontario, there does not appear to be any way to comply with the naming requirements of both jurisdictions, which are different. The Society is encouraged to initiate dialogue with the Barreau du Quebec in order to promote the ability of limited liability partnership law firms with a presence in both provinces to comply with each province's naming provisions.
7. The assumption about the current firm name rule – that the public should not be misled about the number of lawyers practicing with the firm – is not valid when John Doe is the sole remaining partner of Doe, Smith, Brown and Jones and there is no requirement to list all members of the firm on the letterhead. It is increasingly the practice not to list members of a firm on its letterhead.
8. I agree with the current rule 3.02(1) but as trade names are not permitted, the word "shall" should replace "may". Otherwise, a foreign firm could establish an affiliate firm in Ontario using its foreign name when the members of that firm never practiced in Ontario.
9. Rule 3.02(2) should be made more restrictive by adding the words "and were members of the firm at the date of their retirement or death" at the end of the rule, to prohibit in a name the name of lawyer who was not a member of the firm at death or retirement.
10. Rule 3.02(3) should be amended to include the consent of the lawyer or firm who or which sold the practice to use of the name.
11. The prohibition on trade names should remain as distinguishing lawyers as professionals from those engaged in a business or trade. If the practice of law is still to be regarded as a profession, the definition of the profession should not be watered down to mean something different.
12. I agree with rule 3.02(6) but it does not address the circumstance of more than one person in a firm with the same name, one of whom goes to the bench.
13. A problem with rule 3.02(7) might be where a lawyer has died or has been retired for some time before the name is assigned. How much of a practice must there be to assign with the name?

14. The Society should not amend its rules to make firm names less restrictive and permit a range of forms. Enforcement will be difficult. Many lawyers are increasingly considering law to be a commercial rather than professional activity. Does the Society wish to encourage this?
15. The Society should be concerned with terms that import a qualitative assessment.
16. Foreign lawyers names should not be permitted in firm names.
17. The use of foreign titles is difficult. Perhaps the jurisdiction where the member is qualified to use the title could be added in brackets.
18. There should be no restriction on the use of a foreign lawyer's name in the firm name if the firm carries on business in the US and Canada, for the following reasons:
 - a. It would mirror the rights enjoyed by Ontario firms who also practice in New York;
 - b. It would help to clarify the nature of the relationship between Ontario and non-Canadian lawyers;
 - c. It would reduce the current inequities where only US law firms who employ Canadian lawyers with same names as the US firm name can practice in Ontario using the US name;
 - d. It would reduce the public's confusion in circumstances where US law firms restrict their practice to the practice of foreign law but employ Ontario lawyers in Ontario (i.e. are the Ontario lawyers practicing Ontario law even though the firm is identified as practicing foreign law?).
 - e. It would remove the disincentive to US firms to opening Ontario offices as opposed to other Canadian jurisdictions where the rules are more liberal.
 - f. There is no need to impose any restriction on the use of a foreign lawyer's name, based on the five assumptions listed on page three of the information document.
19. I am not in favour of making the firm name rule much less restrictive. Specifically, trade names should not be permitted, nor any of the types of names listed in the information document, page 4, paragraph 2b.
20. The current rule is wide enough. The use of characters such as Donald Duck, race cars or some other form of identity with commercial undertakings will not add anything to the dignity of the profession.
21. The Society should establish a range of categories which law firms may use to describe themselves. These could include the name by which this practice identifies itself ("legal professional association") and other categories such as partnership, limited partnership and professional corporation.

Letterhead

22. There is little guidance on how an MDP's letterhead should be set out. The rule should provide guidance on ensuring that an MDP's letterhead adequately conveys information about its law firm component, while, at the same time, allowing it to accurately convey information about the MDP as an integrated whole.
23. Rule 3.03(1) is too restrictive in that it wants to be an exhaustive list of what can appear on letterhead. It would be better to replace it with a general list, but with clear principles as other law societies have done. The principles are outlined in the information document.
24. I favour more liberal rules around letterhead. The combination of firm name and descriptor should be accurate, disclose that the business is a law firm through use of "lawyer", "barrister", etc., not be misleading, not make claims on behalf of the business and not bring the profession into disrepute.
25. In addition to the list in rule 3.03, lawyers should be able to put their preferred practice areas or other descriptions of their practice areas and preferences on their letterheads if in conjunction with "lawyer", "barrister", etc.
26. Items should not be added to those listed in rule 3.03 on letterhead

General

27. On drafting, the use of wide, encompassing terms such as those used in a Civil Code are better. Detailed exceptions or conditions make it easier to circumvent and will require new language to plug the hole.
28. Should the same rule for letterhead with appropriate modifications apply to professional cards?

GOTTLIEB/AARON MOTION

It was moved by Gary Gottlieb, seconded by Bob Aaron that the Law Society's Equity and Aboriginal Issues Committee and the Law Society's Government Relations Committee recommend to Convocation for Convocation's approval the role the Law Society should play and the positive steps it should take to discourage anti-semitism in our profession, our society and the world and to promote religious tolerance and respect in our profession, our society and the world.

An amendment was accepted by the mover and seconder that the words " and all forms of hatred or discrimination" be added after the word "anti-semitism".

The motion as amended was adopted.

ROLL-CALL VOTE

Aaron	For	Krishna	For
Alexander	For	Legge	For
Backhouse	For	MacKenzie	For
Banack	For	O'Brien	For
Bobesich	For	O'Donnell	For
Bourque	For	Patillo	For
Campion	For	Pawlitza	For
Carpenter-Gunn	For	Porter	For
Caskey	For	Potter	For
Chahbar	For	Ross	Abstain
Cherniak	For	Ruby	For
Coffey	For	Silverstein	For
Copeland	Abstain	Simpson	For
Curtis	For	Swaye	For
Dickson	For	Symes	For
Doyle	For	Warkentin	For
Dray	For	Wright	For
Ducharme	For		
Eber	For		
Feinstein	For		
Filion	For		
Finkelstein	For		
Finlayson	For		
Gotlib	For		
Gottlieb	For		
Harris	For		
Heintzman	For		
Hunter	For		

Vote: 43 For; 0 Against; 2 Abstentions

REPORTS FOR INFORMATION ONLY

Lawyers Fund for Client Compensation Committee Report

- Member Levy and Budget 2005 Discussions
- Insurance
- Grants Paid – Staff Memoranda

Lawyers Fund for Client Compensation Committee
April 8, 2004

Report to Convocation

Purpose of Report: Information

Prepared by the Lawyers Fund for Client Compensation

REPORT TO CONVOCATION, APRIL 2004

1. The Lawyers Fund for Client Compensation Committee (“the Committee”) met on April 8, 2004.

Committee members in attendance were Larry Banack (Vice-Chair), Andrew Coffey, Ronald Cass, Q.C., Abraham Feinstein, Q.C., (by telephone), Dr. Richard Filion and Gordon Bobesich.

Staff and others in attendance were Zeynep Onen (Director of Professional Regulation), Dan Abrahams (Acting Lawyers Fund Manager), Lawyers Fund Counsel Paul McCormick and Louis Bourgon, Fred Grady (Manager, Finance) and Michelle Strom (President & CEO, LawPRO).

2. The Committee and Law Society staff wish to extend their condolences to Robert Topp, Q.C., and his family on the passing of Mr. Topp’s wife.
3. As a result of its meeting, the Committee is reporting on the following matters:

(a) ADMINISTRATION

- i) Member Levy, Goal for Fund Surplus & Budget 2005

The Committee held a general discussion about the Fund’s budget for 2005 including the member levy and what would be an optimum Fund surplus. The Committee considered some background materials relating to the 2004 budget. The Committee agreed to meet again in May to continue discussion of these issues. Staff will provide additional information in support of these discussions.

- ii) Cost of Reinsurance

Michelle Strom, President of LawPRO, reported that, as requested, she has arranged reinsurance coverage for the 2004 financial year. The policy limits and premiums are unchanged from 2003. For 2004, coverage has been obtained for \$10 million excess of \$15 million, protecting the Fund from an aggregation of claims over \$15 million for claims made in the year 2004. The premium for the 2004 insurance coverage is \$458,190.00.

- iii) Compensation Fund Discussions Arising From National Mobility Agreement

Zeynep Onen, Director of Professional Regulation, reported to the Committee on Federation activities on compensation funds within the context of the National Mobility Agreement. She said that the Agreement adopts the existing Inter Jurisdictional Practice Protocol provisions with respect to compensation funds and that there is concern at the Federation that this could result in inconsistencies in compensation for complainants depending on the home/host rules.

Discussions between representatives of the various Canadian Law Societies are at a very early stage, under the auspices of the Federation of Canadian Law Societies. Presently, two further meetings have been scheduled. The Committee asked to be kept apprised of developments as warranted.

(b) POLICY

i) General

The Committee agreed that the issues raised in the background materials regarding Guidelines 1 and 2a), per member caps, per claimant limits and investment claims require further study. The Committee agreed to forgo striking a sub-committee and instead will consider these issues as a committee of the whole, again with the benefit of additional background materials to be assembled by staff.

(c) INFORMATION

i) Grants Paid

The Committee wishes to report that, since its last Report to Convocation, grants have been paid from the Fund in the amounts shown. (Only members whose discipline proceedings are completed are identified by name.)

Member (Status if Disciplined)	Number of Claimants	Total Grants Paid (\$)
Comstock, J. T. (Disbarred, 2000)	1	20,000.00
Cook, F. S. (Disbarred, 1990)	1	141.40
Dagenais, M. B. (Disbarred, 2002)	1	300.00
Filipovich, R. C. (Disbarred, 2002)	1	5,000.00
Howard, G. H. (Disbarred, 2003)	3	211.40
Maloney, P. M. (Permitted to Resign, 2002)	1	70.70
Mavis, L. M. (Disbarred, 2003)	3	11,148.07
McInenly, W. T. (Disbarred, 2002)	1	80,000.00
Sinclair, J. W. (Disbarred, 2003)	6	356,166.00
Steinberg, S. H. (Disbarred, 2003)	1	20,000.00
Steponaitis, H. P. (Permitted to Resign, 2003)	1	14,175.00
Tokar, G. O. (Permitted to Resign, 2001)	1	7,500.00
Tran, E. G. (Disbarred, 2003)	1	450.00
Solicitor #78	1	3,000.00
Solicitor #97	1	60,500.00
Solicitor #99	3	239,900.00
Solicitor #108	1	34,000.00
Solicitor #109	1	1,000.00
Solicitor #111	1	45,300.00
Solicitor #112	1	45,000.00
Solicitor #113	6	27,079.43
Solicitor #114	1	22,336.55
Solicitor #115	1	5,000.00
Solicitor #123	1	168.15

Solicitor X1 (Former member)	1	70.70
Solicitor X2 (Deceased member)	1	1,605.00
TOTAL	42	1,000,122.40

Professional Development & Competence Department Report

- Quarterly Benchmark Report

QUARTERLY BENCHMARK REPORT
PROFESSIONAL DEVELOPMENT & COMPETENCE DEPARTMENT
(First Quarter 2004, including January, February and March)

FOR INFORMATION ONLY

Prepared by:

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

April 2004

BENCHMARKS AND KEY INDICATORS

Practice Management Guidelines

Web traffic report for Practice Management Guidelines (number of visits)

Guideline	November & December 2002	2003	1 st Quarter 2004
Executive Summary	741	5,085	348
Client Service & Communication	71	1,488	285
File Management	108	930	427
Financial Management	93	553	142
Technology	71	597	764
Professional Management	43	584	124
Time Management	83	924	706
Personal Management	33	423	323
Closing Down Your Practice	32	558	139
Total	1,275	11,142	3,258

Self-assessment Tool

The Best Practices Self-assessment Tool will debut in May 2004.

Continuing Legal Education

	2001	2002	2003	1 st Quarter 2004
Number of CLE programs (all formats)	67	63	71	19
Attendance at CLE programs	8,539	11,788	18,269	4,965
Average attendance per program	127	187	258	261
Number of programs on ILN	-	-	35	11
Attendance at ILN locations	-	-	4,014	1,105
Average attendance at ILN locations per program	-	-	115	100
Number of Teleseminars	-	-	5	4
Attendance at Teleseminars	-	-	2,468	1,831
Average attendance at Teleseminars	-	-	494	458
Registrations for synchronous (live) webcasts through BAR-eX	N/A	N/A	213	140
Bursaries provided	140	151	444	83
Units/publications sold (paper, CD and PDF)	8,249	11,424	11,028	2,115

e-Transactions Site

Web traffic report for CLE portion of e-Transactions site

	2003	1 st Quarter 2004
Number of visits	38,954	14,823

Web purchase report for CLE portion of e-Transactions site

Product	2003	1 st Quarter 2004
Book purchases	524	208
Program registrations	1,103	384
ILN program registrations	503	177
Teleseminar registrations	321	296
Video streams	27	11
Registrations for asynchronous (archives) webcasts through BAR-eX	120	33
PDF purchases	36	13
CD-ROM purchases	9	2

BAC Materials Online Purchases by Week

Date (2004)	All Orders	Increase	French Orders (included)	French Increase (included)
January 13	3,524	263	N/A	N/A
January 20	3,760	236	N/A	N/A

January 26	3,967	207	N/A	N/A
February 2	4,188	221	N/A	N/A
February 11	4,423	235	N/A	N/A
February 16	4,540	117	N/A	N/A
February 27	4,745	205		
March 2	4,912	167	35	
March 8	5,033	121	40	5
March 15	5,170	137	49	9
March 22	5,330	160	53	4
March 29	5,496	166	59	6
April 6	5,650	154	63	4

Specialist Certification

The Specialist Certification Program redesign was effective January 2004.

	2001	2002	2003	1 st Quarter 2004
Number of Specialists	617	611	609	630
Specialists in Toronto Area	349	344	341	353
Specialists outside Toronto	268	267	268	277
Number of Specialty Areas	10	10	10	13

Practice Advisory

	2001	2002	2003	1 st Quarter 2004
Total member calls for advice	5,435	5,715	5,303	1,582

Breakdown of Callers

Member	2001	2002	2003	1 st Quarter 2004
Sole practitioners	2,363	2,465	2,399	685
Other members	2,150	2,354	2,372	631
Non-members*	922	896	532	266

*non member category consists of the following: Articling students, Secretary or Bookkeeper at firm, Manager or Administrator at firm, Law Society staff, Law Clerk or Paralegal at firm and other (sales person, lawyer outside Ontario, etc.)

Practice Advisory Mentor Program

	2001	2002	2003	1 st Quarter 2004
Number of new mentors	N/A	N/A	6	1
Number of matches	N/A	30	91	30

Spot Audit

Number of Audits Conducted

	2001	2002	2003	1 st Quarter 2004
Books and records audits	718	506	529	146
Complex audits	319	401	528	105
Total audits	1,037	907	1,057	251

Audits referred to Investigations/undertakings obtained	42	70	56	8
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Practice Review

	2001 (first year of new process)	2002	2003	1 st Quarter 2004
Number of authorizations into program	16	20	19	6
Number of authorizations through internal referrals	3	8	11	2
Total	19	28	30	8

Bar Admission Course

	2001	2002	2003	1 ST Quarter 2004
Enrolment	1,247	1,312	1,317	1,384
Average attendance skills phase	80%	72%	74%	N/A
Average attendance substantive phase	48%	42%	48%	N/A
Tuition Fees	\$4,400	\$4,400	\$4,400	\$4,400
National Mobility Agreement transfer candidates	-	-	41	25
Non-National Mobility Agreement transfer candidates	-	-	26	1
Total Transfer candidates	61	93	67	26

BAC e-Learning Site

Web traffic report for BAC e-Learning Site

	2003	1 st Quarter 2004
Number of visits	55,660	5,746
Percentage of students who visited the site during the course	88%	N/A

Articling and Placement Services

	2003	2002	2003	1 st Quarter 2004
International Articles		16	11	3
National Articles	29	14	16	5
Part time Articles		5	8	5
Joint Articles		0	2	2
Biographic paragraphs posted	53	62	99	10
Job postings	163	129	104	19
New Articling Mentors	N/A	N/A	N/A	0
New Articling Mentees	N/A	N/A	N/A	7
2003 students actively seeking placement	N/A	N/A	N/A	52
2003 students not actively seeking placement	N/A	N/A	N/A	12
2003 students where status is unknown	N/A	N/A	N/A	10
2004 students actively seeking placement	-	-	-	399

Education Support Services

	2001	2002	2003	1 st Quarter 2004
Distance education – number of locations	15	29	71	10
Distance education – number of students	28	46	103	16
Number of students who have received Accommodation*	11	29	127	13
Number of students who have been assisted with a special needs accommodation**	47	33	56	13
Number of students who have received tutoring	60	72	45	1
OSAP – number of applicants	333	258	342	275
Repayable Allowance Program approvals	47	57	37	1
Repayable Allowance Program amount awarded	\$170,700.00	\$213,395.40	\$117,167.00	\$5,000.00

* Accommodation requests cover issues such as bereavement, pregnancy and time conflicts

**Special Needs Accommodation requests cover issues such as disabilities, medical conditions, dyslexia, hearing and vision impairments

Great Library

	2001	2002	2003	1 st Quarter 2004
Materials catalogued and classified	1806	2005	2,179	436
Number of visits on the Great Library Web site	N/A	651,826	608,781	152,635
Catalogue searches on Web site	N/A	132,923	199,191	42,382
Number of research requests	71,000	47,000	48,800	11,040
Pages copied in custom copy service	68,437	56,159	43,815	10,539
Pages copied on self-copiers	481,473	397,957	337,313	74,108
Seminars held	4	6	12	5
Attendance at seminars	N/A	N/A	43	81
Attendance at orientation tours and general instruction	413	350	360	N/A
Corporate Records and Archives new entries into records database	N/A	2,157	5,199	2,516

Sole Practitioner and Small Firm Task Force Report

- Interim Report with Quantitative Survey Results

April 22, 2004

Sole Practitioner and Small Firm Task Force

Interim Report to Convocation

Purpose of the Report: Information

FOR INFORMATION

Background

1. On March 27, 2003, Convocation approved the establishment of a Task Force to examine the ongoing survival of sole practices and small law firms in Ontario and to report to Convocation in April 2004. Specifically, it authorized the Task Force to,
 - a. study and recommend the means to assure future access to legal services in smaller communities that are at risk of losing these services; and
 - b. to address the financial viability of sole practices and small firms.

2. The Task Force was directed to include, within its methodology and its report, specific attention to the experience of lawyers from equality-seeking communities who are in sole practices and small firms.
3. Convocation allocated \$200,000 to the Task Force for its work. LAWPRO agreed to fund an additional \$75,000.
4. Due to bench and Treasurer elections, the twelve members of the Task Force were not appointed until July 2003. The date targeted for delivery of the final report was extended to June 2004.
5. The members of the Task Force are Abe Feinstein (co-chair), Judith Potter (co-chair), Carole Curtis, Susan Elliott, Alan Gold, Gary Gottlieb, Tom Heintzman, Laura Legge, Dan Murphy, Ross Murray, Alan Silverstein, and Bill Simpson. Michelle Strom, President of LAWPRO also sits on the Task Force. Joyce Kaplan was retained as Consultant to the Task Force to coordinate the Task Force's research activities and to act as its secretary. Sophia Sperdakos is the Policy Secretariat staff to the Task Force.
6. Task Force members were aware from the outset that there was much anecdotal information about the challenges sole practices and small firms face and about the relationship between their financial viability and access to justice. However, there was little documented evidence to elucidate the actual situation and to inform the Task Force's work. The collection of such evidence was essential to the Task Force being able to properly identify issues and propose meaningful solutions.

Project Plan

7. The Task Force designed its work to be in four phases, with some overlap between phases and Task Force direction and decision throughout.
 - Phase 1 Data Collection/Situation Analysis
 - Phase 2 Issue Identification
 - Phase 3 Solution Identification
 - Phase 4 Recommendations
8. The Task Force determined it first needed to obtain a more complete picture of the current situation in Ontario from which key issues could then be determined and prioritized, solutions canvassed and recommendations put forward.

Work and Customized Research Done to Date

9. The Task Force collected a good deal of statistical data from the Law Society, LAWPRO, and Legal Aid Ontario. This revealed the need for the Task Force's study to use consistent definitions (e.g. of "sole practitioner") and to recognize where differences may exist within the Target Group of sole practitioners and small firms. The Task Force has defined a "small" firm as five lawyers or fewer. The Task Force agreed to gather information about the differing experiences of:
 - sole practitioners who practise alone without other lawyers in the same office space
 - sole practitioners who share space with other lawyers
 - sole proprietors (sole practitioners who employ up to four lawyers)
 - partners practising in small firms, and
 - lawyers who are employees in small firms.
10. The Task Force's next step was to commission customized research to obtain a "snapshot" of the situation. The work would begin with the perspectives of lawyers in private practice. Strategic Communications Inc. was retained to do a survey of the profession and some in-depth interviews. The quantitative and qualitative research was designed as a broad exploration to provide baseline information across a range of topics, clarify key issues and inform subsequent research into the specific issue areas. The areas of focus were:
 - Practice Profile
 - Satisfaction with Practice
 - Financial Viability
 - Access to Legal Services

- Members of Equality-Seeking Communities
 - Demographics
11. Strategic Communications conducted ten in-depth interviews before the survey to inform its questions, and 29 after the survey to further explore key findings. The survey questionnaire was administered in December 2003 to 734 lawyers in private practice:
- 553 from the Target Group;
 - An additional 10 from the Target Group practising in geographic communities defined for the purposes of the survey as “at risk” of losing access to legal services because there were two or fewer lawyers in the area and they were over the age of 55; and
 - 171 in the Non-target Group (lawyers practising in firms with more than five lawyers) used as the control group.

Findings of Survey and Interviews

12. Strategic Communications Inc.’s April 7, 2004 Report on its research findings, with Executive Summary is attached as Appendix 1.
13. The Report creates an overriding framework for the ways in which dissatisfaction and/or challenges to the financial viability of the Target Group intersect with the issue of public access to legal services.

Next Steps

14. The Task Force is currently reviewing the findings from this initial part of the customized research to determine what additional customized research should be undertaken to build on some of the important information the survey identified. The Task Force is also researching secondary information on the experiences in other jurisdictions and professions.
15. Once all the data is gathered the Task Force will assess and prioritize those areas in which recommendations can be most useful to implement positive change, taking into account:
- a. Whether the issue comes within the Law Society’s mandate;
 - b. If so, how the Law Society can best respond to the issue bearing in mind both human and financial resources; and
 - c. If the issue does not come within the Law Society’s mandate, how best to identify whose mandate it is and how to engage others in facilitating change.
16. The Task Force’s recommendations will also take into account the complexity of the factors affecting a particular issue, including the amount of time necessary to achieve solutions.

Timing

17. The initial customized research was designed as a broad exploration. Its findings provide data that can be mined further, and, given the heuristic nature of such research, suggest areas for additional exploration.
18. The Task Force believes that optimizing these survey findings with further research will inform and enrich its recommendations. Given this, it is premature to attempt to finalize its report for June. The Task Force estimates it will deliver its final report to Convocation in the fall of 2004.
19. The Task Force will return to Convocation in June with a further progress report.

Report to the Task Force Examining the Ongoing
Survival of Sole Practices and Small Law Firms

Sole Practitioners and Lawyers in
Small Firms:
Distinctive Characteristics, Satisfaction and
Financial Viability, Perceptions of Shortages of
Legal Services

April 7, 2004

Strategic Communications, Inc.
David Kraft, Stephen Arsenault, Olga Ialanskaia

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Executive Summary

Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in November 2003, to conduct quantitative and qualitative research to explore:

- Comparisons between lawyers in sole practices and small firms, and lawyers in larger firms;
- Perceived shortages of legal services in smaller communities and elsewhere in Ontario;
- The financial viability of sole practices and small firms;
- The population of lawyers from equality-seeking communities who are sole practitioners or with small firms.

This report presents the combined results of survey research and long interviews with lawyers in private practice in Ontario. Beyond the specific results reported herein, these findings are intended to inform further targeted research in specific areas and provide baseline information, which can be used for comparisons with future research findings.

Methodology

The research project was comprised of three components, which were carried out sequentially in the period from November 2003 to February 2004:

- Key informant interviews and instrument design;
- Opinion survey of lawyers in private practice;
- Follow-up long interviews with sole practitioners and lawyers in small firms.

Quantitative Research: The Survey Questionnaire

The survey questionnaire (Appendix 1) was comprised of 120 questions, including 13 open-ended questions. It was made up of the following sections:

- Practice Profile;
- Satisfaction with Practice;
- Financial Viability;
- Access to Legal Services;
- Members of Equality-Seeking Communities;
- Demographics.

The scope of the survey instrument and the extensive use of open-ended questions reflected the broad, exploratory nature of the research project.

The survey was administered to 734 lawyers in private practice in Ontario (Table 1), including:

- 553 individuals in the *target group*, comprised of sole practitioners, sole proprietors (sole practitioners who employ lawyers), and lawyers practising in firms with five or fewer lawyers;
- 171 individuals in the *non-target group*, comprised of lawyers practising in firms with more than five lawyers (the control group);
- 10 individuals practising in communities previously defined as “at risk” of losing access to legal services, because there were two or fewer lawyers in the area and they were over the age of 55.

The survey, which took an average of 27 minutes to complete, was fielded by trained telephone interviewers at Strategic Communications, between December 3 and December 18, 2003.

The margin of error for the target group sample is 3.9% and for the non-target group is 7.4%, 19 times out of 20.

Qualitative Research: Long Interviews

All survey respondents were asked if they would be willing to participate in a follow-up long interview and/or a focus group. 50% of the target group and 39% of the non-target group indicated they were willing to participate in one or both forms of follow-up research.

Subsequent long interviews explored two areas:

- Limits to access, or shortages of legal services;
- Dissatisfaction and/or challenges to the financial viability of individuals’ practice.

An interview guide (Appendix 2), exploring these themes and comprised of 20 questions, provided the basis for a semi-structured, open-ended conversation with 29 lawyers from the target group.

Comparing the Target and Non-Target Groups

Comparison between the target group of sole practitioners and lawyers and the non-target group of lawyers in firms with more than five lawyers revealed differences in demographic characteristics, income, areas of practice, type of services provided and the clientele served.

What emerges from these comparisons is the extent to which sole practitioners and small firms serve a distinct client population and provide a unique configuration of services:

- It would appear that a large majority of all individuals seeking legal services, obtain them from lawyers in the target group, particularly in the areas of Real Estate, Wills, Estates and Trusts, and Family Law, all of which are dominated by sole practitioners and small firms.
- A large majority of all legal services provided in the Rest of GTA outside of Toronto and in Non-Urban Areas of Ontario are provided by sole practitioners and small firms.
- This group also provides the vast majority of all Legal Aid services delivered in Ontario.
- Finally, and of particular note in light of the rapidly changing ethnic and linguistic composition of Ontario, the target group provides virtually all the legal services available in languages other than English, French or Italian.

Comparisons within the Target Group

Differences within the target group on language/ethnic diversity, income and related aspects of practice profile and stability (*growing, stable or decreasing* areas of practice), are not as clearly defined as those between the target and non-target groups. However they do illustrate that comparisons between the target and the non-target groups can also be viewed as a continuum. Sole practitioners, particularly those practising alone without other lawyers in the same office, tend to be most different from non-target group respondents. In contrast partners in small firms tend to be the most similar to respondents in the non-target group. Other factors - region, gender, equality-seeking status and whether lawyers accept Legal Aid clients - may provide equally or more salient parameters for defining sub-groups within the target group of sole practitioners and small firms.

Satisfaction and Financial Viability

Two insights emerged from our analysis of satisfaction/dissatisfaction, and perceptions of financial viability among survey respondents:

- Target group respondents reported somewhat less overall satisfaction with their practice, less satisfaction with the annual income from their practice and perceived greater challenges to their financial viability. However, despite substantive differences between the two groups, both groups registered relatively high degrees of satisfaction and a similar assessment of their future and future financial viability.
- A cluster of issues - notably the practical financial/utilitarian concerns of financing the practice, dealing with increased overhead costs and lower than expected incomes – are the main drivers determining both dissatisfaction and reduced financial viability in the target group.

More than one sixth of the target group, almost three times the proportion of the non-target group reported they were *somewhat* or *very dissatisfied* with their annual income. A similar proportion of target group respondents reported that maintaining financial viability was a *serious* or *very serious challenge* compared to less than one tenth of the non-target group.

But notwithstanding the differences between the target and non-target groups, including evidence of a small, but measurable, subset of the target group whose viability may be threatened, it is nevertheless important not to overstate the differences between the two groups. Three quarters of the target group report overall satisfaction with their practice, four fifths are satisfied with their current mix of practice areas, and those who are satisfied with their income outnumber those that are dissatisfied by a ratio of almost two to one. Perceptions of current and future financial viability, particularly the latter, are similar in broad outline to the perceptions of lawyers in the non-target group. All of this suggests that as group, sole practitioners and lawyers in small firms have a generally high level of overall satisfaction, are reasonably satisfied with their income, and reasonably optimistic about the financial viability of their practice.

As a whole, the target group is stable and financially viable. At the same time this group includes a smaller subset of dissatisfied lawyers who are facing a variety of financial challenges, which in some instances are converging to threaten the overall viability of individual practices.

Although the practice environment for lawyers in the target and non-target groups undoubtedly has many common characteristics, statistical analysis isolated a unique configuration of drivers of satisfaction/dissatisfaction and threats to financial viability for the target group. As noted in Section 5.5 the most important of these are problems associated with the increased difficulties and/or risks of financing law practices, followed by the increased overhead costs of running a law practice.

How do we explain the different configuration of key drivers affecting the dissatisfaction and financial viability of the target group compared to the non-target group? One explanation lies in the characteristics of the client market that is served by sole practitioners and small firms. As detailed throughout Section 3 of this report, the target group

is comparatively more numerous in the Rest of GTA outside of Toronto and in Non-Urban Areas of Ontario. It serves a higher proportion of individuals than businesses, the overwhelming proportion of individuals using Legal Aid, and virtually all individuals seeking services in languages other than English, French or Italian.

It is reasonable to suggest that problems of financing law practices as well as those of managing rising overhead costs, have begun to surface in a market environment characterized by the growing inability of the client population to purchase legal services and/or pay adequate fees for those services. This is the core explanation for the problems of financial viability facing many target group respondents - particularly sole practitioners - which we heard from individuals who participated in the long interviews.

Shortages of Legal Services

Analysis of survey data and long-interview transcripts revealed five different aspects of shortages of legal services:

- Affordability and/or shortage of Legal Aid and Legal Aid lawyers;
- Shortages in some regions;
- Shortages in specific areas of law;
- Shortages of legal services to cultural and linguistic groups, and communities of interest;
- Shortages due to legal process and administration.

Survey research and the real-world descriptions provided by the individuals we interviewed highlighted the extent to which shortages of legal services are rooted in problems of affordability. Of target group respondents who identified shortages, close to two fifths mentioned either problems of access to Legal Aid and Legal Aid lawyers, or problems of affordability of legal services. In the comparable group of equality-seekers this proportion rose to almost half who cited Legal Aid or affordability problems. But beyond these direct references to shortages rooted in the limited means of potential users of legal services, many of the specific descriptions of shortages in regions and areas of law cited the same underlying problem. Limitations or absences of services in such areas as Family Law, Child Protection and Workplace Safety and Insurance Board claims, were often explained by reference to clients' limited ability to pay or their general reliance on Legal Aid.

Viewed from this angle, we conclude that the issue of shortages must first be seen from the general point of view of the supply and demand of legal services. The problem of shortages of legal services is rooted in under-funded demand. Many potential users of legal services are not able to access those services because of their limited ability to pay. Conversely, the supply of legal services - lawyers working in specific regions, areas of law and communities - is limited by the inability of individuals and communities to purchase services at rates that will sustain sole practitioners and small firms. By definition our research is a snapshot of conditions at this time. Still, comments from many interviewees suggest there may be a growing proportion of the population who need legal services but are unable to adequately access those services due to financial constraints.

Although we have stressed the overarching importance of understanding shortages as a matter of affordability and restricted access to legal services, there are clearly other, more specific shortage issues which are relevant to regions, areas of practice and specific communities. In some parts of Ontario, a shortage of clients of sufficient means to sustain a healthy local community of lawyers may be complicated by a failure or lag in the legal community's response to changing demand. There may be several areas in Ontario, particularly the Non-Urban region and the Rest of GTA outside of Toronto, where attractive opportunities to practice may have gone unnoticed. This research also identified, and in a preliminary way explored the issues of shortages in specific areas of practice. There are a host of issues that may be unique to each area of practice.

Finally, this section of the report explored the extent to which equality-seekers identified shortages of legal services, and the nature of the shortages they reported. It should be noted that whereas just over one third (35%) of the target group as a whole reported shortages of legal services in the community they served, this figure rose to 52% among equality-seekers within the target group.

Conclusion

The findings of this research suggest that the issues of dissatisfaction and financial viability, and shortages of legal services, may be closely linked through the character of the client market that is served by sole practitioners and lawyers in small firms. The problems experienced by some sole practitioners and small firms in financing their practices are rooted in the growing incapacity of potential clients to pay for those services. As we heard directly from several interviewees, some lawyers find themselves on the horns of a dilemma. Many potential clients cannot pay adequately or in a timely fashion for the legal services they need. Yet, in many instances lawyers are obliged to take on these cases both for financial and professional reasons, with the consequences that they assume an increased burden in financing their practice, and inevitably earn a lower income.

The same situation also accounts for the absence of legal services, and perhaps also a trend toward growing shortages in some regions, areas of practice or cultural communities. As a matter of both choice and necessity, lawyers may be forced to restrict the Legal Aid clients they accept, as well as clients of limited means who do not qualify for Legal Aid. Regions, areas of practice or cultural communities where the potential client population has a limited capacity to pay for services, are inevitably subject to growing shortages as the underlying economic realities force lawyers to seek out other more viable markets for their legal services.

This report provides:

- Detailed comparisons between the target and non-target groups;
- Detailed comparisons within the five sub-groups comprising the target group;
- Analysis of the key drivers of satisfaction, dissatisfaction, and financial viability within the target group;
- An exploration of the extent and characteristics of shortages of legal services as they were perceived by respondents in the target group.

In the analysis and interpretation of the research findings, this report has developed a general framework for analyzing these issues that can inform further research.

1.0 Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in November 2003, to conduct quantitative and qualitative research to explore:

- Comparisons between lawyers in sole practices and small firms, and lawyers in larger firms;
- Perceived shortages of legal services in smaller communities and elsewhere in Ontario;
- The financial viability of sole practices and small firms;
- The population of lawyers from equality-seeking communities who are sole practitioners or with small firms.

This report presents the combined results of survey research and long interviews with lawyers in private practice in Ontario. Beyond the specific results reported herein, these findings are intended to inform further targeted research in specific areas and provide baseline information, which can be used for comparisons with future research.

2.0 Methodology

2.1 Research Design

The research project was comprised of three components, which were carried out sequentially in the period from November 2003 to February 2004:

- Key informant interviews and instrument design;
- Opinion survey of lawyers in private practice;

- Follow-up long interviews with sole practitioners and lawyers in small firms.

2.1.1 Key informant interviews and research

Under the direction of Law Society staff and the Consultant to the Task Force, ten key informants were interviewed between November 11 and November 21, 2003. This group included seven lawyers in private practice, the Director of Policy and Legal Affairs, the Consultant to the Task Force and the Equity Advisor.

All interviews explored some common themes including the sustainability of sole practitioners and small firms, the challenges and rewards of practising in specific practice environments, access to legal services and in some cases, equity issues. The interviews were structured as informal conversations and evolved with the parallel process of drafting the questionnaire. The interviews gave context to the research process, provided insights into how to structure the survey questionnaire, identified specific issues that should be addressed and appropriate terminology to incorporate into the survey questions.

2.2.2 Quantitative Research: The Survey Questionnaire

The survey questionnaire (Appendix 1) was comprised of 120 questions, including 13 open-ended questions. It was made up of the following sections:

- Practice Profile;
- Satisfaction with Practice;
- Financial Viability;
- Access to Legal Services;
- Members of Equality-Seeking Communities;
- Demographics.

The scope of the survey instrument and the extensive use of open-ended questions reflected the broad, exploratory nature of the research project.

The survey was administered to 734 lawyers in private practice in Ontario (Table 1), including:

- 553 individuals in the *target group*, comprised of sole practitioners, sole proprietors (sole practitioners who employ lawyers), and lawyers practising in firms with five or fewer lawyers;
- 171 individuals in the *non-target group*, comprised of lawyers practising in firms with more than five lawyers (the control group);
- 10 individuals practising in communities previously defined as “at risk” of losing access to legal services, because there were two or fewer lawyers in the areas and they were over the age of 55.¹

The survey, which took an average of 27 minutes to complete, was fielded by trained telephone interviewers at Strategic Communications, between December 3 and December 18, 2003.

The margin of error for the target group sample is 3.9% and for the nontarget group is 7.4%, 19 times out of 20.

2.2.3 Qualitative Research: Long Interviews

All survey respondents were asked if they would be willing to participate in a follow-up long interview and/or a focus group. 50% of the target group and 39% of the non-target group indicated they were willing to participate in one or both forms of follow-up research.

¹ This report presents and interprets the results of the target and non-target survey sub-samples. It does not report on the “at risk” sub-sample which is too small to permit reliable generalization. This sub-sample could not be incorporated into the target group sub-sample because it was not randomly generated.

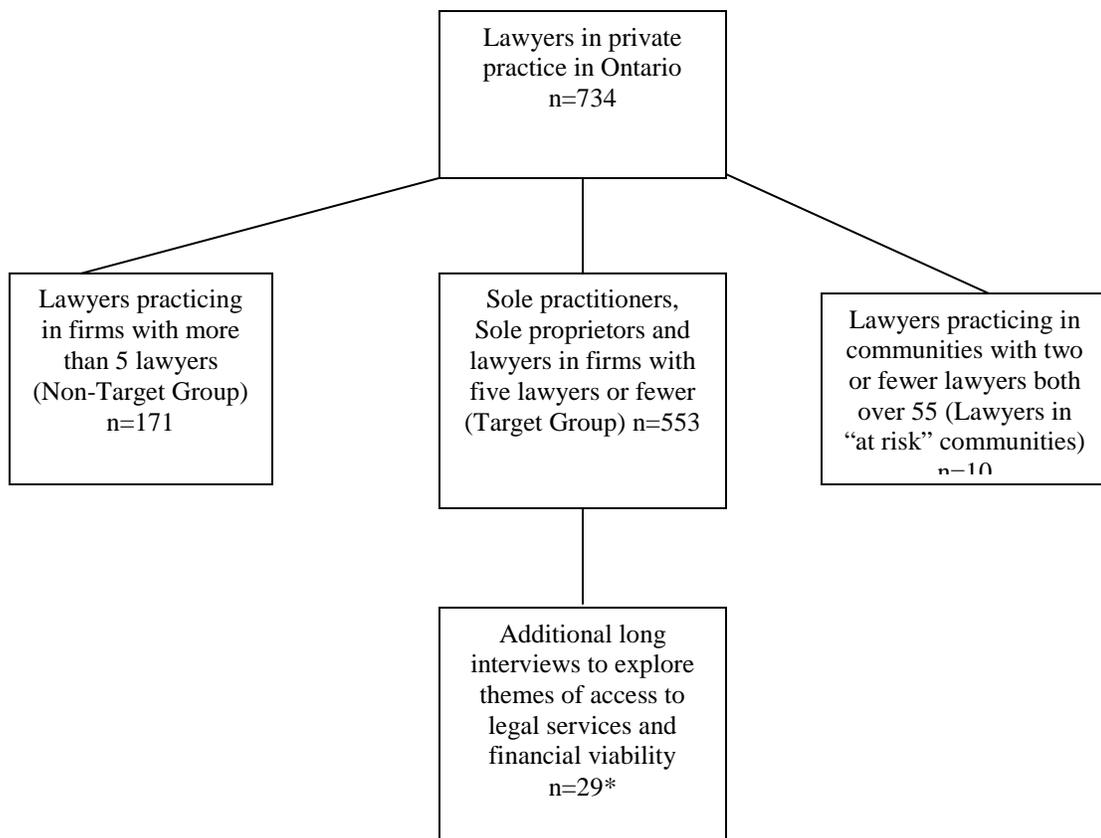
Subsequent long interviews explored two areas:

- Limits to access, or shortages of legal services;
- Dissatisfaction and/or challenges to the financial viability of individual's practice.

An interview guide (Appendix 2), exploring these themes and comprised of 20 questions, provided the basis for a semi-structured, open-ended conversation with 29 lawyers from the target group. Sixteen lawyers were selected to explore access to legal services, while thirteen were selected to explore financial viability and satisfaction with their practice. Interviews were conducted between January 21, 2004 and February 16, 2004. They ranged in length from 17 minutes to 96 minutes, averaging of 47 minutes.

The long interviews permitted a smaller group of survey respondents to frame the issues and describe the problems in their own words. The stories of individuals provided context and meaning to quantitative results. Their indepth comments added qualitative 'flesh' to the quantitative 'bones' of the survey data that had already been collected. This combination of data sources has been particularly valuable to our interpretation of how multiple factors may intersect to affect the issues of financial viability and access to legal services.

TABLE 1 - SURVEY RESPONDENTS AND LONG INTERVIEWS



**Two individuals who completed long interviews were not part of original survey sample of 553. These interviews were conducted to broaden geographical representation.*

2.2.4 Regional Comparisons

Throughout this report - most importantly in Section 6, Shortages of Legal Services - we have used four regional categories for comparative purposes: Toronto, Rest of GTA, Other Urban Areas and Non-Urban Areas. These regional designations were present in the initial data set received from the Law Society.

Following discussion with Law Society staff, one change was made to improve the validity of the regional designations. Municipalities in Southern Ontario with a population of over 50,000 – including for example, Windsor and St. Catharines - were moved from the Non-Urban Area category to the Other Urban Area category. This change was consistent with the original intent of the regional designations; to compare the profile and experience of lawyers practising law in distinct urban and non-urban milieu. In this case moving some mid-sized cities in Southern Ontario from the Non-Urban Areas designation to the Other Urban Area designation, increased the accuracy of both categories. This change resulted in a somewhat narrower definition of the Non-Urban Area and a somewhat wider definition of the Other Urban Area, while having no effect on the definition of the Toronto and the Rest of GTA regions. These changes should be kept in mind when making comparisons between regional findings presented in this report and existing regional information, since the four regional categories being used in each case may not be strictly comparable.

2.2.5 Target and Non-target Groups: Definitions

Throughout this report we have used the terms target and non-target groups. Survey respondents for both of these groups were randomly selected from an up-to-date list of lawyers in private practice in Ontario. The non-target group refers to those lawyers who reported being a partner or employee/associate in a firm with six or more lawyers. The target group refers to lawyers who work in firms with five or fewer lawyers.

The report also discusses similarities and differences between five sub-groups within the target group. These are:

- Sole practitioners practising alone in an office without other lawyers (sole practitioners alone);
- Sole practitioners practising with other lawyers in the same office (sole practitioners with others);
- Sole proprietors;
- Partners in firms with five or fewer lawyers;
- Employees/associates in firms with five or fewer lawyers.

3.0 Comparing the Target and Non-Target Groups

3.1. Key findings

Comparison between the target group and the non-target group revealed differences in demographic characteristics, income, areas of practice, type of services provided and the clientele served.

The target group is older, has a lower proportion of women, and reports lower annual income than the non-target group. The target group is slightly more racially diverse, and exhibits greater linguistic diversity.

Roughly equal percentages of both groups indicated they were members of equality-seeking communities. Among the equality-seekers in the non-target group, a much higher percentage cited gender as at least one of the reasons for their equality-seeking status. Among equality seekers in the target group, a higher percentage of respondents cited ethnicity, race or language as at least one of the reasons for their equality-seeking status.

The differences in the reasons cited for equality-seeking status between the target and non-target group respondents, can be accounted for in part by the differences in the gender, race, ethnic and linguistic composition of the two groups. However, closer comparisons demonstrated that a higher percentage of women in the non-target group identified themselves as equality-seekers, and were significantly more likely to mention gender first among the

reasons for their equality-seeking status. Although it is more difficult to compare reporting differences based on race, ethnicity and language, the higher percentage of target group respondents who cited race may indicate a greater propensity among racialized sub-groups in the target group to identify race as an equality-seeking issue.

A higher percentage of non-target respondents cited English or French as their first language, whereas a higher percentage of target group respondents cited one or more of all other languages as their first language. A higher proportion of the target group reported offering services to clients in other languages. To the extent that legal services in Ontario are being offered in languages other than English, French or Italian, they are provided almost exclusively by lawyers in the target group.

A much higher percentage of non-target respondents were located in Toronto, roughly equal percentages of the two groups were located in Other Urban Areas, and a much higher proportion of target group respondents were located in the Rest of GTA and Non-Urban Areas.

Target group respondents estimated over three-quarters of all clients were individuals, whereas non-target group respondents estimated three tenths of all clients were individuals. Conversely, the target group estimated just over one quarter of clients were businesses, organizations or government, while the non-target group estimated these groups comprised seven tenths of all their clients.

More than one third of the target group respondents reported doing some Legal Aid work compared to less than one tenth of the non-target group. For those doing Legal Aid in the target group, the work comprised an average of just under two-fifths of all billable work. In contrast, for those in the nontarget group who reported doing such work, a quarter of all billable time was comprised of Legal Aid.

The top five areas of practice reported by the target group were: Real Estate; Civil Litigation; Family and Matrimonial; Corporate Commercial; and Wills, Estates and Trusts. Compared to the non-target group, a much higher percentage of target group respondents cited Real Estate; Wills, Estates and Trusts and Family and Matrimonial Law as their main areas of practice.

Of all main areas of practice mentioned by target group respondents, less than half were described as *growing*. Non-target group respondents described three-fifths of all their main areas of practice as *growing*.

Compared to the non-target group, the target group reported a lower percentage of billable legal work, a higher percentage of time spent on nonbillable administration, client development and marketing, a higher percentage of pro bono work and somewhat shorter average hours of work per week.

3.2 Demographics

In comparison with the non-target group, the target group:

- Has a lower proportion of women;
- Is older;
- Reports lower annual incomes.

3.2.1 Gender

CHART 1 - GENDER

As Chart 1 shows, women comprise 21% of the target group compared to 33% of the non-target group.

Within the target group as a whole 21% of respondents were women. However, women were more likely to be associates or employees of small firms, comprising 33% of that sub-group, and less likely to be partners in those firms, comprising 13% of that sub-group. In the other sub-groups, sole practitioners and sole proprietors, the percentage of women was closer to the average presented in Chart 1. A similar pattern was evident within the nontarget group, where 33% of all respondents were women but 47% of all associates/ employees were women and

13% of all partners were women. In both the target and non-target groups, women are less likely to be partners and more likely to be associates or employees in law firms.

3.2.2 Age

The target group of sole practitioners and lawyers in small firms is older, with an average age of 49 compared to 42 in the non-target group. Within the target group sole practitioners alone had the highest average age at 51, followed by sole practitioners sharing office space with other lawyers, at 50. Employees/associates in small firms reported the lowest average age at 41. As Chart 2 shows, the target group has a much lower percentage of respondents under the age of 35, 12% compared to 36% in the non-target group.

CHART 2 - AGE

Within the target group just 6% of sole practitioners practising alone without other lawyers in the same space, and 8% of sole practitioners sharing space with other lawyers, were under the age of 35. In Toronto and the Rest of GTA, 13% of the target group were under 35, compared to 9% in Other Urban and Non-Urban Areas. Target group respondents in Toronto and the Rest of GTA also had the lowest average age at 46 and 47 respectively, compared to an average of 48 and 50 respectively in the Other Urban and Non-Urban regions.

3.2.3 Income

Comparisons reveal substantial differences in the reported income levels of the two groups. As Chart 3 shows, almost twice the percentage of target group respondents, 59% compared to 30% in the non-target group, reported an annual before-tax income of less than \$100,000. And almost twice the percentage of non-target respondents reported income over \$100,000, 70% compared to 40% in the target group.

CHART 3 - ANNUAL INCOME EARNED FROM YOUR PRACTICE IN 2002.

Income within the target group is discussed at greater length in Section 5.3.

3.3 Diversity

Compared to the target group, the non-target group:

- Is more linguistically diverse;
- Has a (slightly) higher proportion of visible minorities;
- Has almost the same percentage of individuals who identify themselves as members of an equality-seeking community;
- Has a higher percentage of equality-seekers who site race, ethnicity and language as a reason for their membership in an equality-seeking community;
- Has a lower percentage of equality-seekers who site gender as a reason for their membership in an equality-seeking community.

3.3.1 Visible Minorities

Survey respondents were asked if they belonged to one or more of 12 racialized categories. All responses were recorded.

As Chart 4 shows, the target group is slightly more racially diverse than the non-target group. A lower proportion of respondents identified themselves as *White* (84% compared to 88% in the non-target group), and a higher proportion cited one or more other categories (19% compared to 16% in the non-target group).

CHART 4 - DIVERSITY (ALL MENTIONS).

In the target group, 3.4% of respondents identified themselves as *South Asian* compared to 0.6% from the non-target group, 3.3% identified themselves as *Black* compared to 2.3% in the non-target group, and 2.9% identified themselves as *Chinese* compared to 2.3% in the non-target group.

3.3.2 Linguistic Diversity

Respondents were asked, “What language or languages did you first learn at home in childhood and still understand?” Here again, all mentions were recorded.

CHART 5 - FIRST LANGUAGE (ALL MENTIONS).

As Chart 5 shows, 80% of the target group compared to 91% of the nontarget group listed *English* among their first languages, while 30% of target group respondents compared to 20% of the non-target group respondents mentioned one or more other languages. Among languages other than *English*, *French* was cited more frequently by respondents in the non-target group. In contrast, the remaining top 10 non-English mentions - *Italian*, *Cantonese*, *German*, *Polish*, *Punjabi*, *Greek*, *Urdu*, *Portuguese* and *Spanish* - were all cited more frequently by target group respondents. In other words, a higher percentage of non-target group respondents cited *English* or *French* as their first language whereas a higher percentage of target group respondents cited all other languages. Respondents were also asked: “In what languages are you able to offer your services to clients?” Chart 6 shows that 34% of the target group compared to 22% of the non-target group cited a language other than *English*. Within the target group, 40% of the respondents based in Toronto reported offering services in a language or languages other than *English*. This figure dropped to 24% among target group respondents in the Non-Urban Areas.

Chart 6 takes a closer look at the non-*English* languages in which lawyers reported offering services to their clients. It compares the frequency of non- *English* language mentions between the target and non-target groups.

CHART 6 - IN WHAT LANGUAGES ARE YOU ABLE TO OFFER YOUR SERVICES?

CHART 7 - “OTHER” LANGUAGES OF SERVICE (ALL MENTIONS)

Interestingly, 73% of non-target respondents cited *French* as a language in which they offer service to clients, compared to just 39% of the target group respondents. Non-target respondents were also slightly more likely to mention *Italian*, 19% compared to 15%. In contrast, target group respondents cited a higher percentage of all the other languages that received frequent mentions.

The sub-sample of non-target participants who mentioned offering their services in languages other than *English* was small (n=37) and for that reason the results should be interpreted cautiously. Nevertheless, the findings reported in Charts 5, 6 and 7, suggest distinct patterns of linguistic diversity in the target and non-target groups.

Respondents in the non-target group are more likely to offer their services in *English* only, and to the extent that they offer services in other languages, those languages are overwhelmingly *French* or *Italian*. Of the non-target group respondents who reported offering services in a language other than *English*, 81% mentioned *French* and/or *Italian*, while just 19% mentioned all other languages. Within the non-target group just seven individuals - 4% of the group - offered services to their clients in languages other than *English*, *French* or *Italian*. Moreover, all seven of these individuals were located in Toronto. In other words, there were no non-target respondents located outside of Toronto who reported offering services to clients in languages other than *English*, *French* or *Italian*.

In comparison to the non-target group, target group respondents were more likely to report offering their services in a language other than *English*. However a comparatively lower 46% of this group offer their services in *French* and/or *Italian*, whereas 54% mentioned all other languages. Within the target group as a whole, 18% of respondents reported offering services in languages other than *English*, *French* or *Italian*. In the Toronto region this figure was 27%, in the Rest of GTA 21%, in Other Urban Areas 12%, and in the Non-Urban Areas 4%.

These findings suggest that the linguistic and ethnic profile of the communities served by the target and non-target groups is quite different. Whereas the non-target group of lawyers are more likely to serve an *English*-speaking clientele or the more institutionally established language communities of *French* and *Italian* speakers, the target group is comprised of a much higher proportion of lawyers who are serving other – comparatively newer and less institutionally established – language communities. The findings summarized in Charts 4,5,6, and 7 suggest that to the extent that language communities other than *English*, *French* or *Italian*, are seeking the services of lawyers in their own language, those services are being provided almost exclusively by sole practitioners and small firms with fewer than five lawyers.

3.4 Members of Equality-Seeking Communities

Respondents were asked the following question:

The Law Society has defined members of equality-seeking communities as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, a disability, language, sexual orientation or gender. Do you consider yourself a member of an equality-seeking community?

As Chart 8 shows, 26% of the target group and 28% of the non-target group, identified themselves as equality-seekers. For all respondents who identified themselves as equality-seekers, a follow-up question repeated the list of factors that define equality-seeking status and asked individuals to indicate one or more of the reasons for their membership in an equality-seeking community. Chart 9 compares the reasons cited by respondents in the target and non-target groups.

CHART 8 - ARE YOU A MEMBER OF AN EQUALITY-SEEKING COMMUNITY?

CHART 9 - MAIN REASONS FOR MEMBERSHIP IN AN EQUALITY-SEEKING COMMUNITY (MULTIPLE MENTIONS)

In the non-target group 58% of equality-seeking respondents compared to 28% of target group respondents cited gender as a reason for their equality-seeking status. (In both groups all the individuals who cited gender were women). 47% of equality-seekers in the target group mentioned ethnicity compared to 42% of respondents in the non-target group. And 37% of equality-seekers in the target group cited race, compared to 19% in the non-target group.

The differences illustrated in Chart 9 can be explained partly by the differences in the gender, ethnic, racial and linguistic composition of the target and non-target groups. For example, as Chart 1 showed, there is a substantially higher percentage of women in the non-target group than there is in the target group (33% compared to 21%). Other factors being equal, it would be reasonable to expect that this difference would be reflected in a correspondingly higher percentage of women in the non-target sub-sample of equality-seekers, as well as a correspondingly higher percentage citing gender as one of their reasons for equality-seeking status. For the same reason, given the greater racial and linguistic diversity of the target group, it was not surprising to see these differences reflected in higher percentages of target group respondents citing ethnicity, race and language as reasons for their equality-seeking status.

However, the differences illustrated in Chart 9 cannot be explained entirely in terms of the different composition of the two groups. For example, a closer look at women in the two groups of equality-seekers reveals some relevant differences. First, although women in both groups were much more likely than men to identify themselves as equality-seekers, 54% of the women in the non-target group, compared to 44% of the women in the target group, indicated they were equality-seekers. Combined with the initially higher percentage of women in the non-target group as a whole, this resulted in women comprising 70% of all non-target group equality-seekers. In contrast, women comprised 37% of equality-seekers from the target group. Second, women in the non-target group were also slightly more likely to mention gender as a reason for their status as equality-seekers: 83% compared to 77% of women in the target group. And finally, it is interesting to note that women equality-seekers in the non-target group

were significantly more likely to cite gender as their first mention of reasons for their equality-seeking status: 60% in the non-target group compared to 45% in the target group.

These comparisons demonstrate that women in the non-target group were somewhat more likely to identify themselves as equality-seekers, and significantly more likely to mention gender as their first reason for quality-seeking status. One possible explanation for these differences is that within the work environment of the non-target group where racial, ethnic and linguistic differences may be somewhat less pronounced than within the work environment of the target group, gender issues assume relatively greater importance. Conversely it might be the case that for some women in the target group the relative importance of gender as a reason for their equality-seeking status is mediated by other concerns such as race, ethnicity and language.

When it comes to examining race or ethnicity as a reason for equality-seeking status, there is no benchmark equivalent to gender that could be easily used to compare reporting differences between the target and non-target group. On the contrary, it is likely that respondents applied a variety of overlapping definitions when it came to specifying ethnicity, race, language and even religion as reasons for belonging to an equality-seeking community. Still, the comparatively higher percentage of target group respondents who cited race – 37% compared to 19% in the non-target group - may indicate a greater propensity among racialized sub-groups in the target group to identify race as an equality-seeking issue.

3.5 Practice Profile

3.5.1 Regional Distribution of the Target and Non-Target Group

As Chart 10 shows, just over one third of target group respondents (37%) compared to almost two thirds of non-target group respondents (66%), were located in Toronto. The two groups were represented in almost equal proportions in Other Urban Areas, 28% in the target group compared to 26% of the non-target group. 21% of target group lawyers were located in the Rest of GTA, compared to just 4% of non-target group lawyers, while 15% of the target group compared to 4% the non-target group are situated in the Non-Urban Areas.

CHART 10 - SURVEY SAMPLE: DISTRIBUTION BY REGION.

Sole practitioners, sole proprietors and small firms comprise more than half of all the lawyers in private practice in Ontario. Given this fact, the information summarised in Chart 10 highlights the extent to which more than four fifths of all the lawyers in the Rest of GTA outside of Toronto and in Non-Urban Ontario, belong to the target group. It may be that both regions, particularly the GTA outside of Toronto, are served to some extent by firms based in Toronto and Other Urban centres. However, the preponderance of target group lawyers suggests that the market for legal services is served overwhelmingly by sole practitioners and small firms in these two regions.

3.5.2 Clients Served: Individuals and Businesses

Respondents were asked to estimate the percentage of “your clients that are businesses, organizations or government” and the “percentage of your clients that are individuals.” As Chart 11 illustrates the estimates of the target and non-target group respondents, present mirror images. Whereas the target group respondents estimated 77% of all clients were individuals, the nontarget group estimated just 30% of clients were individuals. Conversely, the target group estimated 26% of clients were businesses, organizations or government while the non-target group estimated these groups comprised 70% of all clients.

CHART 11 - PERCENTAGE OF CLIENTS WHO ARE INDIVIDUALS AND BUSINESSES

3.5.3 Areas of Practice

Chart 12 compares main areas of practice between the target and non-target group. As expected, a higher percentage of the target group reported Real Estate (46%); Wills, Estates and Trusts (35%); and Family-Matrimonial (26%) as their main areas of practice than did lawyers in the non-target group.

CHART 12 - MAIN AREA OF PRACTICE (ALL MENTIONS)*

Respondents were not asked if their practice as a whole was growing, stable or decreasing. However, as respondents listed their main areas of practice they were asked after each mention if that particular area of practice was, “growing, stable or decreasing.” Chart 13 summarizes all responses for all the areas of practice. Whereas 60% of the non-target group described their main practice areas as *growing*, just 46% of the target group reported growth in their main practice areas. Interestingly the total percentage of practice areas described as decreasing was similar for both groups, 9% for the nontarget group and 10% for the target group.

CHART 13 - IS YOUR PRACTICE GROWING, STABLE OR DECREASING?

3.5.4 Legal Aid

Whereas just 7% of the non-target group reported doing any Legal Aid whatsoever, a much higher percentage (37%) of the target group reported doing some Legal Aid work. And as Chart 14 shows, for 19% of the target group Legal Aid comprises more than one quarter of their billable time. By contrast a negligible 2% of the respondents in the non-target group report that Legal Aid comprises more than one quarter of their billable time.

CHART 14 - WHAT PERCENTAGE OF YOUR WORK IS LEGAL-AID WORK?

The comparisons in Chart 14 illustrate another key difference in the type of legal services and the client population served by lawyers in the target and non-target groups. As a group, sole practitioners, sole proprietors and small firms deliver an overwhelming proportion of all Legal Aid services in Ontario. And for the same reason, income from Legal Aid may be an important source of revenue for one fifth or more of the lawyers in the target group (see Table 2 following). In contrast a very small percentage of lawyers in the non-target group do any Legal Aid work whatsoever, and income from Legal Aid constitutes an important revenue source for an even smaller percentage of that group.

3.5.5 Other Aspects of Practice Profile

In comparison with the non-target group, the target group reported:

- A lower percentage of billable legal work;
- A higher percentage of time spent on non-billable administration, client development and marketing;
- A higher percentage of pro bono work among those who report offering pro bono;
- (Somewhat) shorter hours of work in an average week;
- A higher percentage of Legal Aid work as a percentage of all billable time among those who report taking Legal Aid clients.

Table 2 summarizes these differences.

TABLE 2 - SUMMARY OF MEANS (AVERAGES)*

3.6 Discussion: Comparing the Target and Non-Target Groups

The extensive comparisons in this section reveal consistent differences in the demographic characteristics, practice profile and the client population served.

What emerges from these comparisons is the extent to which sole practitioners and small firms serve a distinct client population and provide a unique configuration of services. It would appear that a large majority of all individuals seeking legal services obtain them from lawyers in the target group, particularly in the areas of Real Estate, Wills, Estates and Trusts, and Family Law, all of which are dominated by sole practitioners and small firms. Similarly, a large majority of all legal services provided in the Rest of GTA outside of Toronto and in Non-Urban Areas of Ontario are provided by sole practitioners and small firms. This group also provides the vast majority of all Legal

Aid services delivered in Ontario. Finally, and of particular note in light of the rapidly changing ethnic and linguistic composition of Ontario, the target group provides virtually all the legal services available in languages other than *English, French or Italian*.

4.0 Comparisons within the Target group

As noted in Section 2.2.5 we have distinguished five sub-groups within the target group:

- Sole practitioners practising alone in an office without other lawyers (sole practitioners alone);
- Sole practitioners practising with other lawyers in the same office (sole practitioners with others);
- Sole proprietors;
- Partners firms with five or fewer lawyers;
- Employees/associates in firms with five or fewer lawyers.

This section examines some of the differences and similarities between these sub-groups, taking a closer look at aspects of language and diversity, practice profile and income.

4.1 Summary of Findings

Comparisons between the five sub-groups revealed some differences.

Both groups of sole practitioners reported the lowest percentages of English as a first language. With the exception of sole proprietors, these two groups also reported the highest percentage of languages other than English as one or more of their first languages.

Sole proprietors reported the lowest percentage of *growing* areas of practice among all main practice areas mentioned. This was the only group to report a lower percentage of practice areas as *growing* than the percentage of practice areas reported as *stable*.

Sole practitioners practising with others in the same office reported the highest percentage taking some Legal Aid clients (45%).

Among those who reported taking Legal Aid clients, associates/employees in small firms, reported Legal Aid billing was almost two-thirds of their work. Sole practitioners practicing with others in the same office, reported that Legal Aid comprised close to half of their work, and sole practitioners practicing alone reported that it made up less than three-tenths of their work.

Among first mentions of main areas of practice, Family Law and Real Estate were described as *growing* by 56% and 55% respectively. The other three main practice areas (Civil Litigation; Corporate; Wills-Estates-Trusts) were described as *growing* by less than half of all respondents who mentioned them first.

Still comparing first mentions of areas of practice, the lowest overall income levels were reported by those who cited Wills, Estates and Trusts, followed by Family Law. The highest income levels were reported by those whose first practice area mentioned was Civil Litigation, followed by Corporate- Commercial.

One quarter of sole practitioners practicing alone reported earning less than \$50,000 annually. About three fifths of both groups of sole practitioners reported earning less than \$100,000 annually. Among the five sub-groups, partners in small firms reported the highest income levels, with more than three-fifths earning over \$100,000 annually.

Controlling for other factors, women, equality-seekers and those who take Legal Aid clients were all more likely to earn lower than average incomes.

Sole practitioners practising alone without other lawyers in the same office reported the lowest percentage of billable work and the highest percentage of non-billable work. Sole practitioners practising alone reported working the fewest hours per week in their practice (46).

4.2 Language and diversity

As noted in Chart 5, 80% of target group respondents listed *English* as a first language. Chart 15 shows some variations within the target group. In particular, both groups of sole practitioners reported a slightly lower percentage of *English* mentions and a slightly higher percentage of other language mentions, when they were compared to both partners and employees/ associates in firms with fewer than five lawyers.²

CHART 15 - FIRST LANGUAGE (MULTIPLE MENTIONS)

4.3 Practice Profile

4.3.1 Areas of Practice

Chart 16 compares all mentions of *growing*, *stable* and *decreasing* practice areas across the five sub-groups. Here again there are some notable differences. Sole practitioners practising alone without other lawyers in the same office report the lowest overall percentage of *growing* practice areas at just 42%.

Within the target group this is the only sub-group that reported a lower proportion of *growing* than *stable* areas of practice. However, sole practitioners alone reported only a very slightly higher than average percentage of *decreasing* areas of practice (11% compared to an average of 10%), which is also slightly lower than the 14% reported by sole practitioners sharing office space with other lawyers.

CHART 16 - IS YOUR PRACTICE AREA GROWING, STABLE OR DECREASING? (ALL MENTIONS)

Whereas Chart 16 aggregates target group response for all areas of practice mentioned, Chart 17 provides the same information for “first mentions” only, summarizing respondents’ description (*growing*, *stable* or *decreasing*) for the top five areas of practice which were mentioned first.

Just as we noted differences across sub-groups, there are also some differences based on which area of practice respondents listed first. A majority of respondents who mentioned Family Law and Real Estate first, described those areas of practice as *growing* (56% and 55% respectively). In contrast, for those whose first mention was Wills, Estates and Trusts - another area of practice dominated by our target group - just 44% reported that area was *growing*, whereas 48% described it as *stable*. Corporate Commercial was the only other area of practice among first mentions where *growing* was cited less frequently than *stable*, 41% compared to 48%.

CHART 17 - COMPARING STABILITY BY THE TOP FIVE AREAS OF PRACTICE (FIRST MENTIONS)

4.3.2 Legal Aid

CHART 18 - WHAT PERCENTAGE OF YOUR WORK IS LEGAL AID WORK?

Chart 18 shows distribution of Legal Aid work across the five sub-groups.

A comparatively lower percentage of sole practitioners practising with other lawyers in the same office reported taking no Legal Aid work (55%), while 28% of this group reported that Legal Aid comprised more than one quarter of their billable time. Similarly 57% of employees/associates in small firms reported doing some Legal Aid, and 33% reported that Legal Aid comprised more than one quarter of their billable time. In contrast a relatively higher 67% of sole practitioners practising alone reported taking no Legal Aid and only 11% of this group reported that Legal Aid made up more than one quarter of their billable time.

² The figures for sole proprietors in Chart 14 and throughout should be interpreted with caution since the sample size for this sub-group is just 24.

As Table 3 below shows, among those lawyers in the target group who reported taking Legal Aid clients, Legal Aid made up a lower percentage of billable work for sole practitioners practising alone than it does for the other four sub-groups. For this group of sole practitioners, Legal Aid comprised 29% of their billable work compared to an average of 43% for sole practitioners sharing offices with other lawyers, and an average 62% for employees/associates. These figures suggest that for sole practitioners working alone without other lawyers in the same office, the economics of Legal Aid may be comparatively unattractive, even for those lawyers who take Legal Aid clients. In contrast, for a sizeable proportion of sole practitioners sharing space with other lawyers and employees/associates, Legal Aid constitutes a healthy percentage of all billings.

4.3.3 Other Aspects of Practice Profile in the Target Group

In addition to providing comparisons of the percentage of Legal Aid billing among those who reported taking legal, Table 3 provides comparisons of percentages of billable and non-billable time, pro bono work and estimated average hours worked each week.

Sole practitioners practising alone reported slightly higher than average time spent on administration, client development and marketing. Both groups of sole practitioners reported a higher than average percentage of pro bono work. And finally, sole practitioners practicing alone reported the lowest average hours of work per week (46), while sole proprietors and employees/associates reported the highest hours worked per week, 57 and 51 respectively.

TABLE 3 - SUMMARY OF MEANS (AVERAGES)

4.4 Income

In Chart 3 we compared income between the target and non-target groups, noting that the target group reported substantially lower income levels. Chart 19 shows some significant differences across the sub-groups within the target group. Fully 25% of sole practitioners who work alone reported an annual income of less than \$50,000. 57% of sole practitioners who work alone, 61% of sole practitioners sharing offices with other lawyers and 70% of employees/associates reported earning less than \$100,000 annually. In contrast, and as might be expected, a majority of partners (61%) and a majority of the smaller group of sole proprietors (54%) reported annual incomes over \$100,000.

CHART 19 - INCOME BY SUB-GROUP.

CHART 20 - INCOME BY REGION.

Chart 20 provides some regional comparisons that indicate close to two thirds (65%) of lawyers in Non-Urban Areas are earning less than \$100,000 whereas just 5% reported earning over \$200,000 annually. This may be explained in part by the fact that the highest percentage of relatively low earning sole practitioners (47%) and the lowest percentage of relatively high earning partners (15%) are located in the Non-Urban Areas.

Further comparisons of reported income, based on the first area of practice mentioned, illustrate some important differences. What stands out in Chart 21 is that 27% of all respondents who mentioned Wills, Estates and Trusts first, reported an annual income of less than \$50,000 and an additional 54% reported earning more than \$50,000 but less than \$100,000. In short, 81% of lawyers whose first areas of practice mentioned was Wills, Estates and Trusts reported earning less than \$100,000 annually.

It is notable as well that a minority, just 44%, of this same group of respondents, reported that Wills, Estates and Trusts was a *growing* practice area (Chart 17). This suggests that the low income levels reported by this group of respondents may originate in part in a stable or declining demand for legal services related to Wills, Estates and Trusts.

Reflecting a similar pattern of income distribution, 75% of respondents who mentioned Family and Matrimonial Law first among their main areas of practice, reported an annual income of less than \$100,000. But in contrast to the apparently limited growth in the area of Wills, Estates and Trusts, 56% of those whose first mention was Family and Matrimonial Law reported that it is a growing area of practice (Chart 17). This reinforces an opinion that we heard

throughout the follow-up long interviews: there is no shortage of demand for Family Law services but rather, for a variety of other reasons, this is a comparatively difficult area of law from which to earn a good income.

CHART 21 - COMPARING INCOME BY THE TOP FIVE AREAS OF PRACTICE (TARGET GROUP).

Comparing average income levels based on first area of practice mentioned yields statistically significant differences that can be summarized as follows:³

- First mentions of Wills, Estates and Trust, or Family and Matrimonial Law, have lower incomes than Real Estate, Corporate/Commercial, and Civil Litigation;
- First mentions of Civil Litigation have higher incomes than Wills, Estates and Trusts, and Family or Matrimonial Law, Real Estate, and Corporate/Commercial.

4.4.1 Income “Drivers”

As might be expected, several factors are positively correlated with higher incomes. These included:

- Years at the Bar;
- Higher percentage of billable work time;
- Lower percentage of non-billable work time;
- Average hours of work per week.

However if we control for these factors, that is temporarily eliminate their influence through the process of statistical regression, then the most powerful drivers of income are:

- *Gender* -- All other factors being equal men are more likely to earn more than women lawyers;
- *Equality-Seekers* -- Non equality-seekers are more likely to earn more than members of equality-seeking communities;
- *Practice Stability* -- Those who report that their first mention of main practice areas is *growing* are more likely to earn a higher income than those who report their first mention is *decreasing* (Incomes are not likely to be higher for those who report *growing* compared to those who report *stable*.);
- *Legal Aid* -- Lawyers who do not take Legal Aid are more likely to earn higher incomes than those who take Legal Aid clients.

Gender and equality-seeking status have the same weight and statistical significance as drivers of income. Practice stability, that is *growing* versus *decreasing*, has slightly less statistical significance and power as a driver of income, as does taking/not taking Legal Aid.

4.5 Discussion: Differences and Similarities within the Target group

³ In order to deal with the problem of multiple mentions collected in the survey, we selected first mentions as a marker or indicator of practice profile that would permit some comparisons with practice stability (i.e. *growing*, *stable* or *decreasing* practice area), and with income. However, first mentions do not necessarily provide an accurate indicator of other practice characteristics, or the relative importance of that Area of Practice in relation to second, third and fourth mentions. Statistical correlations between first mentions and stability or income levels may be useful in pointing to potential differences based on area of practice. However, they are not a substitute for fuller analysis of practice and stability based on a more precise calculation of the relative importance of each area of practice mentioned.

Differences within the target group on language/ethnic diversity, income and related aspects of practice profile and stability (*growing, stable or decreasing* areas of practice), are not as clearly defined as those between the target and non-target groups. However, they do illustrate that comparisons between the target and the non-target groups can also be viewed as a continuum. Sole practitioners, particularly those practising alone without other lawyers in the same office, tend to be the most different from non-target group respondents. In contrast partners in small firms tend to be the most similar to respondents in the non-target group. Other factors such as region, gender, equality-seeking status and whether lawyers accept Legal Aid clients, may provide equally or more salient parameters for defining sub-groups within the target group of sole practitioners and small firms.

5.0 Satisfaction and Financial Viability

This sections compares satisfaction and perceptions of financial viability between the target and non-target groups. It then takes a closer look at the key factors and drivers of satisfaction, dissatisfaction and financial instability among target group respondents.

5.1 Key Findings

Comparing the Target and Non-Target Groups

Respondents in both the target and non-target groups reported a high degree of overall satisfaction with their practice, 75% and 88% respectively. Within the target group, overall satisfaction was lowest among sole practitioners practicing alone, at 66%. Just one tenth of the target group and a mere 2% of the non-target group reported some degree of overall dissatisfaction with their practice.

Just over half of the target group respondents were satisfied with their income, compared to four fifths of non-target group respondents.

One-fifth of the target group, compared to less than one tenth of the nontarget group, indicated they were dissatisfied with their current mix of practice areas.

36% of the target group, compared to 29% of the non-target group, reported some degree of *challenge* in sustaining the financial viability of their practice. A smaller group within the target group (17%) described sustaining financial viability as a *serious* or *very serious challenge*.

Just over one tenth of respondents in both groups described the prospect of maintaining financial viability five years hence as *much more difficult*. Interestingly, a higher percentage of target group respondents described the prospect of maintaining future financial viability as either *somewhat* or *much less difficult* (41% compared to 28% in the non-target group). Within the target group, 28% of respondents reported that upon retirement they would refer their clients to other lawyers in the area. A further 14% reported they would *close the doors*. In contrast, 78% of non-target respondents reported that other lawyers in the firm would continue the practice.

Satisfaction and Financial Viability

Four specific issues emerged as the most salient ‘drivers’ of satisfaction in the target group. In order of importance these were:

- Earning a good income;
- Interesting and challenging work;
- Pursuing career objectives;
- Maintaining a good work-life balance.

Two of these issues, pursuing career objectives and maintaining a good worklife balance, had roughly the same importance for the non-target group. In contrast, earning a good income and having interesting challenging work were more important and more statistically significant issues for the target group.

Four specific issues emerged as the most salient drivers of dissatisfaction in the target group. In order of importance they were:

- Dissatisfaction with present areas of practice;
- Income lower than expected;
- Lack of freedom to make decisions;
- Too much time on administration.

In comparison with the non-target group, two of these issues, lower than expected income and too much time spent on administration, were important and statistically significant to the target group.

Three specific issues emerged as the most salient drivers of financial instability in the target group. In order of importance they were:

- Increased difficulty or risk of financing your practice;
- Increased overhead costs of running the practice;
- Market pressures to keep fees low.

Comparisons with the non-target group revealed similar concerns over the increased overhead costs of running the practice and market pressures to keep fees low. However, the increased difficulty and risk associated with financing practices, was unique to the target group. It was the single strongest driver of financial instability for respondents in the target group.

Overall a cluster of practical financial/utilitarian issues - income concerns, time spent on administration and above all the difficulty/risk of financing practices - constitute the unique source of greater dissatisfaction and greater financial instability in the target group as a whole.

5.2 Comparisons: Target and Non-target groups

We asked respondents to rate “your overall level of satisfaction with your practice” on a seven point scale from *very dissatisfied* to *very satisfied*. As Chart 22 shows, 10% of the target group respondents reported some degree of *dissatisfaction* compared to just 2% in the non-target group.

CHART 22 - RANK YOUR OVERALL LEVEL OF SATISFACTION WITH YOUR PRACTICE

When we asked about *satisfaction* with “your before tax income from your practice” the percentage of those reporting dissatisfaction rose and the differences between the target and non-target group became more distinct, as Chart 23 illustrates.

CHART 23 - ARE YOU SATISFIED WITH YOUR ANNUAL INCOME?

A narrow majority (52%) of the target group indicated some degree of *satisfaction* while 32% reported some degree of *dissatisfaction*. In contrast an impressive 80% of the non-target group registered *satisfaction* with their income while just 11% reported some degree of *dissatisfaction*.

As Chart 24 shows, target group respondents registered somewhat greater dissatisfaction with their “current mix of practice areas”. One fifth or 20% reported they needed to make a change in their “current mix of practice areas,” compared to slightly less than one tenth of the non-target group.

CHART 24 - SATISFIED WITH YOUR CURRENT MIX OF PRACTICE AREAS OR DO YOU NEED TO MAKE A CHANGE?

Respondents were asked to rank the issue of maintaining the financial viability of their practice on a seven-point scale from *not a problem* to *a very serious challenge*. Chart 25 summarizes responses and groups them into three categories: *not a problem*, *neither*, and *challenging*.

A higher percentage of target group respondents, 36% compared to 29% of the non-target group, described the issue of maintaining financial viability as a *challenge*. Of the 36% of target group respondents who identified some degree of challenge in maintaining the financial viability of their practice, roughly half or 17% rated the problem *serious* or *very serious* (not shown). This compared to 11% in the non-target group.

A further question asked respondents if it would be *more* or *less difficult* to “maintain the financial viability of your practice five years from now.” Chart 26 summarizes the results.

CHART 25 - FINANCIAL VIABILITY OF YOUR PRACTICE

CHART 26 - DO YOU EXPECT IT TO BECOME MORE DIFFICULT OR LESS DIFFICULT TO MAINTAIN THE FINANCIAL VIABILITY OF YOUR PRACTICE FIVE YEARS FROM NOW?

Interestingly, the target and non-target groups shared a similar distribution of opinion regarding the viability of their practice five years hence. In the target group, 12% expected things to get *much more difficult*, compared to 11% in the non-target group. But on the optimistic end of the spectrum, 15% of target group respondents expected things to be *much less difficult* compared to just 8% in the non-target group. As a group then, sole practitioners and lawyers in small firms appear to be more optimistic about the future viability of their practice.

A follow-up open-ended question asked respondents to indicate steps that could be taken to improve the financial viability of their practice. Responses were grouped into twenty-three different categories. Of those who offered some form of response the most common recommendation was the need for an *increased client base or new client development* (15% of the target group and 23% of the non-target group). A further 9% of the target group and 8% of the non-target group identified the need for *improved advertising and marketing*. These responses may be an indication that about one quarter of the lawyers in both groups viewed the challenges of maintaining financial viability at least partly in terms of taking specific measures to increase the amount of work available. Among the other top three most frequently mentioned steps to improve financial viability, 9% of target group respondents and 11% of non-target group respondents cited *cutting costs and overhead*.

We asked respondents about their likely options upon retirement. Chart 27 compares and summarizes responses.

CHART 27 - RETIREMENT: WHICH OF THE FOLLOWING IS MOST LIKELY TO HAPPEN TO YOUR PRACTICE? (SELECTED RESPONSES)

Comparisons illustrate a striking difference between the target group and the non-target group. Whereas the overwhelming majority (78%) of non-target group respondents suggested other lawyers in the firm would continue the practice, 28% of the target group said they would refer their clients to other lawyers in the area while a further 14% reported they would simply *close the doors* to their practice. Controlling for other factors, lawyers in the target group were ten times as likely to report that they would refer their clients to other lawyers or close the doors to their practice.

Although these sharply divergent responses may reflect the obvious differences of circumstance between sole practitioners and very small firms on the one hand and the larger law firms on the other, they nevertheless provide a stark indicator of the relatively greater economic insecurity of lawyers in the target group. The selections of the retirement option to *refer clients* or *close the doors*, is a tacit acknowledgement by the respondent that his/her law practice has no market value beyond the day to day earning capacity of the individual. This may be both cause and consequence of the somewhat greater financial insecurity reported by respondents in the target group. Perhaps not surprisingly, individuals who reported one or more decreasing areas of practice were twice as likely to choose referring clients or closing the doors as their preferred retirement option.

5.3 The Target Group: Sources of satisfaction

As Chart 28 shows, levels of overall satisfaction varied somewhat across the five sub-groups within the target group.

Whereas 88% of the non-target group and 75% of the target group reported some degree of overall satisfaction with their practice, satisfaction was lowest for both groups of sole practitioners, dropping to 66% for sole practitioners practising alone. For this group, dissatisfaction rose to 14%. But whereas sole practitioners practising alone are the least satisfied sub-group, and significantly less satisfied than respondents in the target group as a whole, their level of satisfaction is nevertheless relatively high. Satisfied sole practitioners practising alone outnumber the unsatisfied by a ratio of more than four to one.

CHART 28 - RANK YOUR OVERALL LEVEL OF SATISFACTION WITH YOUR PRACTICE?.

A bank of 10 questions explored potential sources of satisfaction. Subsequent analysis sorted these 10 potential sources of satisfaction into four groups or “factors”, determined by how closely they were statistically correlated. Table 4 below lists the four factors, the statistically related issues within each factor and the most important individual issues or drivers within each factor.

The right hand column in Table 4 lists the four issues which, controlling for other factors (such as gender, equality-seekers, practice stability and those who take Legal Aid), contribute most to the level of individual respondents’ overall satisfaction with their practice. Beside each of the issues listed is a number in parenthesis. This number, known as a “regression coefficient”, provides a simple statistical measure of how important that issue is in contributing to satisfaction or the lack thereof. The higher the number the more powerful its effect as a “driver” of overall satisfaction. So, for example, *earning a good income* is the strongest factor affecting overall satisfaction, followed by *interesting and challenging work*, *opportunity to pursue career objectives*, and *maintaining a good work-life balance*.⁴

TABLE 4 - FACTORS AFFECTING OVERALL SATISFACTION

By way of comparison, using the same model of statistical analysis, two issues emerge as important drivers of satisfaction within the non-target group. *Pursuing career objectives* has the same importance for lawyers in larger firms as it has for the target group (regression coefficient .178), while *maintaining a good work-life balance* (regression coefficient .089) is slightly less important but still relevant as a driver of overall satisfaction in the non-target group. On the other hand, neither *earning a good income* nor *interesting and challenging work* are statistically significant drivers of overall satisfaction in the non-target group. These two issues emerge as the most salient sources of overall satisfaction within the target group, while controlling for other factors.⁵

5.4 The Target Group: Sources of Dissatisfaction

A bank of nine questions explored potential sources of dissatisfaction. Subsequent analysis sorted these nine potential sources of dissatisfaction into two groups or factors, determined by how closely they were statistically correlated. Table 5 summarizes the two factors, the statistically related issues within each factor, and the most important individual sources or drivers of dissatisfaction.

TABLE 5 - FACTORS AND ISSUES AFFECTING OVERALL DISSATISFACTION

⁴ For every increase of one unit on a seven-point scale ranking *income satisfaction*, there is a corresponding increase of .218 on the seven-point scale measuring *overall practice satisfaction*. Similarly, for every increase on a seven-point scale ranking the degree of *challenging and interesting work*, there is a corresponding increase of .207 on the seven-point scale measuring *overall practice satisfaction*. And so on.

⁵ Comparisons across the target and non-target groups, while allowing us to isolate specific causal relationships, control for other important factors such as gender, equality-seeking status, and taking Legal Aid, all of which may contribute to actual considerations of satisfaction. Still, this form of analysis permits us to identify one set of issues that are specific to the target group as a whole and unique in terms of their impact.

As the list of issues in the right-hand column and the accompanying regression coefficients show, *lower than expected income* followed by *dissatisfaction with present area of practice*, are the strongest contributors to overall dissatisfaction among target group respondents.

Again, by way of comparison, three issues emerge as important sources or drivers of dissatisfaction within the non-target group. Dissatisfaction with *present area of practice* is a slightly more important issue driving overall dissatisfaction in the non-target group (.196), followed by *lack of freedom to make decisions* (.089), which has the same salience for the non-target group as the target group, and a *bad work-life balance* (.073). In this comparison the two issues of *lower than expected income* and *too much time spent on administration* emerge as sources of dissatisfaction that are unique to the target group, controlling for other characteristics such as differences in the social composition of the target and non-target groups.

5.5 The Target Group: Sources of Reduced Financial Viability

Chart 29 examines respondents' perception of the challenge of maintaining financial viability across the five sub-groups within the target group.

CHART 29 - FINANCIAL VIABILITY OF YOUR PRACTICE.

Sole proprietors are the most positive, with 67% describing the challenge of *maintaining financial viability* as *not a serious problem*. Employees/associates in small firms are the least positive, with 44% describing *maintaining financial viability* as a *challenge*. Consistent with other comparisons, a higher percentage of both groups of sole practitioners, report challenges in *maintaining financial viability* than do partners in small firms.

A bank of eight questions explored potential sources that might make it more difficult to *maintain financial viability* in the future. Subsequent analysis sorted these eight potential sources of dissatisfaction into two groups or factors, determined by how closely they were statistically correlated with one another. Table 6 summarizes the two factors, the statistically related issues within each factor, and the most important individual issues or drivers of financial viability.

TABLE 6 - FACTORS AND ISSUES MAKING IT MORE DIFFICULT TO MAINTAIN FINANCIAL VIABILITY

On competition and market force measures, differences between the target and non-target group were not significant, with the target group registering a slightly higher degree of concern on the issue of *market pressure to keep fees low*. However, the target group registered a significantly higher degree of concern around the cluster of *cost and overhead issues*. Comparisons within the target group suggest that *cost* and *overhead* are the strongest driver of concerns over financial viability for both sole practitioners practicing alone and those practicing with other lawyers in the same office.

For the non-target group, increased *overhead costs* (.282), *extra-professional competition* (.211) and *market pressure to keep fees low* (.191) all emerge as important sources of problems with financial viability. In this comparison the *increased difficulty or risk of financing the practice* emerges as the single strongest driver of financial uncertainty for the target group. Of all these relevant issues, it was the one source of problems with financial viability that was unique or specific to the target group of sole practitioners, sole proprietors and small firms.

5.5.1 Problems of Financial Viability: What Was Said

Follow-up interviews explored issues with individuals who had reported high levels of *dissatisfaction* and/or *financial instability*. As might be expected, many reports of *dissatisfaction* often reflected the specific circumstances of the interviewee. Nevertheless, it was not uncommon to hear a description of financial issues that directly or indirectly confirmed the general findings of the survey.

Interviewees described various circumstances in which sustaining the financial viability of their practice required limiting their fees and taking on additional financial risks in order to make it all work for their clients. One sole

proprietor from a larger urban center in Southern Ontario explained that the problem of maintaining financial viability had reached the point that he was considering “closing my doors”. The root of this problem, as he explained, was the limited ability of clients to pay for services and the increased financial risks that the lawyer was therefore forced to assume:

The financial viability, covering the overheads, is an extremely difficult battle and it basically comes down to the extent to which you have to fund clients in order to assist them in accessing justice.

This comment provides one illustration of the extent to which the increased risk to individuals in financing their practice is rooted in the reduced ability of clients to pay for the legal services they need.

A variation on this theme, suggested that it was not only the incapacity of clients to pay for services, but also the changing expectations of clients. One Toronto lawyer described the issue of financial viability in terms of the expectations of the community he was serving. He described the challenge of billing for production of a will, which is perceived by a client as merely, “five pages of paper”:

It’s a service where a lot of it is unseen, and so you give instructions to somebody in the case of a will. You come back a week or two later and you sign this five-page piece of paper. How much is that worth? How much, possibly, could this person have taken in terms of time in order to prepare this will?

An Ottawa lawyer touched on the problems of delivering Family Law services where the case management system has imposed additional responsibilities on lawyers, and increased costs on clients. The results are costs that may become prohibitive to the lower income clients who are more often being served by the sole practitioner and small firms. In contrast, the higher income client “isn’t going to be leaving the [legal] system because their bill is \$5000 instead of \$2,500.” The implication here is that the lower income clients, typically served by the interviewee, are on the verge of “leaving the system” because of unmanageable expenses.

One lawyer, who as a matter of conscience and involvement in disability issues, took on the cases of disabled clients, described a more extreme example of incapacity to sustain financial viability. Many of this lawyer’s clients had virtually no capacity to pay for the legal services, which they desperately needed:

These are cases that I feel need to be heard and wouldn’t be heard otherwise. And these are people who from, you know, people with disabilities who have real issues, issues that are not covered by Legal Aid. [They are] people who are on welfare and lucky to pay their rent, let alone pay a lawyer. So I do handle a number of cases of that nature. Human rights issues, some landlord/tenant issues, although landlord/tenant for the most part are under Legal Aid. Issues of accommodation for disabilities.

Still others, from our sample of those reporting serious challenges to the financial viability of their practice, described increased competition and the pressure to reduce fees, particularly in the area of Real Estate. One lawyer from southwestern Ontario, who saw the need to broaden his areas of practice, lamented that on Real Estate transactions: “People don’t even call me for price quotes anymore.” Another Real Estate lawyer from Toronto, who reported minimal earning from her practice, commented, “I think it is difficult for most sole practitioners, most small firms to make a living. Yes it is.” Echoing the sentiments of a small group of the most disaffected lawyers we encountered, this interviewee commented:

I used to make speeches about how great it was coming into the practice of law. In the last five or six years I will no longer go into a school and tell them about how great it is to practice law.

5.6 Discussion: Financial Viability and Dissatisfaction

Two insights emerge from our analysis of satisfaction/dissatisfaction, and perceptions of financial viability among survey respondents:

- Target group respondents reported somewhat less overall satisfaction with their practice, less satisfaction with the annual income from their practice and perceived greater challenges to their financial viability. However, despite substantive differences between the two groups, respondents from both groups registered relatively high levels of satisfaction and a similar assessment of the future financial viability of their practice.
- A cluster of issues - notably the practical financial/utilitarian concerns of financing the practice, dealing with increased overhead costs and lower than expected incomes – are the main drivers determining both dissatisfaction and reduced financial viability in the target group. The explanation for the unique combination of drivers affecting the financial viability of the target group may lie in the specific nature of the legal services provided and the characteristics of the client population served.

Evaluating dissatisfaction/financial viability in the target group

As a group, sole practitioners and lawyers in small firms are less satisfied generally, less satisfied with their annual income, and perceive greater challenges to maintaining financial viability than respondents in the nontarget group of lawyers in larger firms.

As noted, more than one sixth of the target group, almost three times the proportion of the non-target group reported they were *somewhat* or *very dissatisfied* with their annual income. A similar proportion of target group respondents reported that maintaining financial viability was a *serious* or *very serious challenge* compared to less than one tenth of the non-target group.

Differences between the target and non-target groups are further highlighted when we compare the relative percentages of the *most dissatisfied* respondents in each group. Whereas 6% of the whole survey population reported both a high degree of income dissatisfaction and serious challenges to sustaining the financial viability of their practice, this group was made up of just 2% of the non-target group compared to 7% of the target group.

This sub-group of 7% of the lawyers in the target group – three fifths of whom are sole practitioners practicing alone - are struggling to maintain the viability of their practice. They may be earning substantially less than they had expected, face serious difficulties financing their practice and dealing with overhead costs, and experience market pressure to keep or set fees at unreasonably low rates. And within this group, is a still smaller sub-group, some of whom we heard from in our long interviews, who are more profoundly frustrated with the practice of law, in some cases to the point of considering “closing the doors” and abandoning the profession entirely.

But notwithstanding the differences between the target and non-target groups, including evidence of a small, but measurable, subset of the target group whose viability may be threatened, it is nevertheless important not to overstate the differences between the two groups. Three quarters of the target group reported overall satisfaction with their practice, four fifths were satisfied with their current mix of practice areas, and those who were satisfied with their income outnumbered those that were dissatisfied by a ratio of almost two to one. Perceptions of current and future financial viability, particularly the latter, are similar in broad outline to the perceptions of lawyers in the non-target group. All of this suggests that as group, sole practitioners and lawyers in small firms have a generally high level of overall satisfaction, are reasonably satisfied with their income, and reasonably optimistic about the financial viability of their practice.

As a whole, the target group is stable and financially viable. At the same time this group includes a smaller subset of dissatisfied lawyers who are facing a variety of financial challenges, which in some instances are converging to threaten the overall viability of individual practices.

Evaluating drivers of dissatisfaction and loss of financial viability

Although the practice environment for lawyers in the target and non-target groups undoubtedly has many common characteristics, statistical analysis isolated a specific configuration of drivers of satisfaction/dissatisfaction and threats to financial viability for the target group. As noted in Section 5.5 the most important of these are problems associated with the increased difficulties and/or risks of financing law practices, followed by the increased overhead costs of running a law practice.

How do we explain the different configuration of key drivers affecting the dissatisfaction and financial viability of the target group compared to the non-target group? One explanation lies in the characteristics of the client market that is served by sole practitioners and small firms. As detailed throughout Section 3 of this report, the target group is comparatively more numerous in the Rest of GTA outside of Toronto and in Non-Urban Areas of Ontario. It serves a higher proportion of individuals than businesses, the overwhelming proportion of individuals using Legal Aid, and virtually all individuals seeking services in languages other than *English, French* or *Italian*.

It is reasonable to suggest that problems of financing law practices as well as those of managing rising overhead costs, have surfaced in a market environment characterized by the growing inability of the client population to purchase legal services and/or pay adequate fees for those services. This was the core explanation for the problems of financial viability facing many target group respondents - particularly sole practitioners - which we heard from individuals who participated in the long interviews.

6.0 Shortages of Legal Services

6.1 Key Findings

Respondents in the target group were almost twice as likely as the non-target group to report shortages of legal services in “whatever community you serve” (35% to 18%).

Among those reporting shortages, the problem of *access to Legal Aid or to a Legal Aid lawyer*, was the issue most frequently mentioned by respondents in both groups (26% in the target group and 36% in the non-target group). Other mentions included *Family Law, affordability of rates, Litigation, Criminal Law, general shortage of practitioners, Immigration and Refugee Legal Services*, and *services in non-English cultures/languages*.

Target group respondents were most likely to site *affordability of services for clients* (22%) and *attrition in unattractive areas of practice*(17%) as reasons for threatened shortages of legal services. Other mentions included *low demand for services due to economic and/or demographic conditions* and *not enough lawyers serving the community*. Comparable percentages of non-target group respondents mentioned *affordability, attrition in areas of practice*, and *economic and/or demographic factors*.

Shortages of legal services were reported by 64% of target group respondents based in Non-Urban Areas, 34% in Other Urban Areas, 28% in the Rest of GTA outside of Toronto and 24% in Toronto. Non-Urban respondents were most likely to report shortages in the areas of *Family Law, Legal Aid and Civil Litigation*.

Within the target group, almost half (48%) of those who identified themselves as equality-seekers reported shortages of legal services, compared to less than one third of those who were not equality-seekers. A majority of women (53%) reported shortages of legal services, compared to less than one third of the men in the target group.

Among equality-seekers *access to Legal Aid, lack of services in non-English cultures and languages, Family Law* and *lack of affordability* were the most frequently mentioned types of shortage of legal services.

Describing Shortages of Legal Services

Analysis of survey data and long-interview transcripts revealed five different aspects of shortages of legal services:

- Affordability and/or shortage of Legal Aid and Legal Aid lawyers;

- Shortages in some regions;
- Shortages in specific areas of law;
- Shortages of legal services to cultural and linguistic groups, and communities of interest;
- Shortages due to legal process and administration.

Although research suggests that each of these aspects of shortage of legal services has its own specific impact on limiting access to legal services in Ontario, the underlying issue of affordability often appeared to set the context for many more specific issues of shortages.

6.2 Comparisons: Target and Non-Target Groups

Respondents were asked if there were shortages of legal services in “whatever community you serve.” As Chart 30 shows, 35% of target group respondents compared to 18% of non-target group respondents, reported a shortage of some kind of legal services. These findings are interesting in both the generally higher percentage of survey respondents who mentioned shortages, and the significantly greater frequency of mentions by respondents in the target group.

CHART 30 - ARE THERE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE?

As Chart 31 shows, non-target group respondents who reported shortages of legal services were most likely to cite problems of *getting Legal Aid and/or finding lawyers to take Legal Aid clients* (36%), *shortages in the areas of Family Law* (23%), and *the cost/affordability of legal services* (23%). In contrast, the target group cited problems of Legal Aid less frequently, which may be explained in part by the fact that a much higher percentage of lawyers in this group accept Legal Aid clients (Chart 14). In addition to *Family Law shortages* (22%), target group respondents also mentioned shortages in several specific areas that were not mentioned by non-target group respondents: *litigators* (9%), *a general lack of practitioners* (7%), *Criminal Law* (7%) and *services in cultures/languages other than English* (5%).

We asked those who identified shortages in their communities to rank the problem of access to legal services on an 11-point scale, from *no legal services at all* to *a full range of legal services* in their community. As Chart 32 shows, a large majority of both groups identified shortages as *limited* or *moderate*.

CHART 31 - DESCRIBE THE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE (SELECTED RESPONSES)

CHART 32 - RANKING THE PROBLEM OF ACCESS TO LEGAL SERVICES.

Chart 33 reports selected responses to the open-ended question, “What is the main reason for shortages of legal services in the community you serve?” Within the target group, among those who offered a positive response⁶, 22% cited the problem of *affordability of services for clients*, followed by 17% who mentioned the problem of *attrition in unattractive areas of practice*. Other mentions included *low demand for services due to economic and/or demographic conditions* (14%), and *not enough lawyers serving the community* (9%). Comparable percentages of non-target group respondents mentioned affordability, attrition in areas of practice, economic and/or demographic factors. However, these figures should be interpreted cautiously since a subsample of just 15 non-target group respondents offered a specific response.

CHART 33 - WHAT IS THE MAIN REASON FOR THE THREATENED SHORTAGES OF LEGAL SERVICES? (SELECTED RESPONSES)

⁶ It is often the case that in open-ended questions many responses are too vague or generic to be grouped under any specific heading, and forcing an interpretation can lead to distortion. In this instance, more than one third (34%) of target group responses could not be coded as a “positive” response.

A further question was asked of respondents who had already identified shortages of legal services (“*In which practice areas do you think there will be shortages and limits to access in your community in the future?*”). Although the proportions varied somewhat, the most frequently identified practice areas were similar across the two groups. 48% of target group respondents compared to 27% in the non-target group anticipated future shortages in *Family and Matrimonial Law*. 38% of target group respondents compared to 33% in the non-target group expected shortages in the area of *Criminal or Quasi Criminal Law*, and 34% of target group respondents compared to 30% in the non-target groups anticipated shortages in the areas of *Civil Litigation (Plaintiff and Defendant)*.

6.3 Describing shortages of legal services

Survey results and follow-up interviews identified five different aspects of shortages of legal services:

- Affordability and/or shortage of Legal Aid;
- Greater shortages in some regions;
- Shortages in specific areas of law;
- Shortages of legal services to cultural and linguistic groups;
- Shortages due to legal process and administration.

6.3.1 Legal Aid and Affordability

Exploring the issues of shortages of legal services in our long interviews with individual lawyers, it was common to hear descriptions of the general problem of a shortage of services for people of limited means. As one lawyer in the southwestern Ontario explained: “I think there is always a need for competent lawyers that are willing to handle low income cases. I think that’s always a struggle in any community, as well as this one.” And, as a lawyer from northwestern Ontario put it:

From a consumer point of view, for the public, I think there’s generally a shortage of affordable legal services. Many people in Thunder Bay can’t afford a lawyer. They struggle with my bills... There’s a shortage of Legal Aid certificates available to them... There is a shortage of lawyers in Thunder Bay who will take a Legal Aid certificate.

Several respondents pointed out that the problem of affordability was both a matter of accessing legal services through Legal Aid, and at the same time a problem of affordability for those with incomes too high to qualify for Legal Aid. One lawyer in Northeastern Ontario, who first described the limited availability of lawyers who would take Legal Aid clients, went on to discuss the problem of affordability for the many people who did not qualify for Legal Aid services in the first place:

You’ve got a lot of people [here] that make between \$40,000 and \$50,000 per year, which is, you know, a great income for people with their families. Is it a great income to add legal fees to? No. These people tend to live quite comfortably but do they have \$3,000, \$4,000 or \$5,000 in the bank for a retainer? No. So I think that those are the people that kind of fall into a hole where they can’t really retain lawyers but at the same time they don’t qualify for Legal Aid. We’re seeing a number of these people showing up in court.

The same point was reiterated by a Toronto lawyer, who described the shortages of legal services for that segment of the population that does not qualify for Legal Aid:

I wouldn’t be able to give you a breakdown of the numbers, but I think the other sector that you’re seeing are people who are the working poor, who do not qualify for Legal Aid.

Many of the lawyers we contacted for long interviews to discuss the issue of shortages of legal service, acknowledged the general problem arising from limits to the Legal Aid system and the general problem of affordability for the many of limited means who failed to qualify for Legal Aid. This brought us to the general conclusion that the problem of affordability, which might also be described as under-funded demand for legal

services, is linked to many of the more specific problems of shortages in a particular region, areas of practice, and cultural or linguistic communities.

The problem of shortages of legal services arising from under-funded demand can be described as follows. Individuals require Legal Aid to access legal services, or they have access to Legal Aid but cannot find a lawyer who will take Legal Aid clients, or they do not qualify for Legal Aid but cannot afford the cost of hiring a lawyer. These various forms of under-funded demand for legal services result in limits to the supply of services. Lawyers are not able or willing to provide legal services at the unsustainable rates which individuals, and in some cases businesses, are able to pay. The result could be described as a form of market failure. The need for legal services exists, but there is not sufficient capacity - money or subsidized supports - to pay for those services. Thus, while the supply of legal services is potentially available, it cannot be adequately delivered at the low prices that potential clients are able to pay.

The underlying problem of the limited ability of many potential and actual clients to pay for legal services sets the context for many of the more specific shortage issues, ranging from regional shortages to gaps in specific areas of law.

6.3.2 Regional Differences

As Chart 34 shows, in Toronto 24% of the target group reported shortages of legal services. This rose to 28% in the Rest of GTA, 34% in the Other Urban Areas, and 64% in the Non-Urban Areas. These are quite dramatic differences. Controlling for other factors - gender, equality-seekers and lawyers who take Legal Aid - Non-Urban respondents were three times more likely to report shortages of legal services than respondents in Other Urban Areas. They were, respectively, four and five times more likely to report shortages than respondents in the Rest of GTA outside of Toronto, and in the Toronto region.

CHART 34 - ARE THERE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE (BY REGION)?

Comments from the Non-Urban Areas of Ontario were rich with specific descriptions of shortages. The following account from Eastern Ontario illustrates how a smaller community of lawyers may be more likely to give rise to shortages or unanticipated gaps in specific areas of the law:

As far as ... really good competent Civil Litigators, there's only a few in our community ... I think there's a need for more... Today someone's coming in with a Workers' Compensation claim. So I immediately called one of the four guys [in the community] and said: "Who should I refer him to?" He said, "I don't think there's anyone in [town] I'd do that with" So I acknowledge now that Civil Litigators have some kind of specialization that I'm not aware of.

Along similar lines a lawyer in a small, relatively isolated Northwestern Ontario town reported a shortage of Family Law services where local demand generally exceeded the supply of services offered by the "three or four lawyers that will do [Family Law]".

These and other cases of shortage are problems arising from the relatively small size of the local bar, and the resulting shortages of supply in specific areas of law, or at specific times. These shortages could be viewed as specific gaps, in an otherwise reasonably functional supply and demand equation.

On the other hand, we also encountered reports of a more general shortage of lawyers in some regions, as the following comment from a lawyer in eastern Ontario illustrates:

The area where I am, clearly has a need for lawyers. I'm in a town of about 6,000, but I'm serving a population base of 25,000 and there's nobody around... There are very few counsel between here and the Quebec border to deal with these people, to deal with Anglophones or Francophones.

In some cases the shortages which lawyers reported were explained in terms of local economic conditions and a client base of limited means, largely dependant on Legal Aid. One lawyer, located in central Ontario, described the local situation as follows:

We do not have a really high socio-economic group of year-round residents, so they tend to be on Legal Aid and therefore they find it even harder to get representation. You can get Legal Aid up here, but the fact of the matter is that certainly in [this county], it's going to be difficult to find a lawyer who's willing to accept Legal Aid.

Ironically, in the challenging economic environment of this community, relatively few lawyers were able and willing to accept Legal Aid, notwithstanding their general need for clients. The result, as described by our interviewee, was a general shortage of legal services, particularly in the area of Family Law, coupled with the imminent prospect of a shrinking local bar.

But although shortages were sometimes explained in terms of regional economic stagnation, our group of Non-Urban interviewees was just as likely to describe regional shortages as a failure of the legal profession to keep up with the demand generated by an expanding local economy. For instance, the respondent who described the general absence of lawyers in the region east of Ottawa, attributed this in part to local development and growth which had outstripped the supply of lawyers. In his words:

The amount of stuff I turn away on a daily basis convinces me that there's at least another full practice here for somebody. Absolutely- another full practice. All the stuff I'm not doing.

In this case the shortage of local legal services was largely explained by the failure of urban-based and urban-oriented lawyers to recognize the opportunities in the region. Along similar lines, a lawyer based in Aurora, just outside Toronto, described a "chronic shortage" of lawyers in the area, due to extremely rapid local growth and the failure of the legal community to keep pace.

Finally, we interviewed individuals in Non-Urban Areas where they reported both fairly rapid local growth and the accompanying development of a robust local bar. One lawyer, located near Coburg, reported that the legal community had expanded since he had first worked in the region more than four decades earlier. Residential developments, expanding eastwards from Toronto, had helped generate demand for legal services and attracted new lawyers to the community. Another lawyer reported that while there were generally no shortages of legal services in the Muskoka community he served, local economic development was sufficiently strong that it could provide work for "two brand new lawyers to make a living ... in a relatively short time."

Survey results showed the extent to which shortages of legal services are quite extensive in Non-Urban Ontario. At the same time the results of follow-up long interviews suggest that it would be a mistake to conceive of the causes or the context as identical throughout this region. Long interviews helped us begin to build a more complex picture of Non-Urban Ontario where proximity to major urban centers, regional growth or conversely regional stagnation are factors which contribute to locally unique issues of shortages of legal services. The most important conclusion we drew in this regard is that whereas shortages of legal services in some communities are the result of a lack of effective demand for legal services, shortages in other Non-Urban Areas are the result of a lack of supply of legal services. Strategies developed to deal with shortages of legal service in the Non-Urban regions will necessarily have to address both aspects of these shortages.

6.4 Shortages in specific Areas of law

Chart 35 summarizes some of the most frequently mentioned types of shortages of legal services and compares mentions across the four regions. Whereas *shortages of Legal Aid and Legal Aid lawyers* were cited most frequently in Toronto, Rest of GTA and Other Urban regions, *shortages of Family Law* services were mentioned most often by respondents from the Non-Urban region.

CHART 35 - DESCRIBE THE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE.

When asked, regarding their community, which practice areas will be affected by future shortages and limits to access, respondents in the Other GTA, Other Urban and Non-Urban areas all cited *Family and Matrimonial Law* most frequently. In the Other GTA Area, 66% of respondents anticipated future shortages in *Family and Matrimonial Law*, followed by 60% in the Non-Urban Area and 43% in the Other Urban Area. In all three of these regions *Family and Matrimonial* was followed by *Criminal or Quasi Criminal*, which was cited by 60% of respondents in the Other GTA Area, 34% in the Non-Urban Area and 28% in the Other Urban Area. In these three areas *Civil Litigation (Plaintiff and Defendant)* was the area of practice ranked third among anticipated future shortages (41% in the Non-Urban Area, 34% in the Other GTA Area and 28% in the Other Urban Area). Respondents in the Toronto Area ranked the same areas of practice among the top three areas of anticipated future shortage, but in different order. In the Toronto Area *Criminal or Quasi Criminal Law* received the highest percentage of mentions (37%), followed by *Civil Litigation (Plaintiff and Defendant)* with 33%, and *Family and Matrimonial Law* with 28%.

Of all the specific current shortages of legal services identified in this research project, the lack of Family Law services was certainly the most extensive. Almost one quarter of target group respondents who identified shortages of legal services mentioned Family Law. This figure rose to 38% in the Non-Urban region. One quarter of all the lawyers surveyed from that region mentioned a shortage in the area of Family Law.

Shortages of Family Law services were also frequently mentioned by those we spoke to in follow-up long interviews. These interviewees pointed out that clients in Family Law cases often relied on Legal Aid. Hence, the shortage of Family Law services is closely related to the limits of the Legal Aid system, and the inability or unwillingness of many lawyers to take Legal Aid cases.

Several interviewees pointed out that Family Law was quite simply an unattractive area of law for some people. As one lawyer explained: "Nobody who comes into my office on a Family Law file is happy." The result is "burnout" and a regular pattern of lawyers leaving the area of practice: "A bunch of people have stopped doing Family Law." Or, as another explained: "I can't do that stuff anymore, because I did have a passion and it's exhausting when you're always prepared to take a phone call on Christmas Eve because of a custody access issue. I can't be bothered with that..."

Still others identified problems in the area of Family Law associated with court procedure. As one lawyer explained:

These so-called family rules which are supposed to be for the assistance of matters, it puts an awful lot of extra paperwork and responsibility and burden on the lawyer or whoever is handling the file.

One Ottawa lawyer summarized the problems of delivering Family Law services, linking them to affordability, the limitations of Legal Aid and the problems created by an expensive and time-consuming court procedure:

The context I'm most familiar with is Family Law. The reality is, Legal Aid covers only the very, very poor. People who are not quite completely destitute, but almost there, don't qualify. They are often left in the position where they have to try to represent themselves because they can't afford lawyers and don't have Legal Aid. That's complicated by the fact that the system we have in Family Court requires a ton of time and a lot of paper preparation that results in lawyer's bills being higher than they ought to be, quite frankly. We now have a case management system that is designed to try and help settle cases. But realistically it means that on most files you're probably spending three times as much time and therefore three times as much in fees you bill to your client than what you had before it was case management. So that makes legal services unaffordable.

Interviewees cited several other specific areas of legal service where there were shortages. A Toronto-based lawyer stressed that although shortages of Family Law services existed, the problem of child protection was much more serious:

But I think the most severe shortage is at the child protection end... People coming into practice don't find it a particularly appealing area. They know it's not going ... it's never going to be a field where you make a ton of money and it can be quite emotionally taxing.

Another Toronto lawyer pinpointed a shortage of cost-effective services to medium-sized businesses:

I'd say business law for the medium-sized company: let's say 5 to 50 million dollars in sales. Almost impossible for those people to get advice... Between ... cookie cutter advice... and the people who will advise on the fanciest transactions, there's nobody.

Finally, one lawyer from Sarnia, pointed out a local shortage of lawyers specializing in Workplace Safety and Insurance Board compensation claims, notwithstanding the extremely high rate of compensation claims from Sarnia in recent years:

WSIB. There are people looking for representation in that area and as far as I've been able to tell, there isn't anybody in [private practice] taking those on...

6.5 Shortages in cultural/language and equality-seeking communities

Chart 36 compares reported shortages of legal services between equality-seekers and non equality-seekers, and men and women. Almost half (48%) of all equality-seekers report shortages of legal services while slightly over half of all woman reported shortages (53%). In comparison, just 31% of both non-equality- seekers and men reported shortages.

CHART 36 - ARE THERE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE? .

Chart 37 shows the areas of shortage most frequently mentioned by equality-seekers. *Legal Aid issues* were mentioned by 34% of the equality-seekers, followed by 16% who mentioned *shortages of services to non-English cultures and languages* and 16% who mentioned *shortages of Family Law services*.

CHART 37 - DESCRIBE THE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE*

6.6 Legal administration/procedure

Just 4% of respondents in the target group identified the need to streamline or simplify the legal process as a positive step toward improving access to legal service. In our long interviews we heard several mentions of areas of law where the legal process renders the services of lawyers too expensive and cumbersome for low or middle-income clients. These included Civil Litigation, Family and Matrimonial Law, Children's Aid and Protection Services, and Real Estate. The following exchange with a Mississauga lawyer is representative of several comments we heard from interviewees:

Lawyer: The court system has been notoriously under-funded and inefficient...

Interviewer: I have heard from more than one lawyer that this was what made litigation unattractive...

Lawyer: Absolutely. Absolutely. I mean the inefficiencies... If Joe Blow is paying his lawyer \$300 an hour and his lawyer has to go to court and sit around for five hours doing nothing, that's not a particularly efficient way for

him to deal with his problems.

6.7 Discussion: Shortages of Legal Services

Survey research and the real-world descriptions provided by the individuals we interviewed highlighted the extent to which shortages of legal services are rooted in problems of affordability. Of target group respondents who identified shortages, close to two fifths mentioned either problems of access to Legal Aid and Legal Aid lawyers, or problems of affordability of legal services. In the comparable group of equality-seekers this proportion rose to almost half who cited Legal Aid or affordability problems. But beyond these direct references to shortages rooted in the limited means of potential users of legal services, many of the specific descriptions of shortages in regions and areas of law cited the same underlying problem. Limitations or absences of services in such areas as Family Law, Child Protection and Workplace Safety and Insurance Board claims, were often explained by reference to clients' limited ability to pay or their general reliance on Legal Aid.

Viewed from this angle, we conclude that the issue of shortages must first be seen from the general point of view of the supply and demand of legal services. And as we have already suggested, the problem of shortages of legal services is rooted in under-funded demand. Many potential users of legal services are not able to access those services because of their limited ability to pay. Conversely the supply of legal services – lawyers working in specific regions, areas of law and communities - is limited by the inability of individuals and communities to purchase services at rates which will sustain sole practitioners and small firms.

By definition our research is a snapshot of conditions at this time. Still, comments from many interviewees suggested there may be a growing proportion of the population who need legal services but are unable to adequately access those services due to financial constraints.

Although we have stressed the overarching importance of understanding shortages as a matter of affordability and restricted access to legal services, there are clearly other more specific shortage issues which are relevant to regions, areas of practice and specific communities.

In some parts of Ontario, a shortage of clients of sufficient means to sustain a healthy local community of lawyers may be complicated by a failure or lag in the legal community's response to changing demand. There may be several areas in Ontario, particularly the Non-Urban region and the Rest of GTA outside of Toronto, where attractive opportunities to practice may have gone unnoticed.

This research also identified, and in a preliminary way explored the issues of shortage in specific areas of practice. There are a host of issues that may be unique to each area of practice.

Finally, this section of the report explored the extent to which equality-seekers identified shortages of legal services, and the nature of the shortages they reported.

7.0 Conclusion

The findings of this research suggest that the issues of dissatisfaction and financial viability, and shortages of legal services, may be closely linked to the character of the client market that is served by sole practitioners and lawyers in small firms.

The problems experienced by some sole practitioners and small firms in managing the financing and overhead costs of their practices are rooted in the growing incapacity of potential clients to pay for those services. As we heard directly from several interviewees, some lawyers find themselves on the horns of a dilemma. Many potential clients cannot pay adequately or in a timely fashion for the legal services they need. Yet, in many instances lawyers are obliged to take on these cases both for financial and professional reasons, with the consequences that they assume an increased burden in financing their practice and covering overhead costs, and inevitably earn a lower income.

The same situation also accounts for the absence of services, and possibly also a trend toward growing shortages in some regions, areas of practice or cultural communities. As a matter of both choice and necessity, lawyers are forced to restrict the Legal Aid clients they accept, as well as clients of limited means, who do not qualify for Legal Aid.

Regions, areas of practice or cultural communities, where the potential client population has a limited capacity to pay for services, are inevitably subject to growing shortages as the underlying economic realities force lawyers to seek out other more viable markets for legal services.

This report has provided:

- Detailed comparisons between the target and non-target groups;
- Detailed comparisons within the five sub-groups comprising the target group;
- Analysis of the key drivers of satisfaction, dissatisfaction, and financial viability within the target group;
- An exploration of the extent and characteristics of shortages of legal services as they were perceived by respondents in the target group.

In the analysis and interpretation of the research findings, this report has developed a general framework to guide the next stage of research.

APPENDIX I: SURVEY QUESTIONNAIRE

Law Society of Upper Canada
December 4, 2003

Hello may I speak with (name recorded). *If not, arrange a time to call back.*

Hello _____. My name is _____. I am calling on behalf of the Law Society of Upper Canada. We are calling today to ask members some questions about their law practices. We are collecting this information so that we can better understand the practice environment and challenges faced by sole practitioners and small firms. We are also interviewing lawyers in larger firms to compare differences and similarities in the practice environments. This information will be used to develop policy recommendations to address the viability of sole practices and small firms, and ensure access to legal services for the Ontario public.

Your individual responses will be kept strictly confidential. The Law Society will only see the results of the survey as whole. Do you have about 20 minutes to be interviewed for this confidential survey?

If YES: Thank you very much. May I begin? GO TO SECTION A

If NO: Is there a better time to interview you?

If NO: Thanks for your time.

If YES: (schedule callback) Thank you, I'll call back then.

A PRACTICE PROFILE (All survey respondents)

A1. Please indicate your main area or areas of practice. [*DO NOT READ: RECORD UP TO FIVE RESPONSES*]

[*If necessary probe with: "For example do you do criminal, labour or corporate commercial law?"*]

[*NOTE: If respondent answers "General" to indicate area of a practice, repeat the question with, "But can you tell me your main area or areas of practice?"*]

- 1) ADR/Mediation Services
- 2) Administrative
- 3) Bankruptcy and Insolvency

- 4) Civil Litigation – Plaintiff
- 5) Civil Litigation – Defendant
- 6) Construction
- 7) Corporate/Commercial
- 8) Criminal/Quasi Criminal
- 9) Employment/Labour
- 10) Environmental
- 11) Family/Matrimonial
- 12) Immigration
- 13) Intellectual Property
- 14) Public Law
- 15) Real Estate
- 16) Securities
- 17) Tax law
- 18) Wills, Estates, Trusts
- 19) Workplace Safety & Insurance
- 20) Other (specify) _____
- 21) DK/NA

A2. As I read the area or areas you just mentioned please tell me if your practice is growing, stable or decreasing in that area? [*REPEAT ORDER OF MENTIONS FROM A1*]

A2. a) [First Mention]

- 1) Growing
- 2) Stable
- 3) Decreasing
- 4) Refused [DO NOT READ]
- 5) DK/NA

A2. b) [Second Mention]

- 1) Growing
- 2) Stable
- 3) Decreasing
- 4) Refused
- 5) DK/NA

A2. c) [Third Mention]

- 1) Growing
- 2) Stable
- 3) Decreasing
- 4) Refused
- 5) DK/NA

A2. d) [Subsequent Mentions]

- 1) Growing
- 2) Stable
- 3) Decreasing
- 4) Refused
- 5) DK/NA

A3. Are you satisfied with the current mix of practice areas or do you feel you will need to make a change?

- 1) Satisfied GO TO A5
- 2) Need to make a change GO TO A4
- 3) Refused GO TO A5
- 4) DK/NA GO TO A5

A4. What changes do you feel will be necessary?

A5. Which of the following most accurately describes your current practice? Do you,

- | | | |
|-----|---|----------|
| 1) | Practise alone without other lawyers in the same office space | GO TO A8 |
| 2) | Practise alone but share space with other lawyers | GO TO A6 |
| 3) | Practise alone with other lawyers you employ | GO TO A7 |
| 4) | Practise in partnership in a firm with 5 lawyers or less | GO TO A7 |
| 5) | Practise as an employee/associate in a firm with 5 lawyers or less | GO TO A7 |
| 6) | Practise as an employee/associate in a law firm of 6-15 lawyers | GO TO A7 |
| 7) | Practise with partners in a law firm with 6-15 lawyers | GO TO A7 |
| 8) | Practise as an employee/associate in a law firm with more than 15 lawyers | GO TO A7 |
| 9) | Practise as a partner in a law firm with more than 15 lawyers | GO TO A7 |
| 10) | Other (specify) _____ | GO TO A7 |
| 11) | Refused [DO NOT READ] | GO TO A7 |
| 12) | DK/NA | GO TO A7 |

A6. How many lawyers do you share space with?

- | | | |
|----|-------|----------|
| 1) | _____ | GO TO A8 |
| 2) | DK/NA | GO TO A8 |

A7. What is the total number of lawyers who work in same office space as you?

- | | |
|----|-------|
| 1) | _____ |
| 2) | DK/NA |

A8. What is the main reason or reasons you chose the size of firm you practise in?

A9. Please tell me what administrative support staff you use [*RECORD ALL MENTIONS*]

- | | | |
|----|-------|-----------|
| 1) | _____ | GO TO A10 |
| 2) | None | GO TO A11 |
| 3) | DK/NA | GO TO A11 |

A10. For each position you mentioned please tell me if they are a full-time employee, part-time employee or paid a fee-for-service.

A10. a) [First Mention]

- 1) Full-time employee
- 2) Part-time employee
- 3) Fee-for-service
- 4) DK/NA

A10. b) [Second Mention]

- 1) Full-time employee
- 2) Part-time employee
- 3) Fee-for-service
- 4) DK/NA

A10. c) [Third Mention]

- 1) Full-time employee
- 2) Part-time employee
- 3) Fee-for-service
- 4) DK/NA

A10. d) [Fourth Mention]

- 1) Full-time employee
- 2) Part-time employee
- 3) Fee-for-service
- 4) DK/NA

A10. e) [Repeat for all Mentions]

- 1) Full-time employee
- 2) Part-time employee
- 3) Fee-for-service
- 4) DK/NA

A11. Do you employ an articling student?

- 1) Yes GO TO A14
- 2) No GO TO A12
- 3) DK/NA GO TO A12

A12. Have you ever employed an articling student?

- 1) Yes GO TO A13
- 2) No GO TO A13
- 3) DK/NA GO TO A14

A13. What is the main reason you don't have an articling student now?

A14. What percentage of your work time is made up of following:

A14. a) Billable legal work

- 1) _____
- 2) DK/NA

A14. b) Pro Bono legal work

- 1) _____
- 2) DK/NA

A14. c) Non-billable time spent on the administration, client development and marketing

- 1) _____
2) DK/NA

A15. What percentage of your work is legal aid work?

- 1) _____
2) DK/NA

A16. How many hours do you work in your practice during an average work week, including all billable and non-billable time?

- 1) _____
2) DK/NA

B SATISFACTION WITH PRACTICE (All survey respondents)

B1. Using a scale from one to seven, where "1" is very dissatisfied and "7" is very satisfied how would you rank your overall level of satisfaction with your practice?

1-----2-----3-----4-----5-----6-----7

Very Dissatisfied

Very Satisfied

B2. What are the main problems or challenges you are facing in your current practice?

[NOTE: ROTATE ORDER OF B3/B4 AND B5/B6]

B3. Can you tell me a positive aspect, something that makes you more satisfied with your practice? [After first response ask, "Is there another positive aspect, something that makes you more satisfied with your practice?" After second response ask, "And is there another positive aspect,.. (something that makes you more satisfied with your practice ?)"]
[DO NOT READ. RECORD UP TO THREE RESPONSES]

- 1) Income (good level, rising, more than I can earn elsewhere)
2) Freedom (being my own boss)
3) Interesting/creative/varied work
4) Meaningful/socially useful/helpful work
5) Working in a team
6) Flexibility (hours, time off)
7) Community position/status
8) Other (specify) _____

B4. I'm going to read you some positive statements. Please rate each statement, using a scale from 1 to 7 where "1" is strongly disagree and "7" is strongly agree. [READ AND RANDOMIZE]

1-----2-----3-----4-----5-----6-----7

Strongly disagree

Strongly agree

B4. a) You are earning a good income

- B4. b) You are able to maintain a balance between work and the rest of your life
- B4. c) You get professional satisfaction from meeting the needs of your clients
- B4. d) You are pursuing career objectives
- B4. e) You have the freedom of being in business for yourself
- B4. f) You have work that is interesting or challenging
- B4. g) You have profile and recognition in the community where you work
- B4. h) You are working in a team
- B4. i) You are doing work that is meaningful or socially useful
- B4. j) You are working with a community that you belong to by virtue of your ethnicity or cultural background, your race, religion or creed, a disability, your language, your sexual orientation or your gender.

B5. Can you tell me a negative aspect, something that makes you less satisfied with your practice? [After first response ask, "Is there another negative aspect that makes you less satisfied with your practice?" After second response ask, "And is there another negative aspect...(that makes you less satisfied with your practice?")] [DO NOT READ. RECORD UP TO THREE RESPONSES]

- 1) Income (too low, not rising fast enough)
- 2) Lack of Freedom (work for a boss, can't make my own decisions)
- 3) Work is uninteresting/uncreative/no variety
- 4) Work is not meaningful/not socially useful
- 5) Isolated (from other lawyers)
- 6) Work Life Balance (hours are too long/ too much pressure)
- 7) Too hard to make a living (financial viability, increased competition etc.)
- 8) Lack of flexibility (no one to take files in cases of emergency/no one to share work)
- 9) Area of practice (not interesting/not first choice/not successful)
- 10) Other (specify) _____

B6. I'm going to read you some negative statements. Please rate each statement using a scale from 1 to 7 where "1" is strongly disagree and "7" is strongly agree. [READ AND RANDOMIZE]

1-----2-----3-----4-----5-----6-----7

Strongly disagree

Strongly agree

- B6. a) You are earning an income that is lower than you expected
- B6. b) You don't have as much freedom to make decisions as you want
- B6. c) You have work that is uninteresting or unchallenging
- B6. d) Your work is not meaningful or socially useful
- B6. e) You are isolated from other lawyers
- B6. f) Your hours of work are too long and your work impinges on the rest of your life
- B6. g) The financial risks of maintaining your practice are too high
- B6. h) You spend too much time on the administrative aspects of your practice
- B6. i) You are dissatisfied with your present area or areas of practice

B7. Is it important or unimportant to you in your practice, to have a network of other lawyers or staff to share information, clarify ideas, solve problems and provide support? [If important, "Would that be very/somewhat important?" If unimportant, "Would that be somewhat unimportant or not at all unimportant?"]

- 1) Very important
- 2) Somewhat important
- 3) Somewhat unimportant
- 4) Not important at all
- 5) Refused

6) DK/NA

B8. And would you say that your existing supports – professional associations, other lawyers, staff or colleagues in the legal profession – are adequate or inadequate to meet your current needs? [*Would that be very or somewhat adequate/inadequate*]

- 1) Very adequate
- 2) Somewhat adequate
- 3) Somewhat inadequate
- 4) Very inadequate
- 5) Refused
- 6) DK/NA

B9. Using a scale from 1 to 7 where “1” is not important at all and “7” is extremely important please tell me which of the following *supports* are important or unimportant to you in your practice. [*READ AND RANDOMIZE*]

1-----2-----3-----4-----5-----6-----7
 Not important at all Extremely important

- B9. a) Regular interaction with other lawyers in the same office
- B9. b) Working with law clerks in the same office
- B9. c) Working with paralegals paid on a fee-for-service basis
- B9. d) A network of informal contacts or colleagues who are lawyers in other firms
- B9. e) Membership in a professional association
- B9. f) A network of colleagues that belong to the same community as you by virtue of your ethnicity or cultural background, your race, religion or creed, a disability, your language, your sexual orientation or your gender.
- B9. g) Having a group of lawyers who can take on your work in cases of family or other emergencies
- B9. h) Good secretarial or administrative support.

B10. Using the same scale where 1 is not important at all and 7 is extremely important, please tell me which of the following resources are important or unimportant to you in your practice. [*READ AND RANDOMIZE*]

1-----2-----3-----4-----5-----6-----7
 Not Important at all Extremely important

- B10. a) Internet
- B10. b) Continuing Legal Education
- B10. c) The library in your office space
- B10. d) Access to other lawyers with expertise or experience
- B10. e) Administrative support staff
- B10. f) The library run by the local law association
- B10. g) Articling students

B11. Are you satisfied or dissatisfied with the quality of the service you are providing to your clients? [*Would that be very or somewhat satisfied/dissatisfied*]

- | | |
|--------------------------|-----------------|
| 1) Very satisfied | GO TO SECTION C |
| 2) Somewhat satisfied | GO TO B12 |
| 3) Somewhat dissatisfied | GO TO B12 |
| 4) Very dissatisfied | GO TO B12 |
| 5) Refused | GO TO SECTION C |
| 6) DK/NA | GO TO SECTION C |

B12. How could your practice be changed to improve the quality of the services you provide your clients?

C FINANCIAL VIABILITY (All survey respondents)

C1. Would you say it is more difficult or less difficult to maintain the financial viability of *your practice* than it was five years ago, or since you began practising as you are now, if less than five years. [*Would that be much more/less difficult or somewhat more/less difficult*].

[NOTE: If respondent has difficulty with “my practice” prompt with, “ If you can’t answer this question in terms of your practice can you tell me if it is more difficult or less difficult to maintain the financial viability of the firm you work for, than it was five years ago...]

- 1) Much more difficult
- 2) Somewhat more difficult
- 3) Somewhat less difficult
- 4) Much less difficult
- 5) Not Applicable
- 6) DK/NA

C2. Using a scale from one to seven, where “1” is not a problem and “7” is a very serious challenge, how would you rank the issue of maintaining the financial viability of your practice?

[NOTE: As in C1 if respondent has difficulty with “my practice” prompt with, “ If you can’t answer this question in terms of your practice , then how would you rate the financial viability of the firm you work for.]

1-----2-----3-----4-----5-----6-----7
 Not a problem Very serious challenge

C3. And do you expect it to become more difficult or less difficult to maintain the financial viability of your practice five years from now? [*Would that be much more/less difficult or somewhat more/less difficult*]

- | | |
|----------------------------|----------|
| 1) Much more difficult | GO TO C4 |
| 2) Somewhat more difficult | GO TO C4 |
| 3) Somewhat less difficult | GO TO C5 |
| 4) Much less difficult | GO TO C5 |
| 5) Not applicable | GO TO C5 |
| 6) DK/NA | GO TO C5 |

C4. What is the most important factor that will make it more financially difficult to maintain your practice in the future? [*After first mention ask, “And is there another important factor that will make it more financially difficult to maintain your practice in the future?” After second mention ask, “And is there one more important factor ... (that will make it more financially difficult to maintain your practice in the future?)”] [DO NOT READ. RECORD UP TO THREE RESPONSES]*

- 1) Increased competition from paralegals and other non-lawyer suppliers of legal services
- 2) Increased overhead/cost of running the practice
- 3) Costs of new technology
- 4) Low rate of legal aid fees
- 5) Increased competition from sole practitioners and small firms
- 6) Increased competition from larger firms
- 7) Market pressure to keep fees low
- 8) Increased costs of financing the practice (size of loans, difficulty of getting bank financing)
- 9) Other (specify) _____

- 10) Refused
- 11) DK/NA

C5. Using a scale from one to seven, where “1” is not a problem and “7” is a very serious problem, please rank each of the following as a factor which will make it more financially difficult to maintain your practice in the future. *[READ AND RANDOMIZE]*

1-----2-----3-----4-----5-----6-----7
 Not a problem A very serious problem

- C5. a) The increased competition from paralegals and other non-lawyer suppliers of legal services.
- C5. b) The increased overhead costs of running the practice
- C5. c) The costs of new technology
- C5. d) Low rate of legal aid fees
- C5. e) Increased competition from sole practitioners and small firms
- C5. f) Increased competition from larger firms
- C5. g) Market pressure to keep fees low
- C5. h) The increased difficulty or risk of financing your practice

C6. Of the factors that I just read, which one presents the greatest threat to the survival of your practice? *[DO NOT READ. RECORD ONE RESPONSE]*

- 1) The increased competition from paralegals and other non-lawyer suppliers of legal services.
- 2) The increased overhead costs of running the practice
- 3) The costs of new technology
- 4) Low rate of legal aid fees
- 5) Increased competition from sole practitioners and small firms
- 6) Increased competition from larger firms
- 7) Market pressure to keep fees low
- 8) The increased difficulty or risk of financing your practice
- 9) Other (specify) _____
- 10) Refused
- 11) DK/NA

C7. Do you think technology – computers, specialised software, internet access to legal information – has made it easier or more difficult for you to maintain the financial viability of your practice? *[Would that be much/somewhat easier/more difficult]*

- 1) Much more difficult
- 2) Somewhat more difficult
- 3) Somewhat easier
- 4) Much easier
- 5) DK/NA

[NOTE: ROTATE C7 AND C8]

C8. In what way does technology make it more difficult to maintain the financial viability of your practice? *[After first mention ask, “Is there another way technology makes it more difficult to maintain your practice?” After second mention ask, “And is their one more way...(technology makes it more difficult to maintain your practice?)”]* *[RECORD UP TO THREE RESPONSES]*

- 1) Too expensive to purchase
- 2) Too costly to upgrade
- 3) Too hard/ too costly to maintain

- 4) Too much time to learn how to use it
- 5) Increases the financial risks of sole practice/small firms
- 6) Can't keep up with the big firms
- 7) Easier to work from locations other than the office/from home
- 8) Other (specify) _____
- 9) DK/NA

C9. In what way does technology make it easier to maintain the financial viability of your practice? [*After first mention ask, "Is there another way technology makes it easier to maintain your practice?" After second mention ask, "And is there one more way...(technology makes it easier to maintain your practice?")*] [RECORD UP TO THREE RESPONSES]

- 1) Easier to compete with big firms
- 2) Boosts productivity
- 3) Much easier to access legal information
- 4) Easier to learn new areas of the law
- 5) Reduces labour costs
- 6) Improves communications
- 7) Other (specify) _____
- 8) DK/NA

C10. Thinking about your income over the past five years - or since you began practising as you are now if it is less than five years - would you say your income has kept pace, fallen behind or increased more rapidly than the average for lawyers in your areas of practice, with similar experience, practising in similar communities?

- 1) Kept pace with the average
- 2) Fallen behind the average
- 3) Increased more rapidly than the average
- 4) Refused
- 5) DK/NA

C11. Using a scale from one to seven where 1 is very dissatisfied and "7" is very satisfied please rate your current level of satisfaction with your before-tax annual income from your practice.

1-----2-----3-----4-----5-----6-----7
 Very Dissatisfied Very Satisfied

C12. Do you believe your practice will be financially viable 10 years from now?

- 1) Yes
- 2) No
- 3) Refused
- 4) DK/NA

C13. What is the most important step or steps that could be taken to improve the financial viability of your practice?

D ACCESS TO LEGAL SERVICES (Sub-sample of survey respondents)

D1. Were you raised in the geographic area where you now practise law?

- | | |
|----------------------------|----------|
| 1) Yes, born and/or raised | GO TO D2 |
| 2) No, not born/raised | GO TO D3 |
| 3) Refused | GO TO D3 |

4) DK/NA GO TO D3

D2. Did you begin practising law in your present geographic community from the start of your career or did you return to your geographic community after practising law somewhere else?

- 1) Began practising law in present geographic community
- 2) Started practising law in a different geographic community
- 3) Refused
- 4) DK/NA

D3. Why did you choose to practise law in your present geographic community?

D4. Please describe the geographic community your practice serves.

D5. Please estimate the average distance in kilometres your clients travel to meet with you?

- 1) _____
- 2) DK/NA

D6. What percentage of your clients are individuals and what percentage is businesses, organizations, or government?

- 1) Individuals _____
- 2) Business, organizations, government _____
- 3) Refused
- 4) DK/NA

D7. Some clients prefer to deal with their lawyer in a language other than English. In what languages are you able to offer your services to your clients?

- 1) English only GO TO D9
- 2) Other Languages (specify) _____

D8. What percentage of your clients do you serve in [*REPEAT FOR ALL MENTIONS*]

- 1) First mention from D7
- 2) Second Mention from D7
- 3) Third mention from D7

D9. Looking ahead to the time when you are ready to retire, which of the following do you think is most likely to happen to your practice? [*READ AND ROTATE*]

- 1) You will sell the firm to other lawyers
- 2) Other lawyers in the firm will continue the practice
- 3) You will recruit lawyers to join the firm to continue the practice
- 4) You will "close the doors" on your practice when you retire
- 5) You will refer your clients to other lawyers in the area
- 6) Other (specify) [*DO NOT READ*] _____
- 7) DK/NA [*DO NOT READ*]

D10. Do you think there is currently a shortage of any kinds of legal services in whatever community you serve?

- 1) Yes GO TO D11
- 2) NO GO TO D13
- 3) Refused GO TO D13
- 4) DK/NA GO TO D13

D11. Please describe the shortage of legal services in whatever community you serve.

D12. Using a scale from 0 to 10 where “0” represents no legal services and “10” represents a full range of legal services adequate to meet demand, how would you rank the access to legal services in the community you serve?

0-----1-----2-----3-----4-----5-----6-----7-----8-----9-----10
 No legal services Full range of legal services

GO TO D14

D13. Do you think there is likely to be a shortage of any kinds of legal services in the community that you serve, in the foreseeable future?

- 1) Yes GO TO D14
- 2) NO GO TO SECTION E
- 3) Refused GO TO SECTION E
- 4) DK/NA GO TO SECTION E

D14.

D14. a) Using the same 0 to 10 scale where “0” represents no legal services and 10 represents a full range of legal services adequate to meet demand how would you rank access to legal services in your community 5 years from now?

0-----1-----2-----3-----4-----5-----6-----7-----8-----9-----10
 No legal services Full range of legal services

D14. b) And on that same 0 to 10 scale where “0” represents no legal services and 10 represents a full range of legal services adequate to meet demand how would you rank access to legal services in your community 15 years from now?

0-----1-----2-----3-----4-----5-----6-----7-----8-----9-----10
 No legal services Full range of legal services

D15. What do you believe is the main reason for the threatened shortages of legal services in your community? [After first mention ask, “And is there another reason for the threatened shortages of legal services in your community?” After second mention ask, “ And is there another reason... (for the threatened shortages of legal of services in community?)”] [RECORD UP TO THREE RESPONSES]

- 1) Not enough new lawyers serving your community
- 2) Declining incomes
- 3) High incomes offered by large urban firms
- 4) Financial risks of sole practice/small firms are too great
- 5) Hours/workweek too long
- 6) Lack of support – administration, staff
- 7) Too isolated
- 8) Shortage of lawyers practising in specific languages

- 9) Other (specify) _____
 10) DK/NA

D16. In which practice areas do you think there are likely to be shortages or limits to access in your community in the future? [*DO NOT READ. RECORD ALL RESPONSES*]

- 1) ADR/Mediation Services
- 2) Administrative
- 3) Bankruptcy and Insolvency
- 4) Civil Litigation – Plaintiff
- 5) Civil Litigation – Defendant
- 6) Construction
- 7) Corporate Commercial
- 8) Criminal/Quasi Criminal
- 9) Employment/Labour
- 10) Environmental
- 11) Family/Matrimonial
- 12) Immigration
- 13) Intellectual Property
- 14) Public Law
- 15) Real Estate
- 16) Securities
- 17) Tax law
- 18) Wills, Estates, Trusts
- 19) Workplace Safety & Insurance
- 20) Other (specify) _____
- 21) DK/NA

D17. And of the areas of practice you mentioned, where do you think the shortages of legal services are likely to be most severe? [*DO NOT READ. RECORD UP TO FIVE RESPONSES*]

- 1) ADR/Mediation Services
- 2) Administrative
- 3) Bankruptcy and Insolvency
- 4) Civil Litigation – Plaintiff
- 5) Civil Litigation – Defendant
- 6) Construction
- 7) Corporate Commercial
- 8) Criminal/Quasi Criminal
- 9) Employment/Labour
- 10) Environmental
- 11) Family/Matrimonial
- 12) Immigration
- 13) Intellectual Property
- 14) Public Law
- 15) Real Estate
- 16) Securities
- 17) Tax law
- 18) Wills, Estates, Trusts
- 19) Workplace Safety & Insurance
- 20) Other (specify) _____
- 21) DK/NA

D18. What is the most important step or steps that should be taken to ensure adequate future access to legal services in the community you serve?

E MEMBERS OF EQUALITY-SEEKING COMMUNITIES

(Sub-sample of survey respondents)

E1. The Law Society has defined members of “equality-seeking communities” as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual orientation, or gender. Do you consider yourself a member of an equality-seeking community?

- | | | |
|----|---------|----------|
| 1) | Yes | GO TO E2 |
| 2) | No | GO TO E3 |
| 3) | Refused | GO TO E3 |
| 4) | DK/NA | GO TO E3 |

E2. Are you a member of an equality-seeking community for one or more of the following reasons:

- | | |
|-----|---------------------------------------|
| 1) | Your race |
| 2) | Your ethnicity or cultural background |
| 3) | Your religion or creed |
| 4) | A disability |
| 5) | Your language |
| 6) | Your sexual orientation |
| 7) | Your gender |
| 8) | Or some other reason (specify)_____ |
| 9) | Refused [DO NOT READ] |
| 10) | DK/NA [DO NOT READ] |

GO TO E5

[NOTE: Questions E3 & E4 which follow are a second attempt to identify “equality-seekers” who may not see themselves as falling into the definition provided in E1]

E3. Thinking about your work as a lawyer, have you ever experienced any discrimination or limitations to your employment opportunities as a result of your ethnicity or cultural background, your race, your religion or creed, a disability, language, your sexual orientation or gender?

- | | | |
|----|---------|-----------------|
| 1) | Yes | GO TO E4 |
| 2) | No | GO TO SECTION F |
| 3) | Refused | GO TO SECTION F |
| 4) | DK/NA | GO TO SECTION F |

E4. Has your ethnicity or cultural background, your race, your religion or creed, a disability, language, your sexual orientation or gender affected the financial viability of your practice? If so, please explain. *[RECORD VERBATIM]*

GO TO SECTION F

[NOTE: Questions E5 to E10 apply only to those respondents who indicated in E1 that they are members of equality-seeking communities.]

E5. Has your ethnicity or cultural background, your race, your religion or creed, a disability, language, your sexual orientation or gender affected the financial viability of your practice? *[RECORD VERBATIM]*

E6. *[READ SLOWLY]* Using a scale from 1 to 7 where “1” is not important at all and “7” is the most important reason please tell me how important being a member of an equality-seeking community was in your decision to practise as you are now, by which I mean practising *alone*, or with *other lawyers in a small firm*, or with *other lawyers in a larger firm*.

1-----2-----3-----4-----5-----6-----7
 Not important at all Most important reason

E7. Lawyers have different reasons for choosing their area or areas of practice. Was being a member of an equality-seeking community an important factor, one consideration among others, or not a relevant consideration in your decision to choose the area or areas in which you now practise?

- | | | |
|----|------------------------------|----------|
| 1) | Important factor | GO TO E8 |
| 2) | One consideration among many | GO TO E8 |
| 3) | Not a relevant consideration | GO TO E9 |
| 4) | Refused | GO TO E9 |
| 5) | DK/NA | GO TO E9 |

E8. How did your membership in an equality-seeking community affect your decision to choose the areas or areas in which you now practise?

E9. What percentage of your clients are from the same equality-seeking community as you are?

- 1) _____
- 2) Refused
- 3) DK/NA

E10. Some individuals have found that being a member of an equality-seeking community has affected the income they earn as a lawyer. In your case would you say that being a member of an equality-seeking community has contributed to reducing your income level, increasing your income level or has had no effect on your income level?

- | | | |
|----|--------------------------|-----------------|
| 1) | Reducing your income | |
| 2) | Increasing your income | |
| 3) | Had no effect either way | GO TO SECTION F |
| 4) | Refused | GO TO SECTION F |
| 5) | DK/NA | GO TO SECTION F |

E11. Would you say that being a member of an equality-seeking community is the most important factor, very important, somewhat important, not very important or not important at all as a factor in determining your annual income from your practice?

- 1) Most important reason
- 2) Very important reason
- 3) Somewhat important

- 4) Not very important
- 5) Not important at all
- 6) Refused
- 7) DK/NA

F DEMOGRAPHICS (All survey respondents)

I just have a few more questions for you so that we can make some statistical comparisons.

F1. Gender [DO NOT ASK. FROM LSUC DATA FILE]

F2. Would you tell me your year of birth? [DO NOT ASK. FROM LSUC DATA FILE]

F3. Can you tell me what year you were called to the bar? [DO NOT ASK. FROM LSUC DATA FILE]

F4. During the past year were you

- | | | |
|----|--|----------|
| 1) | Employed mainly full-time as a lawyer | GO TO F6 |
| 2) | Employed mainly part-time as a lawyer | GO TO F5 |
| 3) | Employed temporarily full-time as a lawyer | GO TO F5 |
| 4) | Other (specify) _____ | GO TO F6 |

F5. And was your part-time/ temporary employment status your personal choice or was it caused by other factors such as limited opportunity to practise law.

- 1) Personal choice
- 2) Limited opportunity to practise law
- 3) Refused
- 4) DK/NA

F6. I am now going ask you about your annual income. As I read the following list, please indicate the range that applies to your annual before tax income earned from your practice in 2002.

- 1) ZERO or lost money
- 2) Less than \$24,999
- 3) More than \$25,000 but less than \$49,999
- 4) More than \$50,000 but less than \$74,999
- 5) More than \$75,000 but less than \$99,999
- 6) More than \$100,000 but less than \$199,999
- 7) More than \$200,000 but less than \$399,999
- 8) More than \$400,000
- 9) Refused [DO NOT READ]
- 10) DK /NA[DO NOT READ]

My next few questions are designed to allow the Law Society to make comparisons with Census Canada data and identify trends in the profession:

F7. What language or languages did you first learn at home in childhood and still understand? [DO NOT READ. RECORD ALL RESPONSES]

- 1) English
- 2) French
- 3) Italian
- 4) Cantonese
- 5) Portuguese
- 6) Spanish
- 7) Punjabi

- 8) Polish
- 9) Arabic
- 10) Tagalog
- 11) German
- 12) Tamil
- 13) Urdu
- 14) Greek
- 15) Vietnamese
- 16) Other (Specify) _____
- 17) DK/NA

F8. Census Canada provides the following membership options in certain communities. Would you please indicate which membership option or options apply to you. [*READ LIST and RECORD ALL RESPONSES. AS NECESSARY PROMPT WITH DESCRIPTIONS IN PARENTHESIS*]

- 1) Aboriginal (Native American, Status/Non-Status Indian, Metis or Inuit)
- 2) White
- 3) Chinese
- 4) South Asian (e.g. East Indian, Paskistani, Sri Lankan, etc.)
- 5) Black (African-Canadian/African-American/African-Caribbean, Continental African)
- 6) Filipino
- 7) Latin American
- 8) Southeast Asian (e.g. Cambodian, Indonesian, Laotian, Vietnamese, etc.)
- 9) Arab
- 10) West Asian (e.g. Afghan, Iranian, etc.)
- 11) Japanese
- 12) Korean
- 13) Other (specify) _____
- 14) Refused
- 15) DK/NA

G QUALITATIVE RECRUITMENT (All survey respondents)

G1. That brings me to the end of our survey. Thank you very much for taking the time to answer my questions. The next phase of this research project may involve longer face-to-face taped interviews as well as focus groups. A focus group is a conversation involving 8-10 participants at a time. Would you be willing to participate in a longer recorded interview or a focus group some time in January, 2004? [*MARK ALL THAT APPLY*]

- 1) Longer recorded interview
- 2) Focus group
- 3) Not interested
- 4) DK/NA

[If YES to long interview or focus groups] That's great! I can't guarantee that you will be contacted but you may be hearing from us in the next few weeks.

Thanks again for taking the time to participate in this research.

[If NO] Well thanks again for taking the time to participate in this research.

APPENDIX II: LONG INTERVIEW GUIDE

Law Society of Upper Canada
January 26, 2004

Procedure

Candidates for follow-up long interviews were selected from the pool of respondents to the telephone survey conducted in December, 2003, who indicated a willingness to participate in a follow-up interview. A staff member at Strategic Communications phoned each candidate, reminded him/her of the December interview, and asked the individual if they were willing to participate in a 30-60 minute telephone interview which would be recorded. Phoning began on Monday, January 19. David Kraft, a senior consultant at Strategic Communications, conducted all the telephone interviews.

PART ONE: INTRODUCTION

Introduction *[All respondents]*

[Moderator begins by reminding the respondent that the interview is being taped, and restating the guarantee that although their comments will be used, he/she will not be identified by name, nor will the community where they practice be mentioned in any way that could identify the individual interviewee.]

1. Can you describe your law practice?

[Probe for number of lawyers, support staff, area of practice, choice of sole practice/small firm, and issues of importance]

2. Can you tell me about the community you practice in?

[Probe for... reasons for practising in 'your' community. Why did you choose to be here? How did you end up there? Do you like the community you are practicing in?]

PART TWO: SUSTAINABILITY

Satisfaction/Dissatisfaction *[for respondents who identified issues of dissatisfaction]*

3. Can you tell me something about what you like or dislike about your current practice?

[Probe for likes and dislikes. Explore specific issues.]

4. In terms of what you have just described are there things about your practice that have *gotten worse* over time – since you began practising, or more recently?

[Probe for description of specific factors, impact on practice. Also, the reasons for these changes.]

5. Are there things about your practice that have gotten better over time –since you began practising or more recently?

[Probe for description of specific factors, impact on practice. Also, the reasons for these changes.]

6. In terms of what we have been discussing do you expect things to get better or worse in the future?

[Probe for what things? why?]

7. Are you satisfied with your current income?

[Probe for future expectation?]

8. Are any of the issues/problems you have described serious enough to affect your decisions about practicing law in the future? For example do you think these problems could cause you to change practice areas/move to another community/even stop practicing law/etc.?

[Probe for specific issues and possible response]

Financial Viability *[primarily for respondents who identified financial viability issues]*

9. From a financial point of view is it more difficult to sustain your practice than it was in the past? *[If so, why?]*

10. How would you describe the challenges or issues that you face in maintaining the financial viability of practice?
[Probe for: competition, legal aid rates, paralegals, market pressure]

11. How serious are these problems for you? Are they likely to affect decisions you make about your choice of practice area(s) or continuing to practice in your community?

PART THREE: ACCESS TO LEGAL SERVICES

Legal Services in Your Community *[All respondents, with some specific probes for Equality-seekers]*

12. Does the community where you practice have any *specific* needs for legal services? By that I mean is there any demand for a particular type of legal services due to the nature of the community and the people who live there?
[Probe equality-seekers to define "community" and its needs.]

13. Are there shortages of any legal services in your community? Can you describe them? *[Probe for practice areas: Family Law, Litigation, Criminal, Employment, Immigration.]*

14. Can you give me some examples of cases you know about, where individuals or businesses could not access the legal services they needed?
[Probe for stories, specific examples of shortages.]

15. How serious are the problems you have just described?

16. Can you compare access to legal services in your community with other communities in Ontario? Are there similarities or differences that come to mind?

The Impact of Shortages of Legal Services *[Primarily respondents who identified access issues]*

17. What do those people who can't access legal services in your community do? Where do they go for those services?

18. Does the shortage of legal services affect your own practice in any way?
[Probe for changes to areas of practice, problem with referrals, people go out of town whenever they need a lawyer, etc. This may also be an opportunity to explore the financial viability of the respondent's practice.]

The Legal community *[All Respondents]*

19. Can you describe the legal community in your area?
[Probe for number of lawyers, size of firms, areas of practice, gaps and/or over-supply]

20. Within the legal community you just described are there lawyers or firms that you work with on a regular basis?
[Probe for contacts, collaboration, support/isolation.]

21. Is the legal community you described changing? *[Numbers, demographics, type of firms, areas of practice and reasons. Probe for causes.]*

Shortages of lawyers *[Primarily respondents who identified access issues or others who have raised this issue in the course of the interview]*

22. Is there a shortage of lawyers in your community? *[What kinds, i.e., area of practice or expertise, age, gender, language.]*

23. *[follow-up]* What do you think makes your community attractive or unattractive as a place where lawyers would decide to practice?

24. What do you think could/should be done to attract more lawyers to practice in your community? [*Probe: What about having/increasing use of articling students? Have you thought about sharing an articling student with another lawyer? If not, why not?*]

PART FOUR: SOLUTIONS

Solving problems of sustainability and financial viability [*Sustainability/viability*]

25. (*Note: Sustainability/satisfaction/equality seekers*) Are the problems you described in terms of your own practice, experienced by other lawyers? If so, are there specific steps or policy measures that should be taken to make practising law less difficult for lawyers like yourself? Are there things the Law Society should be doing?

26. (*Note: Sustainability/financial viability*). Are the problems of financial viability that you described serious enough that specific steps or policy measures should be developed to make practising law more financially viable for lawyers like you? Are there things the Law Society should be doing?

Overcoming the Shortage of Legal Services in Your Community [*Access or others who identify access issues*]

27. Are the problems of access to legal services in your community serious enough that specific action should be taken or policy measures developed to improve the availability of legal services in your community? What steps?

28. What should the Law Society be doing to deal with the problem of shortages of legal services in your community and other communities?

Concluding comments

29. That brings me to the end of my questions. Is there anything further you would like to add or clarify?

[*Interviewer explains that the information from the interview will be integrated into the survey results and submitted in a final report to the LSUC Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms.*]

Thanks again for taking the time to speak with me. Goodbye.

CONVOCATION ROSE AT 1:00 P.M.

The Treasurer and Benchers had as their guests for luncheon Francis Gervais, President of the Federation of Law Societies of Canada and Stephen Bindman, a former lay bencher.

Confirmed in Convocation this 28th day of May, 2004

Treasurer