22nd June, 2000

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 22nd June, 2000
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Arnup, Braithwaite, Carey, Chahbar, Crowe, Diamond, DiGiuseppe, E. Ducharme, Lalonde, Laskin, MacKenzie, Pilkington, Porter, Potter, Puccini, Ross, Topp and Wright.

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The reporter was sworn.

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IN PUBLIC

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Re: Edward William HASTINGS - Stratford

The Secretary placed the matter before Convocation.

Messrs. Topp and Chahbar withdrew for this matter.

Mr. Glenn Stuart appeared on behalf of the Society and Mr. Tory Colvin appeared on behalf of the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 23rd February, 2000, together with an Affidavit of Service sworn 17th March, 2000 by Pertrab Singh that he had effected service on the solicitor by registered mail on 13th March, 2000. (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Carole Curtis, Chair
Susan Elliott
Abdul Chahbar

In the matter of
The Law Society Act
and in the matter of

EDWARD WILLIAM HASTINGS
of the City
of Stratford
a barrister and solicitor

Glenn Stuart
for the Society

Tory Colvin
for the solicitor

Heard: June 16 and September 22, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Complaint D374/97 was issued on December 3, 1997, and Complaint D10/98 was issued on February 9, 1998, against Edward William Hastings alleging that he was guilty of professional misconduct.

The matter was heard in public on June 16 and September 22, 1998 before this Committee composed of Carole Curtis, Chair, Susan Elliott and Abdul Chahbar. The Solicitor attended the hearing and was represented by Tory Colvin. Glenn Stuart appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

Complaint D374/97

2. a) On or about February 28, 1994, and March 29, 1994, the Solicitor misappropriated the sum of $40,000 which he held in trust on behalf of his clients James Ritchie and Pat and Donald Hagedorn;

b) on or about February 28, 1994, the Solicitor misapplied the sum of $21,000 which he held in trust on behalf of his clients James Ritchie and Pat and Donald Hagedorn;

c) on or about April 27, 1994, the Solicitor misapplied the sum of $61,000 which he held in trust on behalf of his client Sharrie Ann Dial;

d) on or about May 31, 1994, and June 16, 1994, the Solicitor misapplied the sum of $79,010.18, more or less, which he held in trust on behalf of his client Edward Lalonde;

e) on or about September 23, 1994, the Solicitor misappropriated the sum of $132,812.60, more or less, which he held in trust on behalf of his client Edward Lalonde;

f) the Solicitor misappropriated a total sum of $21,000, more or less, from the funds which he held in his mixed trust account on behalf of all his clients by the following payments:

i) $6,000 by cheque, dated August 31, 1995, payable to "Dave Padington",
ii) $10,000 by cheque, dated September 1, 1995, payable to "Wib Herman",and
iii) $5,000 by cheque, dated October 18, 1995, payable to "Fred Vickell";

g) on or about November 14, 1995, the Solicitor misapplied the sum of $13,460.00, more or less, from the funds which he held in his mixed trust account on behalf of all of his clients;

i) on or about March 27, 1997, the Solicitor misappropriated the sum of $24,500, more or less, which he held in trust for his client John Switzer;

j) throughout the period from July 31, 1995, to April 30, 1997, the Solicitor has failed to maintain sufficient balances on deposit in his mixed trust bank accounts to meet all his obligations with respect to monies held in trust for clients, thereby breaching subsection 14(12) of Regulation 708 made pursuant to the *Law Society Act*;

k) on or about December 28, 1995, the Solicitor misapplied the sum of $11,952.80, more or less, from the funds which he held in trust on behalf of his clients David and Michelle Million; and,

l) on or about February 23, 1996, the Solicitor misapplied the sum of $30,326.80, more or less, which he held in trust on behalf of his client Hyde Kitchens & Custom Homes Ltd.

Particular (h) was withdrawn at the hearing.

Complaint D10/98

2. a) The Solicitor breached Rule 7 of the Rules of Professional Conduct by borrowing money from his client, Beverley Abbott, who was neither a lending institution nor a related person as defined under the *Income Tax Act*, as follows:

i) on or about December 31, 1996, he borrowed the sum of $25,000 from Ms. Abbott, and

ii) on or about January 22, 1997, he borrowed the sum of $5,000 from Ms. Abbott; and,

b) the Solicitor breached Rule 7 of the Rules of Professional Conduct by borrowing money from his client, David Lupton, who was neither a lending institution nor a related person as defined under the *Income Tax Act*, as follows:

i) on or about November 12, 1991, he borrowed the sum of $10,000 from Mr. Lupton,

ii) on or about May 1, 1992, he borrowed the further sum of $10,000 from Mr. Lupton,

iii) on or about June 17, 1994, he borrowed the further sum of $10,000 from Mr. Lupton, and

iv) on or about December 22, 1995, he borrowed the sum of $30,000 from Mr. Lupton.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION

1. The Solicitor admits service of Complaints D374/97 and D10/98 and is prepared to proceed with a hearing of this matter before the seized Committee on a date to be fixed by the Hearings Co-ordinator following the completion of the criminal charges against him.

II. IN PUBLIC / IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the *Statutory Powers Procedure Act*.

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D374/97 and D10/98 and this agreed statement of facts with his counsel, Tory Colvin, and admits the particulars and facts contained therein. The Solicitor also admits that the particulars alleged in the Complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

Background

4. The Solicitor was called to the Bar on March 22, 1974. As of July 1992, the Solicitor was a partner in the law firm Hastings, Burdett and Fair in Stratford, Ontario. In 1993, the two other members of the firm left the partnership; consequently, the Solicitor has been a sole practitioner since August 1993.

5. An audit of the Solicitor's trust account was completed by the Law Society in 1997. This review revealed several deficiencies with respect to the operation of his trust account as required by Regulation 708 of the *Law Society Act*. In April 1997, as a result of the findings of the audit, the Solicitor agreed to have co-signing controls applied to his trust account.

6. The Solicitor closed his law practice on August 1, 1997, and has undertaken to the Law Society not to engage in the practice of law as of December 31, 1997.

Complaint D374/97

Particular 2(a) On or about February 28, 1994 and March 29, 1994, the Solicitor misappropriated the sum of $40,000.00 which he held in trust on behalf of his clients, James Ritchie and Pat and Donald Hagedorn.

Particular 2(b) On or about February 28, 1994, the Solicitor misapplied the sum of $21,000.00 which he held in trust on behalf of his clients, James Ritchie and Pat and Donald Hagedorn.

7. In early 1994, Pat and Donald Hagedorn sought to acquire the property at 154 Nile Street, Stratford, Ontario for their son Jonathan Hagedorn. The property was owned by 634555 Ontario Limited. As Donald Hagedorn was one of the principals of 634555 Ontario Limited and an undischarged bankrupt at the time, neither he nor Pat Hagedorn were able to acquire the property. They needed to arrange for a third party to acquire the property as trustee.

8. In February 1994, James Ritchie ("Ritchie") agreed to purchase the house on behalf of the Hagedorns and hold it in a secret trust to the benefit of Jonathan Hagedorn. Ritchie retained the Solicitor to act for him (and, consequently, Pat and Donald Hagedorn) in the purchase of 154 Nile Street. The Solicitor was aware of this arrangement between the Hagedorns and Ritchie and the Hagedorn's interest in this property.

9. On or about February 28, 1994, Pat Hagedorn provided Ritchie $72,500.00 to purchase 154 Nile Street. On the same day, Ritchie provided these funds to the Solicitor who deposited the funds into his trust account, as demonstrated by the deposit slip (Document Book, Tab 1).

10. The purchase of 154 Nile Street was intended to close on February 28, 1994. However, there was a problem with the title and the purchase did not close on that date. By letter dated March 4, 1994 (Document Book, Tab 2), the Solicitor advised the Toronto-Dominion Bank and Donald Hagedorn that the transaction could not close on that date.

11. To the Solicitor's knowledge, neither Ritchie nor the Hagedorns authorized the Solicitor to use the $72,500.00 entrusted to him for any purpose other than to complete the purchase of 154 Nile Street.

12. On February 28, 1994, and thereafter, the Solicitor improperly disbursed a total of $61,000.00 from the funds he held in trust. The Solicitor was aware at the time that these payments were not authorized. These payments, described in paragraphs 13 to 16 below, appear in the trust ledger maintained by the Solicitor for Ritchie and the Hagedorns (Document Book, Tab 3). These payments in no way benefited Ritchie or the Hagedorns.

13. On February 28, 1994, the Solicitor misapplied $21.000.00 of the Ritchie/Hagedorn funds by a trust cheque in the amount of $21,000.00 made payable to the Royal Bank (Document Book, Tab 4). This payment was made to pay the arrears of interest and principal on a loan which another client of the Solicitor, Joseph Moss, owed to the Royal Bank in relation to a mortgage refinancing in which the Solicitor had acted for Mr. Moss.

14. On February 28, 1994, the Solicitor also misappropriated $30,000.00 from the Ritchie/ Hagedorn funds by way of a trust cheque in the amount of $30,000.00 (Document Book, Tab 5) payable to Marsh Construction Limited ("Marsh Construction"). Marsh Construction Limited was controlled by Gary Marsh ("Marsh"), a business associate and client of the Solicitor.

15. At the Solicitor's direction, Marsh provided the Solicitor, on February 28, 1994, with a cheque from Marsh Construction for $28,000.00 made payable to the Solicitor personally (Document Book, Tab 6) in return for the Solicitor's trust cheque. The cheque from Marsh Construction was then deposited to the Solicitor's personal bank account as shown in his bank statement for that period (Document Book, Tab 7). Marsh applied the remaining $2,000.00 to the benefit of the Solicitor in payment of an overdue account which the Solicitor had with Marsh Construction for services rendered to the Solicitor. This debt is reflected in Marsh Construction's handwritten accounting records (Document Book, Tab 8).

16. On March 29, 1994, the Solicitor misappropriated a further $10,000.00 from his trust account. The Solicitor wrote a trust cheque for this amount payable to Gary Marsh (Document Book, Tab 9); this transaction was posted to the Ritchie/Hagedorn trust ledger (Document Book, Tab 23). When the Solicitor delivered this cheque to Marsh that same day, Marsh wrote a cheque from Marsh Construction for $10,000.00 payable to the Solicitor personally; a copy of this cheque is found in the Document Book at Tab 10. The Solicitor deposited these funds into his general account on the same day as demonstrated by his bank statements, a copy of which is found in the Document Book at Tab 11.

17. The Solicitor had asked Marsh to process client funds in this way for several years. The Solicitor had advised Marsh that the Solicitor was not permitted to borrow from clients directly but that it was permissible to borrow client funds if they were paid to Marsh's company and then immediately repaid to the Solicitor. The Solicitor was aware at the time that this arrangement was not permissible under the Rules of Professional Conduct.

18. The Solicitor returned $72,500.00 to Pat Hagedorn on April 27, 1994 by trust cheque (Document Book, Tab 12). To prevent the Ritchie/Hagedorn trust ledger becoming overdrawn by this payment after his misappropriations and misapplications, the Solicitor transferred $61,000.00 to it from the trust ledger for another client, Sharrie Ann Dial. A copy of the Dial trust ledger is found in the Document Book at Tab 16.

19. The purchase of 154 Nile Street, Stratford, by Ritchie, as trustee, finally closed on May 27, 1994. To close the transaction, Don Hagedorn provided a total of $72,156.31 to the Solicitor in trust that day as shown by the deposit slip dated May 27, 1994 (Document Book, Tab 13).

Particular 2(c) On or about April 27, 1994 the Solicitor misapplied the sum of $61,000 which he held in trust on behalf of his client Sharrie Ann Dial.

20. The Solicitor was retained by Sharrie Ann Dial ("Dial") in or about January 1994 to act on the mortgage refinancing of her home at 162A Nile Street, Stratford, Ontario. Dial had obtained a private mortgage loan of $102,500.00 in 1989 from Larry Delarge ("Delarge"). A copy of this mortgage is found in the Document Book at Tab 14.

21. In early 1994, Dial obtained new mortgage financing from the Bank of Montreal to replace the mortgage in favour of Delarge.

22. The Solicitor, on behalf of Dial, received $94,000.00 from the Bank of Montreal, on February 1, 1994, and deposited the funds into his trust account. A copy of the deposit slip is found in the Document Book at Tab 15; this deposit was posted in the Dial trust ledger (Document Book, Tab 16).

23. The Solicitor states that he forwarded a certified trust cheque for $91,234.70 (Document Book, Tab 18) to Delarge under cover of a letter dated February 1, 1994 (Document Book, Tab 17). In his letter, the Solicitor requested Delarge execute a Discharge and Release of Insurance, as well as return a duplicate registered Mortgage, so that the Solicitor could register a discharge of the mortgage.

24. The Solicitor registered a mortgage in the amount of $94,000.00 in favour of the Bank of Montreal against 162A Nile Street (Document Book, Tab 19) on February 1, 1994. The Solicitor reported to Dial and the Bank of Montreal on this transaction on February 2, 1994. Copies of the Solicitor's reports to each party are found in the Document Book at Tabs 20 and 21, respectively.

25. Delarge either lost or did not receive the Solicitor's February 1, 1994 letter, and the enclosed certified trust cheque. On March 7, 1994, Delarge wrote a letter to Dial (Document Book, Tab 22) complaining that he had not received a mortgage payment for February 15, 1994.

26. On March 15, 1994, the Solicitor couriered a letter to Delarge (Document Book, Tab 23) and enclosed a new certified trust cheque for $91,234.70 payable to Delarge (Document Book, Tab 24). The Solicitor confirmed that his letter of February 1,1994, if not received by Delarge, must have been lost in the mail and that he had cancelled the certified trust cheque dated February 1, 1994; the Dial trust ledger (Document Book, Tab 16) indicates that the February 1, 1994 certified trust cheque was voided on March 15, 1994.

27. On or before March 18, 1994, Delarge returned the second certified trust cheque to the Solicitor. Delarge claimed that, because of the delay in receiving payment for the discharge of the mortgage on 162A Nile Street, he was, in fact, entitled to more interest, and, consequently, a total amount greater than $91,234.70. The Dial trust ledger indicates that this second certified trust cheque was voided on March 22, 1994.

28. On or about March 22, 1994, Delarge commenced a Small Claims Court action for $2,216.02, the amount Delarge claimed that Dial owed to him for missing mortgage payments on February 15 and March 15, 1994. A copy of the claim is found in the Document Book at Tab 25).

29. On April 19, 1994 the Solicitor filed a Statement of Defence on behalf of Dial (Document Book, Tab 26). The defence stated, in part, that:

The money was forwarded to pay the mortgage in full to the Plaintiff on the February 1, 1994 . The Plaintiff refused payment, returned the certified trust cheque from my lawyer and commenced this action.

30. Delarge did not accept payment for the discharge of the mortgage on 162A Nile Street until May 31, 1994, when the Solicitor forwarded to him a trust cheque in the amount of $94,572.67 (Document Book, Tab 27). The discharge of this mortgage (Document Book, Tab 28) was registered on June 6, 1994. By letter dated June 6, 1994, the Solicitor reported to Dial on this transaction (Document Book, Tab 29).

31. To the Solicitor's knowledge, neither the Bank of Montreal nor Dial authorized the Solicitor to use the $94,000.00 paid to him in trust for any purpose other than the discharge of the mortgage in favour of Delarge. These funds were to remain in the Solicitor's trust account pending the discharge of this mortgage.

32. Owing to the delays in discharging the mortgage in favour of Delarge, the sum $94,000.00, more or less, advanced by the Bank of Montreal to Dial was supposed to remain to the credit of Dial in the Solicitor's trust account at all times throughout the period from February 1 to May 31, 1994.

33. On April 27, 1994, however, the Solicitor misapplied $61,000.00 from the Dial trust ledger, as noted above at paragraph 18, to cover the misappropriations and misapplication from the Ritchie/Hagedorn trust ledger (Document Book, Tab 3). As a result, the balance in the Dial trust ledger (Document Book, Tab 16), was only $30,284.70 as of April 27, 1994. The Solicitor was aware that this application of Dial's funds was not authorized and that this application of Dial's funds in no way benefited Dial.

34. To cover the shortfall in Dial's trust ledger when her funds were properly required, the Solicitor transferred $64,287.97 from the client trust ledger for another client on May 31, 1994. If this transfer had not been made, the Dial trust ledger would not have had sufficient funds to cover the trust cheque the Solicitor issued to Delarge on May 31, 1994.

Edward Lalonde

35. Edward Lalonde ("Lalonde") is a self-employed business man who, at all material times, lived in Stratford, Ontario. In 1994, Lalonde retained the Solicitor to act for him in the sale of two pieces of real estate.

i) R.R. #2 Embro, Ontario

36. In or about May 1994, Lalonde retained the Solicitor to act for him on the sale of his property at R.R.#2 Embro, Ontario. The sale of this property to Stuart and Christine Klein for a price of $85,000.00 closed May 31, 1994. According to the Statement of Adjustments (Document Book, Tab 30), the balance due on closing was $84,552.86. Lalonde provided a Direction to the Kleins (Document Book, Tab 31) to have the balance due paid to the Solicitor in trust (or as Lalonde would further direct).

37. On closing, the Solicitor received $84,552.86 in trust. The Solicitor deposited these funds in his trust account on May 31, 1994, as reflected by the deposit slip of that date (Document Book, Tab 32). The Solicitor reported to Lalonde on this transaction by a letter dated May 31, 1994 (Document Book, Tab 33) which enclosed an account of the same date (Document Book, Tab 34). This letter was received by Lalonde a few days later.

38. When the Solicitor met with Lalonde with respect to this transaction in early June 1994, the Solicitor had prepared a cheque payable to Lalonde for the balance owing to Lalonde. However, Lalonde intended, at the time, to purchase another property in the next month or two and wished to have the Solicitor retain these funds pending this future purchase. The Solicitor states that Lalonde agreed to lend these funds to the Solicitor for his own use; the Solicitor accepts that he did not recommend to Lalonde that he obtain independent legal advice and that Lalonde did not receive same. Lalonde states that he did not agree to lend these funds to the Solicitor.

39. The amount of $84,552.86 was credited to the Lalonde trust ledger re: Sale to Klein (Document Book, Tab 35) on May 31, 1994. Immediately after these funds were credited to the Lalonde trust ledger, on that same day, the Solicitor used $64,287.97 from the funds he held in trust for Lalonde to cover the shortage in the funds the Solicitor held in trust for Dial as reflected in the Dial trust ledger.

40. After disbursing the amount of $4,957.00 for the real estate fees from the sale to the Kleins and paying $585.18 on account of the Solicitor's fees, the balance of funds that the Solicitor actually held in his trust account for Lalonde was only $14,722.71.

41. The Solicitor later wrote two trust cheques made payable to Lalonde in a total amount of $78,960.68. Both cheques were dated June 16, 1994: one was in the amount of $72,500.00 (Document Book, Tab 36); the other for $6,460.68 (Document Book, Tab 37). These cheques were never delivered to Lalonde. These cheques were entered on the Lalonde trust ledger (Document Book, Tab 35) twice on June 16, 1994, and then were immediately cancelled twice on the same day. They were never cashed.

42. On June 16, 1994, the same date on which the two cheques identified in the preceding paragraph were drawn, the Solicitor used $14,722.21 from the funds held in trust for Lalonde. The Solicitor wrote a trust cheque for this amount payable to Dr. Glen Evans (Document Book, Tab 38). This payment was made to reduce a debt which Marsh owed to Dr. Evans. Marsh, as noted above, was a business associate of the Solicitor.

43. This payment to Dr. Evans, as reflected in the Lalonde trust ledger, reduced the balance of the funds which the Solicitor held in trust for Lalonde to $0.50. According to the Lalonde trust ledger, the Solicitor disbursed the remaining $0.50 to himself on June 17, 1994, and thereby reduced the actual funds he held in trust for Lalonde to nil.

44. On or about September 13, 1994, Lalonde directed the Solicitor to pay Maria Burnett ("Burnett") the sum of $25,000.00 from the funds which the Solicitor had received from Lalonde. Burnett is Lalonde's sister. Lalonde directed the Solicitor to pay these funds to his sister to aid her in re-establishing herself following the breakdown of her marriage.

45. The Solicitor needed to find an alternative source of funds to make the requested $25,000.00 payment to Burnett because, as of September 13, 1994, the Solicitor no longer held funds in trust for Lalonde. Lalonde believed that the Solicitor had retained in trust the proceeds from the sale of his property in Embro.

46. In order to make this payment, the Solicitor approached another one of his clients, John Mavity ("Mavity"), on or about September 13, 1994, to borrow $25,000.00.

47. In September 1994, Mavity retained the Solicitor to act for him in the sale of his property at 31 Duke Street, Stratford, Ontario and the subsequent purchase of 34 Gemmel Court, Stratford, Ontario. On September 14, 1994, the Solicitor received approximately $127,000.00 into his trust account, on behalf of Mavity, from the sale of 31 Duke Street. After payments relating to the sale were made, the Solicitor held approximately $37,000.00 in trust for Mavity. The purchase of 34 Gemmel Court did not close until September 26, 1994, twelve days after the sale of 31 Duke Street, during which period the funds were to be in the Solicitor's trust account.

48. On or about September 14, 1994, the Solicitor obtained Mavity's consent to borrow $25,000.00, but Mavity required that the amount be repaid before the purchase on 34 Gemmel Court closed. The Solicitor did not advise Mavity, and Mavity did not ask, why the Solicitor required the funds.

49. On September 13, 1994, the Solicitor wrote a trust cheque (Document Book, Tab 39), in the amount of $25,000.00 made payable to Burnett. This cheque was thereafter drawn from the funds held in trust for Mavity when it was posted to the Mavity trust ledger (Document Book, Tab 40) on September 15, 1994. According to the Lalonde trust ledger, this loan was repaid, without interest, to the credit of Mavity on September 23, 1994, prior to the closing of Mavity's purchase of 34 Gemmel Court. The loan was repaid when the Solicitor applied an additional $25,000.00 he subsequently received in trust from Lalonde to Mavity's credit; the details of this application are explained below.

ii) 32 Homewood Road, Tavistock, Ontario

50. In or about September 1994, Lalonde retained the Solicitor to act for him in the sale of his property at 32 Homewood Road, Tavistock, Ontario. The sale of this property for a price of $167,500.00 closed on September 23, 1994. According to the Statement of Adjustments (Document Book, Tab 41), the balance due on closing was $166,546.09 and was payable to the Solicitor in trust. The Solicitor deposited these funds in his trust account as shown by the deposit slip dated September 23, 1994 (Document Book, Tab 42).

51. The amount of $166,546.09 was credited to the Lalonde trust ledger re: Sale to Witmer (Document Book, Tab 43). The Solicitor states that Lalonde agreed to lend these funds to the Solicitor for his own use; the Solicitor accepts that he did not recommend to Lalonde that he obtain independent legal advice and that Lalonde did not receive same. Lalonde states that he did not agree to lend these funds to the Solicitor but asked him to retain the funds in trust.

52. Subsequently, the Solicitor used $25,000.00 of these funds to repay the loan obtained from Mavity. The Lalonde trust ledger (Document Book, Tab 44) shows that $25,000.00 was transferred from Lalonde's funds to the credit of Mavity on September 23, 1994.

53. On September 23, 1994, the Solicitor wrote a certified trust cheque for $132,812.60 made payable to Gary Marsh (Document Book, Tab 45).

54. The Solicitor prepared a fee billing and accounting for this purchase transaction (Document Book, Tab 46) which showed these disbursements of the funds.

55. After he received the trust cheque for $132,812.60 from the Solicitor on September 23, 1994, Marsh wrote four cheques that same day which disbursed all of these funds except for $500.00. Each of these cheques was written at the Solicitor's direction and to the Solicitor's ultimate benefit:

1) A cheque for $100,000.00 payable to the Solicitor's general account (Document Book, Tab 47);
2) A cheque for $1,312.60 payable to the Solicitor personally (Document Book, Tab 48);
3) A cheque for $21,000.00 payable to Brad Lotz (Document Book, Tab 49); and,
4) A cheque for $10.000.00 payable to Rick Quinn (Document Book, Tab 50).

The $500.00 remainder was applied in partial repayment of the Solicitor's personal indebtedness to Marsh.

56. Most of the $100,000.00 paid to the Solicitor's general account was applied to the repayment of various loans the Solicitor had taken from the Royal Bank.

57. Brad Lotz ("Lotz"), a real estate agent at the relevant time, was a client of the Solicitor. Lotz had, on occasion, loaned the Solicitor money and had often "turned around" cheques for the Solicitor. The latter activity involved Lotz receiving trust cheques from the Solicitor made payable to Lotz; Lotz would cash and /or deposit the cheques and then return the funds to the Solicitor personally.

58. The $21,000.00 paid to Lotz was for the sole benefit of the Solicitor. These funds either were repaid to the Solicitor by Lotz or were partial repayment of a personal loan Lotz had advanced to the Solicitor.

59. Rick Quinn ("Quinn") had been a friend and business partner of the Solicitor for several years. Quinn had loaned the Solicitor money in the past and had often "turned around" cheques for the Solicitor in a manner similar to Lotz. The $10,000.00 paid to Quinn was for the repayment of money loaned to the Solicitor personally.

60. After deducting the funds paid to Marsh, applying the $25,000.00 to Mavity, and disbursing real estate fees of $8,148.50 for the sale of 32 Homewood Road, the Solicitor held only $584.99 in trust for Lalonde. The Solicitor disbursed this remainder to himself for his fees, reducing the balance of Lalonde's funds held in trust to nil. As of September 23, 1994, the Solicitor would have held $211,823.28, more or less, in trust for Lalonde, had those funds not been used.

61. In January 1995, Lalonde requested the Solicitor to return $120,000.00 of the funds which the Solicitor held in trust at that time, and the balance of his funds in April 1995. The Solicitor asked Lalonde to wait for a couple of weeks while the Solicitor changed the bank at which his trust account was located. Lalonde visited the Solicitor's office at the beginning of March 1995 and renewed his request for the return of $120,000.00.

62. The Solicitor tried to repay $120,000.00 to Lalonde in March 1995; instead of writing a cheque for this amount drawn against the Solicitor's trust account, the Solicitor wrote two cheques on the personal joint bank account which the Solicitor and his wife maintained. The cheques, copies of which are found in the Document Book at Tabs 51 and 52, were made out for $20,000.00 and $100,000.00 and were respectively dated March 2 and 3, 1995. Lalonde deposited the cheques in his own bank account.

63. These two cheques were returned by the bank to Lalonde marked "NSF" on or about March 7, 1995. By letter dated March 30, 1995 (Document Book, Tab 53), Lalonde complained about the Solicitor to the Law Society.

64. Lalonde instituted proceedings against the Solicitor in August 1995 with respect to the loss. On October 27, 1995, Lalonde obtained a judgment against the Solicitor and Gary Marsh for damages in the amount of $211,773.28, prejudgment interest of $2,768.99, and costs of $2,000.00. A copy of the judgment is contained in the Document Book at Tab 54.

65. Apart from the $25,000.00 which Lalonde directed the Solicitor to pay to Burnett, the Solicitor has not repaid any of the funds which Lalonde had entrusted to him except a payment of $25,000.00 on March 27, 1997 (Document Book, Tab 55). The judgment remains outstanding, and Lalonde's loss of principal (without interest) is currently $181,822.78.

Particular 2(f) The Solicitor misappropriated a total sum of $21,000, more or less, from the funds which he held in his mixed trust account on behalf of his clients by the following payments:

i. $6,000.00 by cheque, dated August 31, 1995, payable to "Dave Padington,"
ii. $10,000.00 by cheque, dated September 1, 1995, payable to "Wib Herman," and
iii. $5,000.00 by cheque, dated October 18, 1995, payable to "Fred Vickell."

66. The Solicitor maintained a mixed trust account in the name of Edward Hastings to hold funds for his various clients.

67. On August 31, 1995, the Solicitor wrote a trust cheque for $6,000.00 made payable to "Dave Padington"("Padington") (Document Book, Tab 56). The Solicitor improperly paid this sum to Padington from the Solicitor's mixed trust account as partial repayment for a personal loan which Padington had advanced to the Solicitor.

68. Padington had not entrusted any funds to the Solicitor. None of the Solicitor's clients authorized the Solicitor to pay Padington this amount, and the funds were not paid to the benefit of any of the clients who had funds in the mixed trust account. These funds were misappropriated by the Solicitor from the pool of trust funds held by the Solicitor in his mixed trust account.

69. On September 1, 1995, the Solicitor wrote a trust cheque for $10,000.00 made payable to "Wib Herman" ("Herman") (Document Book, Tab 57). The Solicitor improperly paid this sum to Herman from the Solicitor's mixed trust account as partial repayment for a personal loan which Herman had advanced to the Solicitor. Herman had loaned the Solicitor $25,000.00 between January and April 1995. The trust cheque made payable to Herman was partial repayment of this loan.

70. Herman had not entrusted any funds to the Solicitor. None of the Solicitor's clients authorized the Solicitor to pay Herman this amount, and the funds were not paid to the benefit of any of the clients who had funds in the mixed trust account. These funds were misappropriated by the Solicitor from the pool of trust funds held by the Solicitor in his mixed trust account.

71. On October 18, 1995, the Solicitor wrote a trust cheque for $5,000.00 made payable to "Fred Vickell" ("Vickell") (Document Book, Tab 58). The Solicitor improperly paid this sum to Vickell from the Solicitor's mixed trust account as the final repayment of a personal loan which Vickell had advanced to the Solicitor. The Solicitor and Vickell are personal friends.

72. Vickell had not entrusted any funds to the Solicitor. None of the Solicitor's clients authorized the Solicitor to pay Vickell this amount, and the funds were not paid to the benefit any of the clients who had funds in the mixed trust account. These funds were misappropriated by the Solicitor from the funds in the pool of trust funds held by the Solicitor in his mixed trust account.

73. To date, the amount of these misappropriations, totalling $21,000.00, has not been repaid.

Particular 2(g) On or about November 14, 1995, the Solicitor misapplied the sum of $13,460.00 more or less, from the funds he held in his mixed trust account on behalf of all his clients.

74. On November 14, 1995, the Solicitor wrote a trust cheque for $13,460.00 made payable to "B.C. Timbers" (Document Book, Tab 59). B.C. Timbers was a company owned by Brad Lotz. The Solicitor did not hold $13,460.00 in his trust account to the credit of B.C. Timbers or Lotz as of November 14, 1995. The Society accepts that it cannot establish that these funds were misappropriated by the Solicitor for his own benefit, but only that they were misapplied from the mixed trust account.

Complaint D10/98

Particular 2(b) The Solicitor breached Rule 7 of the Rules of Professional Conduct by borrowing money from his client, David Lupton, who was neither a lending institution nor a related person as defined under the *Income Tax Act*, as follows:

(i) on or about November 12, 1991, he borrowed the sum of $10,000 from Mr. Lupton,

(ii) on or about May 1, 1992, he borrowed the further sum of $10,000 from Mr. Lupton,

(iii) on or about June 17, 1994, he borrowed the further sum of $10,000 from Mr. Lupton, and

(iv) on or after December 22, 1995, he borrowed the sum of $30,000 from Mr. Lupton.

75. David Lupton ("Lupton") had been a client of the Solicitor since 1987. The Solicitor had acted for Lupton on both family law and real estate matters.

76. In 1990, the Solicitor acted for Lupton on the sale of his farm. On the sale, Lupton took back a mortgage for approximately $120,000.00 and received the balance of the proceeds in cash. In 1991, the mortgage was paid off. Subsequently, the Solicitor arranged for Lupton to invest $100,000.00 in a first mortgage from an arm's length client of the Solicitor. This mortgage remains in good standing and is not the subject of any complaint by Lupton.

77. In November 1991, the Solicitor advised Lupton that he could invest funds for Lupton at a 12% interest rate. Acting on this advice, Lupton paid the Solicitor $10,000.00 on November 12, 1991.

78. The Solicitor provided Lupton with a promissory note for the $10,000.00 which he had signed in his personal capacity. The promissory note stated that interest of 12% was payable in monthly instalments of $100.00 and that the funds were due 30 days after demand (Document Book, Tab 60).

79. Lupton assumed that a third party was involved in the investment although he understood that the Solicitor was personally indebted to him. The Solicitor did not advise Lupton, and Lupton did not inquire, how the funds were invested. Lupton received monthly payments from the Solicitor either in cash or by cheque; the Solicitor would call Lupton when the payment was ready, and Lupton would pick it up. The Solicitor never advised Lupton to obtain independent legal advice or representation on this transaction, and Lupton never obtained same.

80. On May 1, 1992, Lupton paid the Solicitor an additional $10,000.00. The Solicitor provided Lupton with a promissory note for $10,000.00 which the Solicitor had signed in his personal capacity (Document Book, Tab 60). The promissory note stated that the interest rate was set at 12% and the loan was due on demand.

81. As with the earlier loan, Lupton received monthly payments from the Solicitor either in cash or by cheque once the Solicitor called Lupton to let him know the payment was ready. The Solicitor never advised Lupton to obtain independent legal advice or representation on this loan, and Lupton never obtained same.

82. On June 17, 1994, Lupton advanced the Solicitor a further $10,000.00. The Solicitor provided Lupton with a promissory note which the Solicitor had signed in his personal capacity (Document Book, Tab 117). The interest rate was omitted from the promissory note, but it was understood to be 12%. The loan was due on demand.

83. As with the earlier loans, Lupton received monthly payments from the Solicitor either in cash or by cheque. The Solicitor never advised Lupton to obtain independent legal advice or representation on this transaction, and Lupton never obtained same.

84. The Solicitor had acted for Lupton in 1993 when Lupton invested in mortgages on two properties in Brunner, Ontario. Lupton held a mortgage on one property owned by Ross Bernard ("Bernard") and one owned by Linda Edwards ("Edwards"), who was Bernard's girlfriend. After a short time, Bernard defaulted on one of the mortgages.

85. By December 1995, Bernard was almost two years in arrears on the one mortgage. Lupton retained the Solicitor to commence power of sale proceedings against the property which was the subject of the mortgage. The property was sold under power of sale in December 1995.

86. On December 20, 1995, the Solicitor received a cheque for $32,538.99 from this power of sale which he was to hold in trust for Lupton. The Solicitor deposited this cheque in his trust account on December 20, 1995; a copy of the deposit slip is found in the Document Book at Tab 61. These funds were credited to the client's trust ledger that same day (Document Book, Tab 62).

87. Lupton received a certified trust cheque from the Solicitor on December 20, 1995 for $2,324.99 (Document Book, Tab 63). Upon receiving this amount, Lupton discussed the remaining funds with the Solicitor. Lupton required the $30,000. The Solicitor asked Lupton to give him two or three days to get the money.

88. On December 20, 1995, the Solicitor wrote a trust cheque payable to a lawyer who was acting for him on another mater at the time, in the amount of $23,000.00 (Document Book, Tab 64). This transaction was posted to Lupton's client ledger. This payment to the lawyer was in respect of legal fees owed by the Solicitor. The payment was solely for the benefit of the Solicitor.

89. On December 21, 1995, the Solicitor wrote a certified trust cheque payable to Lotz for $7,000.00 (Document Book, Tab 65). Lotz was a co-accused with the Solicitor in the criminal charges identified in the preceding paragraph. The Solicitor paid this money to Lotz as a loan to assist him in paying legal fees incurred defending criminal charges pursuant to a cost-sharing agreement between them. The payment did not benefit Lupton, and was made for the benefit of the Solicitor to enable him to satisfy his agreed obligation to Lotz.

90. After the three cheques were drawn against the funds held in trust for Lupton (one cheque to Lupton and two to the Solicitor's benefit), the balance in the ledger was nil.

91. Two or three days after the funds were first paid to the Solicitor, in trust, the Solicitor paid the balance of $30,000.00 owed to Lupton in cash. This cash payment was not posted to the Lupton trust ledger. Lupton's planned loan to a third party did not proceed as the third party obtained the funds from another source at a slightly lower interest rate. As a result, upon receiving the cash from the Solicitor, Lupton advised the Solicitor that he could lend him these funds. The Solicitor then borrowed this $30,000.00, in cash, from Lupton.

92. When the Solicitor was asked about the use of Lupton's funds, he told the Law Society auditor that Lupton had authorized the Solicitor to use the funds deposited in trust for his own purposes and that Bob Hastings, the Solicitor's uncle, would ultimately provide Lupton the $30,000.00 in the course of some other business dealing. Neither Bob Hastings nor Lupton knew of any business arrangement between them which required the transfer of this, or any, sum of money. Their only business transaction took place many years before when Bob Hastings sold some cattle to Lupton.

93. As before, the Solicitor provided Lupton with a promissory note in the amount of $30,000.00, bearing interest at the rate of 12%, payable monthly. By the terms of the promissory note, the funds were due 30 days after demand (Document Book, Tab 66). The Solicitor dated the promissory note to December 20, 1995.

94. The Solicitor never advised Lupton to obtain independent legal advice or representation on this transaction, and Lupton never obtained same.

95. As of December 1995, the Solicitor had borrowed a total of $60,000.00 from Lupton and provided promissory notes for same. By the middle of 1996, the Solicitor began to miss his interest payments to Lupton. The last payment Lupton received was at the end of 1996.

96. To date, the Solicitor has not repaid Lupton any of the $60,000.00 principal which he advanced or the outstanding interest owing to Lupton.

Particular 2(k) On or about December 28, 1995, the Solicitor misapplied the sum of $11,952.80, more or less, from the funds which he held in trust on behalf of his clients David and Michelle Million.

97. David and Michelle Million live in Stratford, Ontario. In 1995, they had a first mortgage on their home at 602 Downie Street in favour of Mitchell and District Credit Union and a second mortgage in favour of Becker Brothers Construction.

98. In December 1995, the Millions negotiated a new mortgage for $96,401.25 with the FirstLine Trust Company ("FirstLine") to discharge the two existing mortgages on their home. The Solicitor acted for the Millions on this refinancing. FirstLine advanced the sum of $93,732.71 to the Solicitor, in trust for the Millions, on December 22, 1995; a copy of the statement of advance is located in the Document Book at Tab 67. The mortgage securing this advance was registered on December 28, 1995 (Document Book, Tab 68).

99. On December 27, 1995, the Solicitor deposited the sum of $96,732.71 into his trust account, as reflected in the bank statement for the account (Document Book, Tab 69). On December 28, 1995, the Solicitor posted the receipt of this sum, comprised of $3,000.00 from the Millions and $93,732.71 from FirstLine, to the Millions' trust ledger. A copy of this trust ledger is located in the Document Book at Tab 70. These funds were to be used to discharge the mortgages in favour of Mitchell and District Credit Union and Becker Brothers Construction. The Millions did not authorize the Solicitor to use these funds for any other purposes.

100. On December 28, 1995, the Solicitor issued a cheque for $73,520.81 to Mitchell and District Credit Union (Document Book, Tab 71) and $22,599.37 to Becker Brothers Construction. These entries were posted to the Million trust ledger on December 28, 1995.

101. The Millions' trust ledger showed a nil balance, as of December 28, 1995, after the funds to repay the mortgages to Mitchell and District Credit Union and Becker Brothers Construction were posted, and various disbursements amounting to $612.53 were made.

102. After the cheque for the Mitchell and District Credit Union was prepared by the Solicitor's real estate secretary, the Solicitor indicated that she did not need to forward it to the credit union but that he would deliver it himself.

103. The Solicitor did not forward the trust cheque for $73,520.81 to the credit union. Subsequently, the cheque was voided by the Solicitor on December 28, 1995. This voided cheque ought to have been posted to the Millions' trust ledger, so that the ledger should have shown a balance of $73,520.81on that date. The voided cheque was not posted to the client's trust ledger.

104. The Solicitor did not inform the Millions that the funds had not been remitted to the Mitchell and District Credit Union and their first mortgage had therefore not been discharged. The Millions only learned that the mortgage had not been discharged in February 1996 when their bank account was overdrawn after monthly payments to both FirstLine and Mitchell and District Credit Union were withdrawn automatically.

105. When the Millions learned of the overdraft in their own account, they contacted the Solicitor to ascertain why both payments had been made, in light of their understanding that the credit union mortgage had been discharged. The Solicitor provided conflicting explanations as to his failure to discharge the mortgage but assured them that he would take care of it. He gave them cash to reimburse them for the February mortgage payment on the mortgage with the Mitchell and District Credit Union and to correct the overdraft in their personal bank account.

106. Mitchell and District Credit Union issued a new statement for discharge on the Millions' home as at February 22, 1996, a copy of which is located in the Document Book at Tab 72. The amount required to discharge the mortgage was $72,796.34. On February 23, 1996, the Solicitor issued and forwarded a certified trust cheque for $72,796.34 to Mitchell and District Credit Union. This cheque was not posted to the Millions' trust ledger.

107. By letter dated March 27, 1996 (Document Book, Tab 73), the Solicitor correctly reported to the Millions that he had discharged the Mitchell and District Credit Union mortgage, on their behalf, on an unspecified date, by payment of $73,520.81.

Particular 2(l) On or about February 23, 1996, the Solicitor misapplied the sum of $30,326.80, more or less, which he held in trust on behalf of his client Hyde Kitchens & Custom Homes Ltd.

108. Peter Hyde ("Hyde") is the president of Hyde Construction Limited, the successor of Hyde Kitchens & Custom Homes Ltd. He was a client of the Solicitor for several years. Hyde retained the Solicitor to act for him on the sale of several houses which Hyde built, including 98 Athlone Crescent, Stratford, Ontario, which was sold to Linda Hayton for $131,029.90 in February 1996. A copy of the statement of adjustments for this sale (Document Book, Tab 74) indicates that, on closing, the Solicitor was to be paid, in trust, the amount of $136,836.63.

109. On February 23, 1996, the Solicitor deposited $137,136.63 into his trust account; a copy of the bank statement for the trust account at that time is located in the Document Book at Tab 75. The deposit slip for this deposit (Document Book, Tab 76) shows that $136,836.63 of this amount was from Hyde's sale of 98 Athlone Crescent. An equivalent amount was then credited to Hyde's trust ledger (Document Book, Tab 77).

110. On February 22, 1996, the balance in the Solicitor's trust account was only $42,469.50. If the deposit of Hyde's funds into the Solicitor's trust account on February 23, 1996 had not been made, the Solicitor's trust account would not have covered the cheque for $72,796.34 made payable to the Mitchell and District Credit Union. The Solicitor thereby misapplied the amount of, at least, $30,326.80 from the Hyde trust ledger to cover the shortage in the Millions trust ledger.

111. Hyde had a mortgage in favour of The Mutual Life Assurance Company registered against 98 Athlone Crescent prior to its sale. On closing, the Solicitor was instructed to pay $80,423.53 to The Mutual Life Assurance Company to discharge this mortgage. After fees and other disbursements related to this transaction were paid by the Solicitor, the Solicitor informed Hyde that he was supposed to receive $48,685.41 as the balance of the proceeds from this transaction. The Solicitor provided Hyde with a reporting letter dated March 5, 1996 (Document Book, Tab 78) and a trust ledger statement (Document Book, Tab 79) which purported to set out this transaction. As discussed below, these documents were, in part, false.

112. The Solicitor provided Hyde with a trust cheque for $48,685.41 on February 29, 1996, which represented the balance of funds owed to Hyde after disbursements and the discharge of the mortgage in favour of The Mutual Life Assurance Company. However, the Solicitor did not forward a payment to The Mutual Life Assurance Company on behalf of Hyde, and, as a result, the mortgage was not discharged. There was no reason at the time why the mortgage payment should not have been forwarded.

113. Due to the Solicitor's failure or refusal to forward the discharge payment, the Solicitor ought to have held in trust at least $80,523.81 for Hyde as of February 29, 1996. This amount was not available to Hyde's credit at that date. Hyde did not authorize the Solicitor to use the funds held in trust for Hyde for any purpose other than the payment to discharge the mortgage

114. In the Spring of 1997, the Solicitor approached Hyde and asked to borrow $90,000.00. Hyde declined to lend the Solicitor any money at that time. The Solicitor did not ask Hyde for authority to use Hyde's funds prior to that time.

115. The Solicitor initially advised the Law Society, after the funds were identified on updated trust listings in April 1997, that the mortgage had not been paid out at Hyde's request due to a dispute between Hyde and the mortgagee. This position was, to the Solicitor's knowledge, false.

116. On May 28, 1997, a Law Society investigator contacted Hyde to arrange an appointment to discuss Hyde's dealings with the Solicitor. Hyde agreed to meet with the Law Society's investigator at 8:00 a.m. that morning. Immediately after speaking with the investigator, Hyde contacted the Solicitor for direction. When the Solicitor learned that Hyde was meeting the investigator at 8:00 a.m., he asked to meet with him at 7:45 a.m. Hyde agreed to meet.

117. At the 7:45 a.m. meeting, Hyde learned from the Solicitor that the mortgage on 98 Athlone Crescent had not been discharged in February 1996. This was the first time that Hyde had learned that the Solicitor had not carried out his directions and that the March 5, 1996, reporting letter that he had received was, in fact, a conscious misrepresentation. The Solicitor asked Hyde to lie to the Law Society and say that he was aware that The Mutual Life Assurance Company's mortgage on 98 Athlone Crescent was unpaid. Hyde did as the Solicitor requested; however, Hyde later informed the Law Society that he had supplied incorrect information to the investigator at the Solicitor's request and corrected his earlier statement.

118. The Mutual Life Assurance Company, as a consequence of the Solicitor's misapplication of the funds intended for the payment of the mortgage, brought an action against Hyde and Linda Hayton regarding their default on the mortgage on 98 Athlone Crescent. This claim was settled, ultimately, by the Lawyers Professional Indemnity Company.

119. The Solicitor has not, to date, made any repayment to Hyde of the $80,523.81 which should have been held by the Solicitor in his trust account. The Solicitor states that some of the funds remaining in his frozen trust account.

Particular 2 (j) Throughout the period from July 31, 1995, to April 30, 1997, the Solicitor has failed to maintain sufficient balances on deposit in his mixed trust bank accounts to meet all his obligations with respect to monies held in trust for his clients, thereby breaching subsection 14(12) of Regulation 708 made pursuant to the *Law Society Act*.

120. The Solicitor's trust comparisons were brought up to date in April 1997. At that time, a shortage in the trust account was identified. As a result, co-signing controls were instituted.

121. As of April 30, 1997, the Solicitor's trust account bank balance was $39,629.88; a copy of the Solicitor's trust bank statement is located in the Document Book at Tab 80. After deducting outstanding cheques totalling $1,942.26 (Document Book, Tab 81), the adjusted balanced in the Solicitor's trust account at that date was $37,689.62. At the same time, the Solicitor's trust listings showed liabilities to clients totalling $103,108.87 (Document Book, Tab 82). A shortage of $65,419.25 therefore existed in the trust account as of April 30, 1997.

122. The shortage was not disclosed in the Solicitor's books and records prior to April 1997 due to the Solicitor's failure to maintain his books and records as required by Section 15(1) of Regulation 708 and, specifically, his failure to post these transactions to his trust ledgers between July 31, 1995, and April 30, 1997.

123. The Solicitor concealed the shortages in his trust account by the misapplication of funds from time to time, including his deliberate delay in discharging the $73,000.00 mortgage for the Millions from December 1995 to February 1996 and, subsequently, his decision to not discharge the approximately $80,000.00 mortgage for Hyde.

124. To date, the Solicitor has not repaid any portion of the shortage in his trust account.

Complaint D10/98

Particular 2(a) The solicitor breached Rule 7 of the Rules of Professional Conduct by borrowing money from his client, Beverley Abbott, who was neither a lending institution nor a related person as defined under the *Income Tax Act*, as follows:

i) on or about December 31, 1996, he borrowed the sum of $25,000.00 from Ms. Abbott, and

ii) on or about January 22, 1997, he borrowed the sum of $5,000.00 from Ms. Abbott.

125. Ms. Beverley Abbott ("Abbott") was a long-time client of the Solicitor. In 1996, he acted for her in the sale of a property at 71 St. Andrew Street, Mitchell, Ontario. The sale was originally scheduled to close at the end of January 1997, but the closing was moved forward to December 31, 1996, at the purchaser's request.

126. Abbott attended at the Solicitor's office on December 31, 1996, following the closing of the transaction. The balance due to Abbott on closing was $49,828.56. The Solicitor provided Abbott with a cheque for that balance when she attended at his office. The Solicitor also gave Abbott a statement of account and a trust ledger statement, both dated December 31, 1996 (Document Book, Tabs 83 and 84). Abbott left the Solicitor's office and then deposited this cheque at her bank on the same day.

127. Later that afternoon, the Solicitor telephoned Abbott at home and asked if she was interested in investing the money she had just received. The Solicitor advised Abbott that she could participate in a short-term investment that would pay interest at 12% annually.

128. Abbott was interested in this investment opportunity and returned to the Solicitor's office before the close of business that same day. She gave the Solicitor a cheque for $25,000.00 made payable personally to the Solicitor (Document Book, Tab 85). This was the first time Abbott had invested money with the Solicitor. Abbott assumed that the Solicitor was investing these funds on her behalf with a third party. However, Abbott did not ask the Solicitor specifically what he was doing with the funds, and he did not tell her what he would be doing.

129. The Solicitor did provide Abbott with a promissory note for $25,000.00 which he had signed in his personal capacity. The promissory note stated that interest of 12% was payable monthly and the principal was due, in whole or in part, 30 days after demand (Document Book, Tab 86). The Solicitor told Abbott to come to his office at the end of every month to collect her interest payments.

130. When the Solicitor met with Abbott on December 31, 1996, about this $25,000 loan, he did not advise her to obtain independent legal advice or representation, and Abbott at no time obtained independent legal advice or representation with respect to this loan.

131. Three weeks later, on January 22, 1997, the Solicitor called Abbott and asked whether she wished to "invest" a further $5,000.00 with him. The Solicitor stated that Abbott would then receive a total monthly interest payment of $300.00. Abbott agreed to provide this $5,000.00 to the Solicitor.

132. On January 22, 1997, Abbott went to the Solicitor's office and gave him a cheque, dated January 22, 1997, for $5,000.00 made payable personally to the Solicitor. The Solicitor provided Abbott with a promissory note for $5,000.00 which he had signed in his personal capacity. The promissory note stated that interest of 12% was payable monthly and the principal was due, in whole or in part, 30 days after demand (Document Book, Tab 87). The Solicitor backdated this promissory note to December 31, 1996.

133. When the Solicitor met with Abbott on January 22, 1997, about this $5,000.00 loan, he did not advise her to obtain independent legal advice or representation, and Abbott at no time obtained independent legal advice or representation with respect to this loan.

134. Abbott received cheques from the Solicitor for the interest payments at or about the end of each month up to and including April 30, 1997. Abbott's handwritten listing of the payments and two of the cheques received are at Tab 88 of the Document Book. In May 1997, the Solicitor contacted Abbott again to inquire whether she wished to lend the Solicitor additional funds. Abbott declined to lend the Solicitor more funds at that time.

135. The Solicitor failed to make the interest payment due to Abbott at the end of May 1997. In June 1997, Abbott orally requested the Solicitor to repay the balance of principal and interest outstanding on his promissory note; the Solicitor advised Abbott that he would do so. The Solicitor did not, however, repay the funds at that time. On June 24, 1997, Abbott received a $300.00 cheque from the Solicitor for the interest payment which was due to her on May 31, 1997.

136. On July 28, 1997, the Solicitor gave Abbott $1,000.00 in cash, and indicated to her, at the time, that it should keep her quiet for a while. Since that date, the Solicitor has not honoured his promissory note and Abbott has received no further payments of either interest or principal so that the balance remains unpaid.

137. On October 22, 1997, Abbott sent the Solicitor a demand letter for the principal and interest owed to Abbott by the Solicitor (Document Book, Tab 89).

138. Abbott has retained legal counsel and reported the matter to the police. Abbott also submitted a Compensation Fund claim to the Law Society in January 1998.

V. DISCIPLINE HISTORY

139. On July 14, 1992, the Solicitor was found guilty of professional misconduct and was Reprimanded in Committee for filing false Forms 2, acting in a conflict of interest by acting for both borrower and lender clients, and failing to ensure that the interests of his clients were fully protected by the nature of the case and by independent legal representation in respect of loans made by clients to a corporation in which his wife was a 50% shareholder.

DATED at Toronto, this 16th day of June, 1998."

"SUPPLEMENTARY AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D374/97 and D10/98 and is prepared to proceed with a hearing of this matter on September 18, 1998.

II. IN PUBLIC / IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the *Statutory Powers Procedure Act.*

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D374/97 and D10/98 and this supplementary agreed statement of facts with his counsel, Tory Colvin, and admits, in addition to the particulars and facts identified in the Agreed Statement of Facts signed on June 16, 1998, the following particular and the facts contained in this Supplementary Agreed Statement of Facts. The Solicitor also admits that the particulars alleged in the Complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

Complaint D374/97

Particular 2 (i) On or about March 27, 1997, the Solicitor misappropriated the sum of $24,500.00, more or less, which he held in trust on behalf of his client John Switzer.

4. In January 1997, the Solicitor acted for the vendors, David and Anne Hunt, and the purchaser, Wilfred Hoover ("Hoover"), on the purchase and sale of a house at 31 Bay St., Stratford, Ontario. The property was purchased for $107,000.00. The transaction closed on January 10, 1997. A copy of the Transfer/Deed of Land is found in the Document Book at Tab 90.

5. On January 6, 1997, Hoover borrowed $28,000.00 from Brad Lotz ("Lotz"), formerly a Stratford real estate agent and a client of the Solicitor, to finance his purchase and secured the loan with a second mortgage for this amount in favour of Lotz which was registered against the property on January 10, 1997. This mortgage (Document Book, Tab 91) was prepared by the Solicitor who acted for both Hoover and Lotz on the financing. By letter dated January 13, 1997 (Document Book, Tab 92) and enclosed accounting (Document Book, Tab 93), the Solicitor reported to Hoover on the details of his purchase and confirmed that the financing had been successfully completed.

6. The Hoover trust ledger maintained by the Solicitor (Document Book, Tab 94) shows the Solicitor posted $28,000.00 from Lotz to the credit of Hoover on January 10, 1997. However, the cheque, dated January 6, 1997, from Lotz (Document Book, Tab 95) was returned to the Solicitor on or about January 13, 1997, and debited to his trust account because there were insufficient funds in Lotz's bank account to cover this cheque. A copy of the Solicitor's trust account statement, showing the debit of the NSF cheque, is located in the Document Book at Tab 96. The Solicitor did not obtain a replacement cheque from Lotz despite the fact that he knew Lotz's cheque had been returned.

7. As a result of the NSF cheque, the funds which the Solicitor advanced to Hoover, ostensibly from the funds paid into trust by Lotz, were improperly drawn from the pool of funds which the Solicitor held in his mixed trust account on behalf of other clients. The NSF cheque was not posted to the Hoover trust ledger, and, thus, the trust overdraft was not reflected in the Solicitor's books and records. When the trust comparisons were brought up to date in April 1997, this cheque constituted part of the trust shortage.

8. In March 1997, after being approached by Lotz, John Switzer ("Switzer") purchased the second mortgage of $28,000.00 from Lotz for $24,500.00. On March 27, 1997, the Solicitor was retained by Switzer with respect to the assignment of this mortgage and received a cheque for $24,500.00, payable to the Solicitor, in trust, from Switzer Enterprises Ltd. (Document Book, Tab 97). The Solicitor had never received valid payment from Lotz of the funds advanced under the mortgage on 31 Bay Street. The Solicitor nevertheless paid Switzer's funds to Lotz on the same day as he received them, by a certified trust cheque, payable to Lotz for $24,500.00, dated March 27, 1997 (Document Book, Tab 98).

9. While the Solicitor purported to act for Switzer on the assignment of this mortgage, he did not create a trust ledger for Switzer, and he did not prepare or send a reporting letter to Switzer. The Solicitor states that he prepared an assignment of the mortgage, but it was never signed by Lotz.

10. On March 27, 1997, when he received the cheque from the Solicitor, Lotz, at the Solicitor's request, took Switzer's cheque for $24,500.00 to Canada Trust where he purchased a bank draft for $25,000.00 made payable to Edward Lalonde (Document Book, Tab 99). Lotz, in turn, provided this bank draft to the Solicitor.

11. On or about March 27, 1997, the Solicitor forwarded this bank draft for $25,000.00 to Lalonde in partial satisfaction of the judgment which Lalonde had obtained against the Solicitor. The bank draft was enclosed in a letter addressed to Lalonde's solicitor, Paul Parlee (Document Book, Tab 100).

12. Having not received any report or accounting on this transaction, Switzer wrote to the Law Society on July 19, 1997, to complain about the Solicitor's conduct (Document Book, Tab 101). He complained the mortgage was never assigned despite the fact that he had paid the Solicitor $24,500 in trust, to have it assigned and stated that these funds were "not to be used by a bunch of crooks as they see fit."

13. To the Solicitor's knowledge, Switzer did not authorize the Solicitor to appropriate any portion of the funds paid by Switzer to the Solicitor, in trust, to the Solicitor's own benefit. Switzer was unaware that the Solicitor had released these funds and believed that he was acquiring a bona fide assignment. The Solicitor obtained the personal use of Switzer's funds through Lotz. Lotz had not advanced any funds initially, expecting the Solicitor to cover the amount required as a repayment for money owed to Lotz by the Solicitor.

14. Hoover made mortgage payments to Switzer until he refinanced the property in August 1997 with the assistance of another solicitor. At that time, Hoover's solicitor obtained a discharge of the second mortgage from Lotz who insisted that he, and not Switzer, was still the beneficial owner of the mortgage. To obtain the discharge, Hoover paid approximately $12,000.00 to Lotz, and a new second mortgage for the balance was registered in favour of Lotz.

15. Switzer, consequently, has never obtained the mortgage for which he had advanced funds to the Solicitor, nor did he receive any funds at the time of the discharge of the original mortgage. The Solicitor has not repaid any portion of the $24,500 which Switzer provided to him. Switzer has now been repaid fully by the Law Society's Fund for Client Compensation.

DATED at Toronto, this 22nd day of September, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Edward William Hastings be disbarred.

REASONS FOR RECOMMENDATION

The lawyer admitted that the facts alleged took place, and that those facts supported a finding of professional misconduct. The lawyer consented to the penalty of disbarment. This is a very clear case where disbarment is warranted, a case involving significant misappropriation with some very troubling aggravating circumstances. Determining to disbar the lawyer was not the challenging part of this discipline case; deciding what to do about costs was the difficult part of the decision making.

The hearing originally commenced on 16 June 1998. On that date, counsel for the Law Society and for the lawyer met and worked on resolving a number of issues, which were conditional on the resolution of the criminal case the lawyer was also involved in. The matter had been set for a contested hearing that day, witnesses were prepared and present to give evidence, and there was extensive preparation done. The case did not proceed that day only with the reluctant indulgence of the hearing panel.

At that point, the criminal case was scheduled to proceed in July 1998. It did not. The discipline case was adjourned several times in the interim, in effect, waiting for the criminal case to resolve. The criminal case was rescheduled to proceed on 4 Sept. 1998. The discipline case was adjourned, again, to Sept. 1998, peremptory to all parties.

On 4 Sept. 1998 the lawyer pleaded guilty in the criminal case to four counts, and submissions were made to sentence. Sentencing was adjourned over to a date in Sept. 1998. As the criminal case was nearly concluded, the lawyer was then willing to admit the truth of the facts involved in the discipline case. Consequently, the discipline case could then proceed on the basis of an Agreed Statement of Facts and a joint submission as to penalty.

The discipline case involved extremely inappropriate conduct on the part of the lawyer, many complainants and a very lengthy and elaborate investigation and prosecution. The Law Society was put to great effort and expense to prosecute this lawyer, which expense and effort were both increased due to the lateness at which an agreed resolution was reached. There was extensive preparation done by the Law Society prosecution staff to be ready for the hearing set for 16 June 1998, which was expected to be a contested hearing. There were, as well, 22 witnesses prepared and ready to testify in the Law Society's case, most of them from the Stratford area.

The number of delays and adjournments of the actual hearing in this matter was regrettably, not all that unusual in case as complex as this. It is a situation, however, that the panel felt required comment. In a case such as this, where the profession has born the cost of a lengthy investigation and prosecution under circumstances in which the lawyer chose to wait until the eleventh hour to reach an agreed resolution, the discipline panel would normally award costs against the lawyer.

The lawyer has not made restitution to a significant number of the clients who were harmed by his behaviour. The lawyer's total indebtedness is in the range of $470,000. At the time of the hearing, the lawyer was an undischarged bankrupt. There is litigation involving the lawyer, both with respect to the bankruptcy and with respect to the frauds involved in the discipline case. There are judgments outstanding against the lawyer. The judgments in fraud, which are significant, will survive the bankruptcy, even if the lawyer is discharged.

The Law Society did not seek costs in this case, notwithstanding many good reasons to do so, in part out of a desire to not "effectively elbow in line in front of members of the public".

The fact that the Law Society is not seeking costs of this matter is not, of itself determinative. The panel is very concerned about the process by which this matter came to its conclusion as an uncontested hearing. It is not appropriate for lawyers facing serious penalties, where the facts are not in dispute, to wait until the last minute to accept the inevitable and negotiate an uncontested resolution of the discipline case, and expect there to be no consequences for this.

In determining not to award costs against this lawyer, the panel was influenced by the following factors;

a There are significant judgments against the lawyer.
b Those judgments will survive the bankruptcy.
c If there is any money available in this matter after the discharge of the lawyer, that money ought to go to the members of the public who were defrauded by the lawyer.

The panel is greatly concerned about the consequences to the integrity of the Law Society's discipline process that result from the interplay between Law Society prosecutions and the criminal cases that so often accompany them. Historically, the criminal case has been allowed to wind its way to conclusion, at the cost of repeated delays in the discipline process, often to the great confusion and incomprehension of the members of the public involved as complainants and witnesses in the discipline case. This entire situation, and the extent to which it impacts on the right to self-governance in the public interest, needs to be re-examined.

In this case, there were repeated delays, even after the hearing date was set and reached. The case was ready to proceed (as a contested hearing) on 16 June 1998. The Law Society had 22 witnesses ready to go, most of whom did not reside in Toronto. The inconvenience to the public, as a result of that adjournment, was immeasurable. This is not only an issue of inconvenience; the Law Society's discipline process must be transparent, fair, and structured in ways to ensure the confidence of the public in both the process and the results. The Law Society has an obligation to prosecute, where appropriate, and that obligation includes an obligation to the public of a timely conclusion to matters.

The panel did not award costs against the lawyer in this case. All of the factors identified would have contributed, on the merits of this case, to an award of costs against the solicitor, but for the concerns set out about the use of the money available. But for that circumstance, there certainly would have been an award of costs against this lawyer, and the award would have been a substantial one.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 2000

Carole Curtis

Susan Elliott

Abdul Chahbar

It was moved by Mr. Carey seconded by Mr. E. Ducharme that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Both counsel made brief submissions in support of the recommended penalty.

It was moved by Mr. Carey, seconded by Mr. E. Ducharme that the solicitor be disbarred.

Carried

Re: Roland William PASKAR - Mississauga

RE: MOTION TO ADJOURN

Mr. Topp withdrew for this matter.

Ms. Elizabeth Cowie appeared on behalf of the solicitor and Mr. John O'Sullivan, Duty Counsel appeared on behalf of the solicitor who was present.

Mr. O'Sullivan, on behalf of the solicitor brought a motion to adjourn the proceedings.

Ms. Cowie objected to the Motion based on the fact that the adjournment had been denied by the Law Society's Convocation Management Tribunal (CMT) on June 21st.

Both counsel, the solicitor, the reporter and the public withdrew.

Convocation deliberated in camera and decided that it would hear the application.

Both counsel, the solicitor, the reporter and the public returned and were advised that Convocation would hear submissions on the motion to adjourn.

Mr. O'Sullivan made submissions on the motion to adjourn the matter to September in order that the solicitor could file a Notice of Disagreement.

There were questions from the Bench.

Ms. Cowie, counsel for the Society made submissions opposing the motion to adjourn.

Convocation took a recess at 11:15 a.m. and resumed at 11:40 a.m.

There were further questions from the Bench.

Ms. Cowie continued with her submissions and there was a reply by counsel for the solicitor.

Both counsel, the solicitor, the reporter and the public withdrew.

It was moved by Ms. Potter, seconded by Ms. Ross that the adjournment motion be denied.

Carried

Both counsel, the solicitor, the reporter and the public were recalled and informed that the decision to adjourn was denied.

REPORT AND DECISION OF THE DISCIPLINE COMMITTEE

The Secretary placed the matter before Convocation.

Convocation had before it the Report of the Discipline Committee dated 20th May, 1999, together with an Affidavit of Service sworn 11th June, 1999 by Pal Singh that he had effected service on the solicitor by registered mail on 8th June, 1999 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton Ruby, Chair
Carole Curtis
Nora Angeles

In the matter of
The Law Society Act
and in the matter of

ROLAND WILLIAM PASKAR
of the City
of Mississauga
a barrister and solicitor

Elizabeth Cowie
for the Society

Robert Burke, Q.C.
for the solicitor

Heard: January 12, March 9 and April 14, 1999

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

The following Complaints were issued against Roland William Paskar alleging that he was guilty of professional misconduct: Complaint D86/98 issued on June 5, 1998, was withdrawn and replaced by Complaint D86a/98 issued on March 9, 1999; Complaint D103/98 was issued on September 25, 1998; and, Complaint D154/98 was issued on October 28, 1998.

These matters were heard in public on January 12, March 9 and April 14, 1999 before this Committee composed of Clayton Ruby, Chair, Carole Curtis and Nora Angeles. The Solicitor attended the hearing and was represented by Robert Burke, Q.C. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

Complaint D86a/98

2. a) He allowed himself to made the dupe of one or all of Lakshman Doobay, Chris Kanhai and Tameshwar Singh, the principals of Baypark Investments Inc., clients and business associates. Without limiting the scope of the foregoing, he.

i) signed documents and correspondence without ensuring the accuracy of such documents and correspondence;

ii) negligently allowed others access to his stationery, thereby enabling them to sign his name to documents and correspondence which were fraudulent, misleading or inaccurate, resulting in the presentation of a fraudulent mortgage in the amount of $4,000,000 (U.S.D.); and

iii) negligently allowed misleading representations to be made in his name when he ought to have known persons would rely on those representations.

b) He failed to co-operate with the Law Society in that he:

i) failed to produce all the books and records of his practice as required by Section 18 of Regulation 708 despite attempts made by the Law Society; and

ii) failed to provide substantial responses to the Law Society despite numerous requests.

Complaint D103/98

2. a) Between December 1, 1997 and January 15, 1998, he practised law while his rights and privileges to do so were suspended by Order of Convocation made on November 27, 1997; and

b) He failed to produce all the books and records of his practice as required by Section 18 of Regulation 708 despite requests made by the Law Society between April 16, 1998 and May 15, 1998.

Complaint D154/98

2. a) He failed to serve his client, Rohan Grant, in a conscientious, diligent and efficient manner in that he:

iii) facilitated the attendance of another client upon his client who was incarcerated, resulting in a benefit to the other client,

v) misled his client as to the recommendations and positions articulated at a pre-trial conference,

vi) continued to act on behalf of his client after his retainer was terminated.

b) He acted for parties opposed in interest both civilly and criminally and preferred the interests of one party over the others;

c) He misled his client, Antonio Prete, by indicating to him another solicitor, E. Jaszi, was prepared to act on his behalf, which indication was untrue;

d) He misled the court by providing a letter to his client to be given to the court purportedly from another solicitor, E. Jaszi;

e) He sent correspondence on behalf of another solicitor, E. Jaszi, without her knowledge or consent;

f) He failed to account to his client, Anthony Bombini, for funds held on his client's behalf;

g) He failed to provide trust books and records concerning his client, Anthony Bombini to the Law Society, or in the alternative, he failed to maintain such books and records;

h) He failed to reply meaningfully to the Law Society concerning the complaint of Anthony Bombini despite numerous requests;

i) He breached his undertaking, given to the Law Society on August 20, 1996, to respond promptly to all communications from the Law Society;

j) He failed to reply meaningfully to the Law Society concerning a complaint by Ross McLeod, despite numerous requests.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statements of Facts:

"AGREED STATEMENT OF FACTS
Complaint D154/98, Particulars 2(a) and (b)

I. ADMISSIONS

1. The Solicitor has reviewed Complaint D154/98, Particulars 2(a) and (b), along with this Agreed Statement of Facts, with his counsel, Robert Burke, Q.C. and admits that particular, 2(b), in part, as supported by the facts herein, constitutes professional misconduct. He does not admit professional misconduct with respect to particular 2(a).

II. FACTS

Particular 2a)

He failed to serve his client, Rohan Grant, in a conscientious, diligent and efficient manner in that he:

i) sought out retainer by his client so as to advance the interests of another client,
(ii) pressured his client to follow a course of action without consideration of the client's best interests,
(iii) facilitated the attendance of another client upon his client who was incarcerated, resulting in a benefit to the other client,
(iv) failed to follow the instructions of his client,
(v) misled his client as to the recommendations and positions articulated at a pre-trial conference,
(vi) continued to act on behalf of his client after his retainer was terminated.

Particular 2b)

He acted for parties opposed in interest both civilly and criminally and preferred the interests of one party over the others.

2. In December, 1996, Rohan Grant was sued by Baypark Investments Inc. and Baypark Homes St. Kitts Ltd. (Exhibit 1). The Statement of Claim in that action was served by Lakshman Doobay, who swore to being a director of Baypark Investments Inc. and Baypark Homes St. Kitts Ltd. A copy of the Affidavit as served is attached as Exhibit 3.

3. While the Solicitor was not the solicitor of record on the civil action, he did appear for the plaintiffs on an adjournment of a motion and signed a consent order on behalf of the complainants (Exhibit 7).

4. On May 7, 1997, Rohan Grant, who was incarcerated on unrelated matters, had a bail hearing and was ordered released on a cash bail but remained in custody. On that date, the Solicitor telephoned his house and spoke to his fiancee, Andrea Aberhardt, stating he wished to speak to Mr. Grant about the bail. The Solicitor telephoned because he had received information they wished to speak with him.

5. Mr. Grant returned the telephone call, and arrangements were made for the Solicitor to come and see him. Mr. Grant indicated he already had counsel. The Solicitor attended at Maplehurst Correctional Centre. Mr. Grant recognized the Solicitor from an occasion in November, 1996 when he had met the Solicitor in company of Lakshman Doobay.

6. At that meeting, Mr. Grant did not agree to retain the Solicitor.

7. On May 16, 1997, Rohan Grant was charged with fraud and *Bank Act* charges. A copy of the information is attached hereto as Exhibit 4.

8. That same date, the Solicitor drafted a letter to the superintendent of Maplehurst Correctional Centre, stating as follows:

> Mr. Lakshman Doobay is a law clerk employed by me.
>
> Please provide the necessary clearance so that Mr. Doobay can meet on my behalf with clients who are incarcerated or detained pending trial.
>
> If you require further information about Mr. Doobay please contact me.

A copy of that letter is attached as Exhibit 5.

9. On May 18, 1997, the Solicitor attended at Maplehurst Correctional Centre and spoke to Rohan Grant. Mr. Grant did retain the Solicitor at that time, providing him with a financial retainer in the amount of $5,000.00. Mr. Grant also provided $100,000.00 to Baypark prior to the Solicitor's retainer.

10. A bail hearing was held on the fraud and *Bank Act* charges on May 21, 1997. At that time, Lakshman Doobay testified on behalf of Rohan Grant, and indicated that much of the funds had been returned to Baypark. Rohan Grant was ordered detained. A transcript of that hearing is attached as Exhibit 6.

11. Thereafter, Lakshman Doobay visited Rohan Grant at Maplehurst Detention Centre a number of times. The visits were an attempt to resolve Rohan Grant's outstanding charges in the United States so as to facilitate his release. Mr. Grant's civil matters and possible further criminal charges were also discussed.

12. On June 15, 1997, Rohan Grant's fiancee, Andrea Aberhardt, and her parents were requested by the Solicitor to meet with him at the offices of Baypark, as Baypark had a board room and the Solicitor did not. They did so, meeting for a number of hours.

13. On June 17, 1997, the Solicitor conducted a bail review on behalf of Rohan Grant. This review was unsuccessful. On June 23, 1997, Rohan Grant terminated the Solicitor's retainer with respect to both the civil and criminal matters. This termination was confirmed by a letter sent by Rohan Grant's fiancee, Andrea Aberhardt, on June 24, 1997, a copy of which is attached as Exhibit 8.

14. On June 23, 1997, Rohan Grant retained the services of the firm of Greenspan, Humphrey, and requested Tamara Brooks of that firm be present in court the next day (June 24, 1997) as there was a pre-trial conference scheduled for that afternoon.

15. By letter dated June 25, 1997, the Solicitor reported to Rohan Grant the results of the pre-trial conference. A copy of this letter is attached as Exhibit 9.

16. By letter dated July 8, 1997, the Solicitor wrote to Andrea Aberhardt. A copy of this letter is attached as Exhibit 10. That letter sets out that the Solicitor would to continue to act on the civil matter until he is served with a Notice of Change of Solicitor. The letter also states as follows:

> The situation is already serious and it is getting worse. Decisions must be made quickly and if they are not made correctly, the consequences for both you and Ron could be disastrous.

I would encourage Ron to speak to Mr. Doobay when he returns from the Caribbean tomorrow. Mr. Doobay has a strategy to resolve the civil as well as the criminal matters and Ron would do well to listen to him.

17. Andrea Aberhardt did take steps to obtain fresh civil counsel (Exhibit 12). On August 11, 1997, the Solicitor advised opposing counsel that the new counsel consulted by Ms. Aberhardt would not be going on the record for her and should not be giving her advice (Exhibit 13).

18. Thereafter, Rohan Grant did take steps to obtain fresh civil and criminal counsel. On both matters, the Solicitor initially indicated he was exercising a solicitors lien and declined to turn the files over (Exhibits 14 and 15). The files have now been forwarded to new counsel.

19. In the summer of 1997, the Solicitor attended at Rohan Grant's house on several occasions, in the company of Lakshman Doobay, as Baypark held a mortgage on the property and was therefore responsible for it.

20. In late August and September, 1997, the Solicitor served Rohan Grant with a number of documents from Baypark at the Clarence Street Court House and Maplehurst Correctional Centre.

21. On September 5, 1997, Rohan Grant's new criminal counsel conducted a bail review on his behalf before Mr. Justice Thomas. Mr. Justice Thomas ordered Mr. Grant's release. A copy of the transcript of the detention review is attached as Exhibit 18.

22. On October 2, 1998, the Law Society wrote to the Solicitor setting out its concerns with respect to the Solicitor's representation of Rohan Grant and requested the Solicitor to comment. The Solicitor did not respond. A copy of this letter is attached as Exhibit 21.

DATED at Toronto this 14th day of April, 1999."

"PARTIAL AGREED STATEMENT OF FACTS
Complaint D154/98, Particulars 2(c), (d) and (e)

I. ADMISSIONS

1. The Solicitor has reviewed this Partial Agreed Statement of Facts with his counsel, Robert Burke, Q.C., and admits the facts contained herein. The Solicitor acknowledges that the Society will be calling further *viva voce* evidence with respect to these particulars. He does not admit that the facts as admitted constitute professional misconduct.

II. FACTS

Particular 2(c)

He misled his client, Antonio Prete, by indicating to him another solicitor, E. Jaszi, was prepared to act on his behalf, which indication was untrue.

Particular 2(d)

He misled the court by providing a letter to his client to be given to the court purportedly from another solicitor, E. Jaszi.

Particular 2(e)

> He sent correspondence on behalf of another solicitor, E. Jaszi, without her knowledge or consent.

2. The Solicitor was retained by Antonio Prete to act on his behalf with respect to a criminal charge of perjury in the summer of 1998. The Solicitor went on record as counsel for Mr. Prete in Newmarket provincial court and set a date for hearing in that court of September 4, 1998

3. On June 11, 1998, the Solicitor was suspended by Convocation on an interim basis, pending final disposition of Complaint D86/98, which Complaint is currently before this Committee for hearing.

4. On August 14, 1998, the Society received information that the Solicitor might be continuing to represent Mr. Prete in his perjury matter despite his suspension.

5. The Society followed up on this information with the Crown Attorney in Newmarket assigned to the matter, Mr. John Neander.

6. As a result of that contact, on August 19, 1998, Mr. Neander wrote to the Solicitor, stating in part:

> ... I received information from the Law Society of Upper Canada that your privilege to practice has been suspended indefinitely and that it is not likely to be reinstated by the 4th of September, 1998. This is a pressing concern, of course, in that I see nothing to suggest Mr. Prete has retained any one else or indeed has been given the opportunity to retain anyone else or that he will have a realistic opportunity to remedy the problem unless he moves to fix it immediately.
>
> Please confirm if it is correct that you will not be acting for Mr. Prete and please advise whether you know what Mr. Prete plans to do in the event you are incapable of representing him.

A copy of this letter is attached hereto as Exhibit 1.

7. The Solicitor did not respond to this letter.

8. On September 3, 1998, the Crown's office in Newmarket received a letter concerning the Prete trial. This letter was dated September 2, 1998, and typed on a page without letterhead. It was purportedly signed for "E. Jassi". A copy of that letter is attached hereto as Exhibit 3. That letter had been prepared and signed by the Solicitor.

9. The Solicitor delivered a similar letter to his client, Antonio Prete, on the same day. The Solicitor did not take sufficient steps to ensure that Mr. Prete understood what was now to happen on September 4, 1998. Nor did he explain to Mr. Prete why he was not able to act for him.

10. Antonio Prete attended in Newmarket Provincial Court on September 4, 1998. A copy of the transcript of that appearance is attached hereto as Exhibit 2. At that time, the letter from "E. Jassi" was presented to the court. A check of the Law Society records revealed that no such person is a member of the Law Society. However, Erzsebet (Elizabeth) Jaszi is a member in good standing of the Law Society.

11. Given the difficulties, the court adjourned the matter until September 25, 1998, to set a fresh date for trial. On that date, Antonio Prete appeared without counsel and the matter was remanded to October 2, 1998. On that date, as well, Antonio Prete appeared without counsel.

12. The Society made an attempt to obtain the Solicitor's representations on this matter and obtain access to his client file. That attempt was unsuccessful.

DATED at Toronto this 9th day of March, 1999."

"AGREED STATEMENT OF FACTS
Complaint D154/98, Particulars 2(f), (g), (h) and (i)

I. ADMISSIONS

1. The Solicitor has reviewed Complaint D154/98, Particulars 2(f), (g), (h) and (i), along with this Agreed Statement of Facts, with his counsel, Robert Burke, Q.C., and admits that the particulars, as supported by the facts herein, constitute professional misconduct.

II. FACTS

Particular 2(f)

He failed to account to his client, Anthony Bombini, for funds held on his client's behalf.

2. On or about April 23, 1994, Anthony Bombini entered into an Agreement of Purchase and Sale (Exhibit 1) to dispose of his property at 28 Hetherington Crescent in Vaughan.

3. He retained Larry Hadbavny to act on his behalf on the transaction and, on June 7, 1994, Homelife/Heritage Group Limited wrote to Mr. Hadbavny setting out the amount owed for real estate commission (Exhibit 2).

4. On June 8, 1994, Anthony Bombini signed a Direction to Mr. Hadbavny to hold back the sum claimed by Homelife as commission from the proceeds of the sale (Exhibit 3). There was some dispute as to whether Mr. Bombini and Homelife had reached an agreement considerably reducing the amount of commission to be paid.

5. As instructed by his client, on June 9, 1994, Mr. Hadbavny wrote to Homelife explaining his client's understanding of the reduced commission (Exhibit 4).

6. Homelife disagreed with Mr. Bombini's interpretation and, by letter dated June 15, 1994, Mr. Hadbavny reported to his client. Mr. Hadbavny advised his client to retain litigation counsel and that he was holding the disputed funds in trust (Exhibit 5).

7. Shortly thereafter, Homelife, by letter from its solicitors dated August 2, 1994, (Exhibit 6) made clear its intention to sue for recovery of the full commission.

8. Shortly thereafter, Anthony Bombini retained the Solicitor to act on his behalf with respect to the litigation and presented his previous counsel, Larry Hadbavny, with an Authorization and Direction to deliver his file to the Solicitor. He also authorized and directed Mr. Hadbavny to deliver to the Solicitor in trust the sum of $22,149.00, being the amount that was held back by the Solicitor for the payment of the commission. A copy of the Authorization and Direction is attached as Exhibit 7.

9. By letter dated September 1, 1994, Mr. Hadbavny forwarded his file to the Solicitor and indicated that he was prepared to turn the funds over to him upon receipt of an indemnity and personal undertaking from both the Solicitor and Mr. Bombini. A copy of that letter is attached as Exhibit 8.

10. Mr. Hadbavny also reported to his client, Mr. Bombini, by letter dated September 7, 1994, and confirmed that he had forwarded his file to the Solicitor. A copy of that letter is attached as Exhibit 9.

11. By letter dated September 9, 1994, the Solicitor provided his undertaking to Mr. Hadbavny in the following terms:

> In consideration of your releasing to me in trust the funds you are currently holding, I personally undertake to hold in trust on the same terms and conditions binding you not less than $15,000.00 pending a final disposition of this matter.

A copy of that letter is attached as Exhibit 10.

12. After some small delay (Exhibit 11 and 12), Mr. Bombini provided his indemnity to Mr. Hadbavny (Exhibit 13), at which time Mr. Hadbavny forwarded the funds he had been holding in trust to the Solicitor.

13. The Solicitor took steps to have Mr. Hadbavny included in the matter (Exhibits 19 to 21), and by letter dated May 13, 1996, the Solicitor reported to his client his litigation options. A copy of the letter is attached as Exhibit 22.

14. After some further negotiations, Mr. Hadbavny settled the matter on the basis of a nuisance claim in the net amount of $3,500.00 and, in January, 1997, Mr. Hadbavny's counsel forwarded a cheque in the amount of $3,500.00 to the Solicitor in trust (Exhibits 33 to 39).

15. On February 7, 1997, judgment was given against Anthony Bombini in the amount of $15,149.00 plus interest in the Homelife matter (Exhibit 40).

16. Mr. Bombini instructed the Solicitor to appeal the judgment, then became dissatisfied with the Solicitor's representation and, by letter dated June 13, 1997, instructed the Solicitor to forward his file to his new counsel (Exhibit 45).

17. The Solicitor did not so forward the file, despite further requests (Exhibit 46 and 47).

18. Finally, by letter dated January 7, 1998, Anthony Bombini wrote to the Law Society, seeking their assistance (Exhibit 48).

19. At no time did the Solicitor ever provide an accounting to Anthony Bombini on the Homelife matter. An examiner for the Law Society, on her attendances at the Solicitor's office on April 17, 1998 and May 4, 1998, could find no evidence that the funds forwarded by Mr. Hadbavny to the Solicitor to be held in trust in September, 1994 or the funds forwarded to the Solicitor in trust by Mr. Hadbavny's counsel in January, 1997, had ever been placed in the Solicitor's trust account. Nor, when she located all the client ledgers for Anthony Bombini and Tri-Krete did she find a client ledger for the Homelife matter (Exhibit 55).

20. The Solicitor represented Tri-Krete and Anthony Bombini in a number of matters. By accounts dated December 28, 1994, the Solicitor billed Mr. Bombini for his services with respect to a number of those matters. Those accounts appear to be paid (Exhibit 15).

21. On July 15, 1995, the Solicitor commenced renting office space from Tri-Krete (Exhibit 16).

22. On January 4, 1996, Tri-Krete paid the Solicitor a retainer of $5,000.00 (Exhibit 17). The Solicitor, by letter dated January 5, 1996, indicated that the retainer would be applied to services already rendered on a number of enumerated matters (Exhibit 18). However, there is no evidence that the Solicitor ever accounted for that retainer or billed either Tri-Krete or Bombini for the services he indicated were already rendered.

23. By letter dated August 2, 1996, Tri-Krete requested a receipt for the $5,000.00 retainer (Exhibit 25). That receipt was not provided.

24. On or about July 30, 1996, the Solicitor rendered an account in the matter of *Nick Repole et. al.* v. *Tri-Krete* in the amount of $7,000 (Exhibit 24). That account appears to be set off against amounts owed by the Solicitor for rent, as shown in a statement provided to the Solicitor by Tri-Krete on or about August 2, 1998 (Exhibit 26) which shows a balance owing to Tri-Krete by the Solicitor of $2,788.88.

25. On August 9, 1996, Tri-Krete provided the Solicitor with funds in the amount of $4,000.00 to fund its action against Sun Life. The Solicitor never accounted for these funds.

26. By October 17, 1996, Mr. Bombini was becoming concerned about the Solicitor's handling of Tri-Krete affairs and he wrote to him expressing that concern (Exhibits 29 and 30).

27. By letter dated November 2, 1996, the Solicitor indicated to Mr. Bombini that he was preparing interim accounts on all of the files. Despite Mr. Bombini's encouragement of that action, there is no evidence that any such accounts were ever prepared (Exhibit 32).

28. On March 13, 1997, the Solicitor rendered an account on the Sun Life matter in the amount of $2,500.00 (Exhibit 41). Instead of paying the account, Mr. Bombini used it to reduce the amount owed to him by the Solicitor as shown in his statement of August 2, 1996 (Exhibit 26), the practice that the Solicitor appears to be complaining of in his letter of November 21, 1996 (Exhibit 32).

29. On March 14, 1997, the Solicitor rendered an account to Tri-Krete in the amount of $1,607.00 which Tri-Krete paid the same day (Exhibit 42).

30. On May 2, 1997, the Solicitor rendered an account to Tri-Krete on the Sun Life matter in the amount of $1,754.00, which Tri-Krete paid on May 16, 1997 (Exhibit 43).

31. On that same date, Tri-Krete generated a statement (Exhibit 44), which indicated that the Solicitor owed to Tri-Krete the sum of $288.88.

32. None of the retainers, accounts, or payments by Tri-Krete are reflected on any of the client ledgers obtained by the examiner of the Law Society (Exhibit 55).

33. At no time did the Solicitor account properly to Mr. Bombini for a number of the matters he was handling on behalf of himself or his company, Tri-Krete.

Particular 2(g)

He failed to provide trust books and records concerning his client, Anthony Bombini to the Law Society, or, in the alternative, he failed to maintain such books and records;

Particular 2(h)

He failed to reply meaningfully to the Law Society concerning the complaint of Anthony Bombini despite numerous requests;

Particular 2(i) He breached his undertaking, given to the Law Society on August 20, 1996, to respond promptly to all communications from the Law Society.

34. As a result of a complaint lodged with the Society by Anthony Bombini, on January 29, 1998, the Society wrote to the Solicitor requiring his response. Specifically, the letter requested "a complete accounting of this matter including a copy of the client trust ledger for each file." A copy of the letter is attached as Exhibit 49.

35. The Solicitor did not respond and, on April 20, 1998, a staff member of the Society telephoned the Solicitor and spoke with him. The Solicitor indicated that Mr. Bombini had his files. The Society informed him that his reply was still required. The Solicitor indicated he could have his reply to the Society within the week and requested that the Society fax him a copy of its January 29, 1998 letter. A copy of the telephone transaction record is attached as Exhibit 50.

36. That same day, the Society faxed a copy of its January 29, 1998 letter to the Solicitor (Exhibit 51).

37. The Solicitor did not respond and, on May 1, 1998, a staff member of the Society called the Solicitor and inquired of him when his reply would be expected. The Solicitor indicated that the reply would be received by the Society early the next week. No such reply was received and, on May 7, 1998, a staff member of the Society telephoned the Solicitor and was informed by his secretary that he had been ill and was not in the office. The staff member called again on May 11, 1998 and was informed that the Solicitor was not in the office. She left her name and telephone number and a message for the Solicitor to return her call as soon as possible. A copy of the telephone transaction record is attached as Exhibit 52.

38. By letter dated May 11, 1998, the Solicitor wrote to the Society indicating he had been ill and would "provide the documents soonest." He asked that the Society be patient for one further week. A copy of the letter is attached as Exhibit 53.

39. No further reply was received from the Solicitor and, on May 27, 1998, a staff member of the Society telephoned the Solicitor and left a message for him to return the call. A copy of the telephone transaction record is attached as Exhibit 54.

40. The Solicitor did not respond and, on June 23, 1998, the Society sent a letter by registered and regular mail to the Solicitor requiring him to respond within 7 days. A copy of that letter is attached as Exhibit 56. The Solicitor did not respond.

41. In April and May, 1998, an examiner of the Law Society had attended at the Solicitor's office to conduct an audit. At that time, she obtained a number of client ledgers for Anthony Bombini and Tri-Krete (Exhibit 55). The books and records for the Bombini and Tri-Krete matters which were produced to her were incomplete and she required the Solicitor to provide her with further records. The Solicitor did not do so.

42. On or about August 20, 1996, the Solicitor had provided a written undertaking to the Law Society to respond promptly to all communications from the Law Society. That undertaking is still in force.

43. To date, the Solicitor has not accounted to his client, Anthony Bombini for funds held on his behalf. Nor has he responded to the Law Society or provided the books and records as requested by the Law Society.

DATED at Toronto this 9th day of March, 1999."

"AGREED STATEMENT OF FACTS
Complaint D154/98, Particular 2(j)

I. ADMISSIONS

1. The Solicitor has reviewed this Agreed Statement of Facts with his counsel, Robert Burke, Q.C., and admits the facts herein. He does not admit that the facts constitute professional misconduct.

II. FACTS

Complaint D154/98

2j) He failed to reply meaningfully to the Law Society concerning a complaint by Ross McLeod, despite numerous requests.

2. By letter dated January 30, 1997, Ross M. McLeod, a solicitor, wrote to the Law Society complaining about the conduct of the Solicitor in arranging a mortgage and failing to account to his clients. A copy of the letter is attached as Exhibit 1.

3. The Society obtained further information from Mr. McLeod (Exhibits 2-4) and, on February 14, 1997, the Society wrote to the Solicitor requiring his response to a number of concerns raised by the McLeod complaint. A copy of the letter is attached as Exhibit 5.

4. On February 20, 1997, the Solicitor wrote to the Society. However, rather than addressing directly the concerns raised by the Society, the Solicitor complained about the difficult nature of his clients. He failed to provide any of the information or documentation requested by the Society. The Solicitor did promise to respond in a more detailed manner shortly. A copy of the letter is attached as Exhibit 6.

5. By letter dated March 13, 1997, the Solicitor again wrote to the Society. However, this correspondence indicated that a more detailed response would not be forthcoming because litigation had been commenced. The letter made accusations about Mr. McLeod and concluded as follows:

> Mr. McLeod is very much like the man who murders his parents and then asks for special consideration because he is an orphan.

The Solicitor did not provide any of the information or documentation requested by the Society. A copy of the letter is attached as Exhibit 7.

6. By letter dated May 28, 1997, the Society wrote to the Solicitor, informing him that, notwithstanding the litigation, the Society still required a complete and detailed response as outlined in its previous correspondence. A deadline of two weeks was given for that response. A copy of the letter is attached as Exhibit 8.

7. The Solicitor did not respond within the deadline and, on June 18, 1997, the Society contacted him by telephone. He returned the call the next day, June 19, 1997, and left a message indicating that he was in the process of preparing a detailed response and would respond within approximately a week. A copy of the telephone transaction record is attached as Exhibit 10.

8. By letter dated July 1, 1997, the Solicitor wrote to the Society, stating in part:

> Unfortunately, I require some information from Mr. Doobay who was Mr. Della Torre's administrative assistant. Mr. Doobay is absent from Canada for about a week.
>
> I expect that shortly after his return I will be able to provide the reply. Please be patient.

A copy of the letter is attached as Exhibit 12.

9. When the response was not received, on July 15, 1997 the Society contacted the Solicitor. At that time, it was agreed that he would provide his full response to the Society no later than July 22, 1997. A copy of the telephone transaction record is attached as Exhibit 14.

10. The response was not received and, on July 24, 1997, the Society telephoned the Solicitor and left a message for him to call with respect to that response. A copy of the telephone transaction record is attached as Exhibit 16.

11. The Solicitor returned the telephone call on July 25, 1997, and promised a response by Tuesday, July 29, 1997. He was warned that, should a response not be received by that date, the Society would have to take further steps. A copy of the telephone transaction record is attached as Exhibit 17.

12. By letter dated July 31, 1997, the Solicitor wrote to the Society. That letter states in full:

> I spoke with your assistant and agreed to have my response ready this week.
>
> To complete my response I needed some information from Mr. Doobay who is Mr. Della Torre's assistant and who was present when Mr. McLeod prepared minutes of settlement.
>
> I expect to have those documents today.

A copy of that letter is attached as Exhibit 18.

13. No further response was received from the Solicitor and, on August 8, 1997, the Society telephoned the Solicitor. He indicated that he should have the documents by Monday and promised to respond to the Society by the end of Monday, August 11, 1997. A copy of the telephone transaction record is attached as Exhibit 19.

14. No further response was received from the Solicitor and, on August 13, 1997, the Society wrote to the Solicitor by regular and registered mail, requiring his response within 7 days. A copy of that letter is attached as Exhibit 20.

15. By letter dated August 19, 1997, the Solicitor wrote to the Society. That letter states in part:

> I regret the delay in responding to you.
>
> I need to consult with and obtain documents from Mr. Doobay who is Mr. Della Torre's assistant and who in fact made most of the arrangements in respect to the mortgage.
>
> ...

> Mr. Doobay who was present at the settlement and who witnessed the minutes can verify that the Della Torre's all had independent advice, that they made their own arrangements and that the funds - other than my account - did not go through my trust.
>
> I am attaching copies of documents which I believe corroborate what I have said.
>
> Mr. Doobay will be happy to write you a full account, disputing Mr. McLeod's allegations when he returns to Canada at the end of the month.

No documents were enclosed with the letter. A copy of the letter is attached as Exhibit 21.

16. By letter dated September 29, 1997, the Society wrote to the Solicitor, stating in part:

> I have become somewhat concerned over the lack of documentation with respect to what appeared to be normal institutional mortgages and loans. As well, although you have referred to what I believe are several suits, we have yet to be provided with pleadings.
>
> In addition, although in your most recent letter you have referred to Lakshman Doobay as Mr. Della Torre's assistant, it is clear from his address that he is working out of your office, and I understand that he is in fact your assistant. Please confirm.

A copy of this letter is attached as Exhibit 22.

17. The Solicitor wrote to the Society by letter dated October 2, 1997, which states in part:

> I will agree that this was not a normal mortgage nor was it a normal situation but it was an arrangement between Della Torre and the bank.
>
> You are making an incorrect assumption about Mr. Doobay. He is not working out of my office and his [sic] is not my assistant. Your understanding is wrong.

The letter provided no further information or documentation to the Society. A copy of the letter is attached as Exhibit 24.

18. On April 17, 1998, an examiner of the Law Society attended at the Solicitor's office to conduct an audit. The Solicitor informed the examiner that Mr. Della Torre had his file and that he had written to the Solicitor indicating that he was satisfied. The Solicitor also advised that Mr. Della Torre's accounting was completed.

19. Following up on that audit, the Society wrote to the Solicitor by letter dated July 10, 1998, stating in part:

> ...Please provide the letter from Mr. Della Torre advising that he is satisfied with the accounting he has received from you. The matter will not end there. The Law Society has been asking you for an accounting on the loans arranged in accordance with Mr. McLeod's letter of complaint on behalf of the Della Torre family. In addition you had at various times in this file, referred to some law suits. Please provide pleadings of all law suits involving the Della Torre family and yourself, either as a solicitor for one or all of them or as a party.

> In addition, I am very concerned about the information you have provided with regard to Mr. Lakshman Doobay. In my letter of September 29, 1997, I advised that it was my understanding that Mr. Doobay is your assistant, and it is certainly clear that he is working out of your office. I asked you to confirm. In your letter of October 2, 1997, you stated as follows: "You are making an incorrect assumption about Mr. Doobay. He is not working out of my office and his [sic] is not my assistant. Your understanding is wrong." I am enclosing a copy of a letter you wrote to the Superintendent at Maplehurst Correctional/Detention Centre in Milton on May 16, 1997. Please note that you stated at that time very clearly that "Mr. Lakshman Doobay is a law clerk employed by me."
>
> I would appreciate your comment. With the exception of your letter to me dated October 2, 1997, all indications including your own statement point to Mr. Doobay's assistance of you. Therefore any information you need from him with regard to the Della Torre matter including the file itself, I will assume is in your control.
>
> Please arrange to provide all information asked for with regard to this matter, including and especially the accounting, within two weeks of today's date.

A copy of this letter is attached as Exhibit 27.

20. The Solicitor did not respond and, on August 4, 1998, the Society telephoned the Solicitor and left a message for him to return the call that day. A copy of the telephone transaction record is attached as Exhibit 29.

21. The Solicitor's secretary returned the telephone call that day and indicated that she had tried to reach him all day and had left a message at his mother's, that he was away for the weekend and that he was expected back that night. A copy of the telephone transaction record is attached as Exhibit 31.

22. The Solicitor responded to the Society's telephone call in writing by letter dated August 4, 1997, which states in its entirety:

> I was out of town briefly. I was informed of your call. I prefer to answer in writing as experience has taught me that telephone calls can be "edited."
>
> Firstly, I do not like the tone of your letter and I do not believe the questions in the form of "When did you stop beating your wife?" are proper.
>
> Mr. Doobay is an accredited law clerk with more than 30 years of litigation experience. He is "employed" by me from time to time on a case by case basis just as he "employed" me from time to time as a lawyer.
>
> Mr. Doobay, however, is not employed by me in the sense that he works 9 - 5 and receives a pay cheque. I cannot give him orders.
>
> Mr. Della Torre, I believe, will provide a letter that:
> a) he is satisfied and has no claims against me;
> b) Mr. Doobay was his administrative assistant at the relevant time and Dooby arranged the mortgage and that my only function was to register the mortgage/assignment.

> I repeat again that the funds went directly from the Hong Kong bank to Canada Trust and Cassels Brock. I cannot provide you with documents I do not have.
>
> The action by the Hong Kong bank against the Della Torre's have been settled. I received letters from both LPIC and Jonathan Wiggly, the bank's counsel, advising the matter closed and the Hong Kong bank has no claim or grievance against me. Ms. Janet Merkley has a copy of the above.
>
> Permit me also to remind you that you have studiously ignored the fact that Mr. McLeod, who is supposedly acting for the Della Torre's, disobeyed a court order and paid monies into his trust account that should have gone to the Hong Kong bank.
>
> If anyone should be sued or made the subject of disciplinary proceedings, it is Mr. McLeod. However, you have chosen to ignore this and you persist in asking questions I believe I have already answered.
>
> I expect to have a letter from Mr. Della Torre in a few days. Mr. McLeod purports to speak on his behalf. You may want to ask Mr. Della Torre if he authorized Mr. McLeod to do so.

A copy of this letter is attached as Exhibit 30.

23. The Society wrote to the Solicitor by letter dated September 29, 1998, which states in part:

> ...Despite our requests, you failed to provide substantive information regarding the Della Torre matter. This includes an accounting and various information which would have come from the client file, which you do not appear to have made efforts to retrieve.
>
> If there is any information you wish to provide to the Society, we ask that you do so within the next 7 days.

A copy of this letter is attached hereto as Exhibit 33.

24. To date, the Solicitor has not responded further to the Society nor has he provided any of the information or documentation requested by the Society.

DATED at Toronto this 9th day of March, 1999."

"AGREED STATEMENT OF FACTS
Complaint D103/98

I. ADMISSIONS

1. The Solicitor has reviewed Complaint D103/98 and D154/98, Particular 2(k), along with this Agreed Statement of Facts, with his counsel, Robert Burke, Q.C. and admits that the particular 2(b), as supported by the facts herein, constitute professional misconduct. He does not admit professional misconduct with respect to particular 2(a).

II. FACTS

Complaint D103/98

2a) Between December 1, 1997 and January 15, 1998, he practised law while his rights and privileges to do so were suspended by Order of Convocation made on November 27, 1997; and

2. By Order of Convocation dated November 27, 1997, the Solicitor's rights and privileges to practise law were suspended for a period of one and a half months commencing December 1, 1997. A copy of the Order of Convocation is attached hereto as Exhibit 1.

3. During the period of his suspension, the Solicitor had a number of active real estate files in his office, including Mak (Exhibit 20), Kirk (Sale - Exhibit 21, Purchase - Exhibit 25), Ramprashad (Exhibit 22), Hoeppner (Exhibit 23), Kanhai (Exhibit 24), Mintz (Exhibit 26), Joseph (Exhibit 27), Kenzora (Exhibit 28) and Szanyi (Exhibit 29). The Solicitor's bank records for that period are attached as Exhibits 30 - 35.

Complaint D103/98

2b) He failed to produce all the books and records of his practice as required by Section 18 of Regulation 708 despite requests made by the Law Society between April 16, 1998 and May 15, 1998.

4. An audit of the Solicitor's practice was authorized under the *Law Society Act* and, on April 16, 1998, an examiner from the Law Society contacted the Solicitor requiring that he produce his books and records to her.

5. The examiner attended at the Solicitor's office the next day, April 17, 1998. At that time, a number of the books and records she required for her review were not made available to her. She made a list of the books and records that she required and gave it to the Solicitor, requiring him to produce them to her for Tuesday, April 21, 1998. A copy of that list is attached as Exhibit 38.

6. The Solicitor did not produce the books and records as required and, on May 4, 1998, the examiner reattended at his office. At that time, she reaffirmed her request for the books and records she had previously listed and provided him with a further list of required books and records. A copy of that list is attached hereto as Exhibit 38. She arranged a further appointment with the Solicitor for May 13, 1998.

7. By letter dated May 11, 1998 (Exhibit 36), the Solicitor cancelled the appointment due to illness. He promised to produce his books and records to the Society by the end of May, 1998.

8. The examiner did not receive the Solicitor's letter prior to May 13, 1998 and, on that date, she attended at the Solicitor's office. When he was not present, she asked that his secretary have him telephone her to reschedule the appointment. He did not do so.

9. On May 15, 1998, the examiner telephoned the Solicitor's office on two occasions and left messages asking him to call her that day. He did not. A copy of the telephone transaction record is attached as Exhibit 37.

10. On May 15, 1998, the examiner sent the Solicitor a letter by regular and registered mail attaching a list of the outstanding books and records and requiring their production by June 5, 1998. A copy of this letter is attached as Exhibit 38.

11. The Solicitor did not contact the examiner.

12. To date, the Solicitor has not contacted the examiner to arrange the completion of the audit, nor has he produced the required books and records.

DATED at Toronto this 9th day of March, 1999."

REASONS FOR FINDING

Complaint D86a/98
Particular 2(a)(i),(ii),(iii)

This particular was admitted by the Solicitor. A complex business transaction was engaged in, involving a property investment in St. Kitts. First, a loan, and then an investment was made by Mr. Volker Schetelig. Mr. Schetelig agreed at one stage to advance some two and a half million dollars ($2,500,000) provided a mortgage securing it was arranged. Mr. Paskar, who had been introduced as one of the lawyers for the developer, Bay Park Homes, and who acted for Bay Park Homes during the relevant period, was directed in writing not to pay the money out before a certified title of the land owned by Baypark St. Kitts Limited was furnished. The required sum - three million in total as it turned out - was advanced. A letter on Paskar and Associates letterhead undertook in writing that, "your funds will only be disbursed simultaneous with the registration of the First Mortgage in your favour on closing". The letter bears the signature R. Paskar. It then transpired that Baypark St. Kitts Ltd. paid back two and a half million dollars of the loan. Then, a new loan was given because of a delay in obtaining money from the World Bank. Mr. Schetelig agreed to advance four and a half million dollars if collateral was given in Canada or elsewhere - but he did not agree to take the collateral consisting of the St. Kitts property itself. Eventually, two million dollars of the sum was advanced. Mr. Schetelig faxed Mr. Paskar via one Rupy Singh authorizing the release of 2.4 million U.S. dollars from the trust account of Baypark St. Kitts which he held. Most of that sum was repaid.

Then Mr. Schetelig was prevailed upon to agree to lend the sum of four million dollars. A collateral mortgage on 10952 Bayview Avenue in Richmond Hill was to secure this loan. A letter was faxed saying that the mortgage was registered. That letter is on Mr. Paskar's stationery and bears his signature. Mr. Schetelig believed it valid and advanced the funds. Without this letter, he would not have advanced what turned out to be 1.67 million dollars U.S. The money was eventually credited to the account of Mr. Paskar and later, further funds secured by the same loan in the amount of 1.73 million followed the same course.

Rupy Singh, is one of the principals of Baypark and it is conceded that Mr. Lakshman Doobay and one Chris Kanhai were additional principals involved in this scheme. Several payments were made, but it transpired shortly thereafter, that the mortgage was not in fact registered on the property and that nothing was secured. The signature of Mr. Paskar, together with many other documents in connection with these transactions, appeared to be Mr. Paskar's signature in most cases, but Mr. Paskar swore that they were copies. Some of the documentation takes place on non-formal office stationery. It is clear that Mr. Schetelig relied upon Mr. Paskar's status as a lawyer in trusting him with this venture.

In short, Mr. Schetelig had been defrauded by means of phoney letters and registration documents certifying to arrangements that would have protected them if they were real, but which were totally fraudulent.

Mr. Paskar testified and maintained that his signature was on very few of the letters and that some of them might have been signed in blank and some of them might have had writing on them when he signed them, but he cannot remember. He signed documents in blank more than once. Some of the documents were forgeries and he had never seen any of the fraudulent documents before the scheme was uncovered. He was himself no part of the fraudulent scheme.

Mr. Paskar says, to take one example, that the signature was not his because he never signed to the right of the typed name and the signature was larger than his in reality. He said it was, "too big; too far to the right". But, in the letter which he clearly wrote, addressed to his client Mr. Grant regarding the plea bargain he said was proposed by Judge Budzinski and Crown counsel, which is found in exhibit 17, tab 9 , the signature is just as big and is even further to the right, if anything. That letter is dated June 25, 1997.

There are many other examples in the documentary material of signatures equally far to the right and of equal size. Clearly Mr. Paskar wishes to distance himself from the fraud. This technique of doing so lessens his credibility.

This is an appropriate time to comment on Mr. Paskar's credibility. His manner was evasive. On crucial issues, he professed either not to remember, or would not give a straightforward answer to the question, one way or the other. He omitted details of how he practised law, disclosed a willingness to deceive and eagerness to avoid responsibility when problems arose. He has a history of misleading his Law Society which he admitted in his evidence, and he failed to recognize conflicts, both real and potential, that would ensure his inability to function as a lawyer with integrity. His evidence cannot be relied upon and we do not accept it where it conflicts with others, and in particular with that of Ms. Jaszi, Ms. Montague, Mr. Schetelig or Mr. Staats.

In short, Mr. Paskar appears to have allowed his law office to be used by others in a way which allowed them to perpetrate a fraud. This sad state of affairs caused a substantial loss to Mr. Schetelig who relied upon him as a lawyer.

Particular 2(b).

This particular is established. It is clear that the Law Society sent letters requiring him to produce the books and records of his practice. The Solicitor did not keep a pre-existing appointment with Andrew Cawse when he attended for that purpose with another staff person from the Law Society. The enquiry was concerned with a complaint from Mr. Schetelig and was urgent because it alleged a very substantial fraud. On May 8, 1998, Mr. Paskar wrote to Mr. Cawse saying,

> "In respect to Schetelig, I believe I stated I would co-operate with you subject to what LPIC has to say. Mr. Schetelig has counsel and litigation has commenced. I believe that notwithstanding my profession, I have the same rights as any other Canadian citizen. I also believe that in a matter that is already before the Court, it does not behoove you to usurp the Court's role or make determinations that conflict with the Court's ultimate decision".

Mr. Paskar is quite wrong. We do not accept that the existence of the litigation in any way excuses a solicitor from full co-operation with the Law Society. Indeed, if anything, it enhances it.

When Andrew Cawse requested further information, he received none. There was no response to further letters. The Solicitor had given an undertaking dated August 20, 1996 to respond promptly to written communications from the Law Society within one week of receipt. Repeated attempts by Mr. Cawse to set up appointments were rebuffed, the Solicitor indicating that he would be busy as he already had appointments for those particular days. Kathi MacDonald of LPIC indicated that she gave the Solicitor no information that would indicate that he should not be reporting fully to the Law Society in response to questions.

The Solicitor in late April indicated that he would consult with LPIC to obtain advice from them, but he never did.

We do not consider the Solicitor's professed reliance upon the existence of litigation or his obligation to LPIC are sincere and honest. We think they are an excuse proffered to the Law Society in order to avoid answering questions.

Complaint D103/98
Particular 2 (a)

The majority finds this complaint established. The view taken by the majority is that the uncontradicted evidence of the work done on a real estate file was substantial, ongoing, and constituted the practice of law. The Solicitor did not merely sign cheques or perform other administrative tasks. True, he did not attend on closing, but there was a variety of correspondence, not on his firm letterhead, which indicated that he was taking the real estate deal forward to completion.

All members of the panel accept the evidence of Mr. Howard Staats regarding what transpired in the civil litigation he was conducting with Mr. Paskar as counsel. Mr. Staats is a Brantford lawyer. When he took the file over from a partner who had been appointed to the bench, Mr. Paskar was acting on the other side of this family law case. Mr. Paskar wrote letters and filed an affidavit under his name and described himself as "lawyer". He appeared to act as counsel prior to the relevant dates.

On December 7, 1997 Larry Spodek wrote to Mr. Staats saying he was assuming carriage of the file. Mr. Spodek was a barrister, but Mr. Spodek made no attempt to contact Mr. Staats or do anything in relation to this file.

The letter from Mr. Spodek was sent by fax the day before a trial was scheduled. Mr. Staats attended, and Mr. Paskar attended that morning as well. Clearly, they both agreed there were some negotiations that morning, although they differ in what was discussed and how long they took. Mr. Staats says the negotiations were towards a resolution of the case with representatives from the Ministry of Community and Social Services and took place over a two hour period. Mr. Paskar insists that it took no more than half an hour and that they were discussing only an adjournment and not money. Mr. Staats is clear that money was discussed extensively. Mr. Paskar, according to Mr. Staats, never said that he was suspended and that he learned that only later. Mr. Paskar, to his surprise, did not go into court. When the negotiations concluded, Mr. Paskar said he did not go in, "because he was not counsel for the party". Later in court, it transpired that the judge was told on another date that the reason for his not attending in court was because he was suspended. Mr. Staats was clear that he would not have negotiated with Mr. Paskar if he had known that he was not counsel or that he was suspended. The judge was told of what happened regarding the negotiations. The case was adjourned. Mr. Staats described the negotiations that morning as very extensive and very heated at points over the two hours. He cannot now remember the numbers that were discussed. He was never told by Mr. Paskar that Mr. Spodek would be acting in the future.

The majority of the Committee is of the view that these negotiations constituted the practice of law as they were work that a member would normally do for his client, and that in these circumstances, it was incumbent upon Mr. Paskar to either refrain from such negotiations or disclose that he was suspended and acting merely as an agent.

The Chair, dissenting, takes the view that there is no warrant in law for imposing an obligation on Mr. Paskar in dealing with Mr. Staats to disclose that he was no longer acting as counsel because he was suspended. If the work can in fact be done lawfully by an agent, the disclosure of his status as either lawyer or agent is a matter that makes no difference. The case would not be made out if the work could be done by an agent. It is common ground that an agent can engage in negotiations and for this reason, the Chair dissents.

The dissenting member of the panel accepts what was done by the member in the course of completing the real estate deal was in fact borderline, but does not consider, given the failure to attend on closing, and the use of the non-firm letterhead, that this something that could not have been done by an agent. It was not, in any event, substantial enough to constitute the practice of law.

Particular 2(b).

This particular is established. The Solicitor made that admission.

Complaint D154/98
particular 2(a)(i)

Counsel for the Law Society concedes she has not proved this particular.

Particular 2(a)(ii).

Counsel for the Law Society concedes she has not proved this particular.

Particular 2(a)(iii).

It is clear that the Solicitor had difficult financial problems during this period, had enough experience to recognize he impropriety of what he did. He had previously been retained to act against Rohan Grant in connection with civil matters on the same subject matter. Mr. Lakshman Doobay was, during some of this period, a friend, from time to time a member of the Law Clerks Association, hired on a per case basis as a law clerk and from time to time, would hire Mr. Paskar in connection with business deals that he was involved in financially. He was not a lawyer but had some legal training in the Caribbean.

Mr. Paskar stated that his only previous involvement as counsel in a civil case against Mr. Grant was to obtain an adjournment at one point. Thereafter, he believed there had been a settlement of the case whereby part of the money owing by Mr. Grant had been paid to Mr. Lakshman Doobay, and security by a mortgage was secured for the balance. He insisted he did nothing by way of pressure to obtain that payment. He asserted that he did not seek out the retainer, but rather was told that Mr. Grant was dissatisfied with his then counsel, and wanted to speak to him. This characterization of the relationship was a little loose. Further evidence indicates that Mr. Grant had told his girl-friend, who in turn told Mr. Doobay, that Mr. Grant "needed help". Mr. Doobay took the view that that help was obtainable only if he retained Mr. Paskar and that is what ensued. Mr. Paskar did not see the conflict because in his view, Mr. Grant had been charged by the State, and Mr. Doobay and Baypark had not charged him and therefore, though they were victims in the alleged crime, he saw no conflict. This is very hard to credit.

He asserted that Mr. Grant was very happy to have Mr. Doobay "in his corner". Mr. Doobay was trying to persuade Mr. Grant that what was keeping him in jail was the U.S. charges. Mr. Doobay wanted Grant out of jail, but so did everyone; "everyone wanted Mr. Grant out of jail. I suspect he [Mr. Doobay] had some selfish interest too. Con artist though he may be, Grant had some real money".

Mr. Paskar on several occasions took Mr. Doobay in to see Mr. Grant on solicitor/client visits to the correctional centre where they jointly urged upon him this course of action. They certainly discussed other charges pending against him under the *Bank Act*. On these occasions, it is clear that Mr. Doobay, in his role as clerk to Mr. Paskar, even though he was directly opposed in interest respecting these matters, obtained a benefit he would not otherwise have had; namely, full and direct knowledge of solicitor and client communications between the Solicitor and Mr. Grant.

This particular is found established.

Particular 2(a)(iv)

This particular was not established.

Particular 2(a)(v).

At one point in their ill-thoughtout relationship, Mr. Paskar was directly and clearly fired by Mr. Grant, who obtained the services of another law firm. Shortly thereafter, a pre-trial had been scheduled to take place, before, as it turned out, His Honour Judge Lloyd Budzinski. Ms. Lori Montague was the Crown counsel who had carriage of the fraud case for a period. She has been a Crown Attorney for some eleven years. She indicates that as she met Mr. Paskar in the hallway outside the court, she asked him if he was still retained because she had heard from the police, through Mr. Grant's girlfriend, that he had been discharged. He answered that he was still retained. Mr. Paskar had never, at any time, raised a retainer issue. She therefore gave Mr. Paskar further disclosure in the case. There was, in the course of this pre-trial, a discussion of a resolution. According to Ms. Montague, there was a discussion of a plea to fraud with a suggested sentence of six months, conditional upon full restitution being made. The Crown's position was that the sentence should be six to nine months.

At no time, on her evidence, did Mr. Paskar indicate to Judge Budzinski that he had been discharged. He did tell the Judge that this was a difficult client and that he was having problems, unspecified. If Mr. Paskar had given any such indication, Ms. Montague would have gone to lunch instead of attending. She would have ended the pre-trial then and there. There was no discussion of bail at all.

Mr. Paskar maintains that he disclosed fully to Judge Budzinski that the client had fired him the night before and that Judge Budzinski insisted that he remain and pass on the information from the pre-trial to the client. He says, when Crown counsel asked him, "I hear you've been discharged", he answered, "Well, I'm still on the record".

At one point in his evidence, Mr. Paskar said that he told the Judge "that I might not be counsel any more, but I might be replaced". This was in any event misleading, and Ms. Montague denies it. It is very unlikely that any judge would have proceeded with a pre-trial with a lawyer who had been fired, or that he would have continued having been told this. True, in his letter of June 25, 1997 to the client, he refers to an undertaking given to the Judge to pass information on to Mr. Grant, but that comment does not determine the matter. It is very unlikely that any proposal would be made by Judge Budzinski respecting a sexual assault charge when Judge Budzinski would know nothing about it and when this particular Crown Attorney did not have carriage of it and could not possibly have spoken to it meaningfully. Judge Budzinski would have no knowledge of how serious the assault was.

The Solicitor wrote a letter to Mr. Grant on June 25, 1997. Much of the letter is devoted to attempting to bully the client into accepting his advice. The advice may well have been correct. That is not the issue. Ms. Montague insists that in a number of respects what Mr. Paskar asserts was discussed was in fact not discussed and that therefore it follows that he misled his client. We accept that the following parts of the letter were misleading:

> "You would receive on all charges a sentence of 12 - 14 months, but sentencing will be delayed to permit you to benefit from the maximum 2 for 1 principle, the effect of which would be to reduce the actual time served to a few months, taking into account the automatic one third remission period".
>
> "I indicated that you might retain other counsel. Both the Crown and the Judge indicated that if you and your new counsel did not accept the above proposal, the following would occur:
>
> 1. The Crown would proceed by indictment on all charges, including the Bank Act and seek the maximum fine;
>
> 2. You would remain in detention until your preliminary enquiry which would take at least 1 week and would not be sooner than January 1998;

3. The Crown would seek a longer period of incarceration after a trial which I estimate would occur in the fall of 1998.

If, on the advice of your new lawyer, you choose to not plead guilty, I want you to remember that in June of 1997 you could have resolved everything in a few months and with no fine."

The Crown could not choose to proceed by indictment because the charges that she was concerned with were indictable and nothing else. Moreover, if he was ordered in detention, it would not be true that his preliminary enquiry would not be heard sooner than January of 1998, because as someone in detention his case would have taken priority and he would have gotten a much earlier trial date. Even though this is Brampton, notorious for its delays, we accept that this would happen.

Particular 2(a)(vi).

This particular is established. The evidence of Ms. Montague is accepted. The Solicitor should have taken no further steps pursuant to the case other than to ask for permission to withdraw as counsel at the earliest opportunity when he was before a judge in court. He certainly could not take any step without making full disclosure that he had been discharged.

Particular 2(b).

This particular is established. Indeed, the Solicitor admits that the activities recounted above amply prove this particular.

Particulars 2(c),(d) and (e).

Ms. Jaszi testified and indicated that she had a history and a broad experience only in immigration matters. She had very little experience in criminal law, and while she was desirous of getting more experience, she would never have considered taking on a case as serious as a case of perjury. The Solicitor had indeed discussed with her the question of taking cases on during a suspension and she had agreed to do so, subject to each case being put to her to see if she really could help. In this case, she had no knowledge of Mr. Prete whatsoever. She had never met him. She had not authorized a letter to be given to the court in her name. She had never received a copy of a letter.

The Solicitor testified that he and Ms. Jaszi were friends. She had been going through a very difficult period in her personal life and as a result, was in financial difficulties and emotional difficulties of a very severe nature. She had agreed to see some of Mr. Paskar's clients and to take cases from his office. She had familiarity with real estate as well as immigration. She had given him general permission to send out date-setting letters for those he selected, provided he made sure he sent her a copy of the letter and that she got the dates she required in court. The Solicitor insisted that he did so with Mr. Prete. He notes that the letter that he wrote respecting Mr. Prete didn't bind Ms. Jaszi to appear. He insists that the Prete case was discussed with her.

When it came time for trial, she says, she would not go because she had a conflict with Iranian clients who were paying cash on an immigration matter. At that point, the Solicitor got Mr. Spodek to attend. It is possible, he says, that Ms. Jaszi wasn't told that the letter had been sent out in her name, but he thinks she probably was told. She had a lot on her mind. The Solicitor denied that Ms. Jaszi ever said that the Prete matter was too complicated for her when it was discussed.

We accept the evidence of Ms. Jaszi and reject that of the Solicitor. She was nervous, but testified in a straightforward manner. There is no reason on earth why she would have put the Solicitor in this position other than the account that she in fact gives.

Particulars 2(f),(g), (h) and (i).

These particulars are established. The Solicitor in his evidence claims that money is still owing him from Mr. Bombini, but he admits that he never sent out a full account. He assigns as the reason for this, his own laziness or incompetence. He admits that he is a terrible record keeper and that the client could not have paid an account in any event.

As things got worse for him financially and emotionally, he had no staff to help him. He was a "complete mess" financially and emotionally and that's why he was unable to respond appropriately to the Law Society regarding these complaints.

Particular 2(j) .

In this case the Solicitor admits acting on behalf of the Hong Kong Bank and registering a mortgage for $400,000. Unusually, all he did was register the mortgage. The money was sent directly to the appropriate parties and never went through his hands. He maintains that he gave the Law Society of Upper Canada all the information he had, but that he couldn't give them information he did not have, in particular, he never opened a file in this case and kept no documents. It is, however, clear that he did keep some documents because he sent them to LPIC. The Solicitor's letter to the Society, when examined, touches on many aspects of the McLeod complaint, but, we think designedly, never makes it clear that he had no file at all. As it turns out, part of the contents of that file had been given to the client and parts were kept in the possession of Mr. Doobay, the part-time clerk, part time client, full time friend, who seems to have had a controlling hand in this enterprise.

The Solicitor keeps promising to give information again and again, but it is not for many months that he discloses "my role in respect to the mortgage was very limited; I was to register the mortgage for the Bank".

As he began to discuss the role of Mr. Doobay, the Law Society not surprisingly, asked for information concerning Mr. Doobay. The reply of the Solicitor, dated October 2, 1997, to the Law Society's request for information about Mr. Lakshman Doobay, dated September 29, 1997, was most unforthcoming. His further answer on August 4 is equally unenlightening. And all of it is unacceptably delayed. This particular is established.

Particular 2(k). This is a duplicate and is dismissed.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Roland William Paskar be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor offered a letter from Mr. Stanley Zigelstein for whom he proposes to work as an employee. He is prepared, once again, to see a psychiatrist, though he had voluntarily terminated such treatment some time ago.

The Solicitor's discipline history discloses that on October 24, 1996, he was reprimanded in Convocation and required to pay Law Society costs in the amount of $500, because:

1. a) He improperly obtained and misapplied trust funds deposited by the purchasers on an aborted real estate transaction for his own use and the use of his client, the vendor;
   b) He misled the solicitor for the purchasers by implying that the funds in issue had not been disbursed when he had previously received and disbursed the funds to his client, the vendor, and himself.

2. a) He did not provide a reporting letter or accounting to his client;
   b) He failed to honour a financial obligation resulting from the operation of his practice;
   c) He accepted $1,000.00 from a client in excess of fees and disbursements paid by the Legal Aid Plan without disclosing these fees to the Plan, in contravention of the Regulations made under the Legal Aid Act;
   d) He failed to provide a client who had retained him privately with a bill for legal services;
   e) He failed to deposit client funds into his trust account in contravention of Section 14 of Regulation 708 of the Law Society Act ;
   f) He failed to maintain appropriate books and records as required by Section 15 of Regulation 708 of the Law Society Act;

3. a) He failed to file with the Society within six months of the termination of his fiscal year ended June 30, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

He was thereafter reprimanded in Committee pursuant to a Complaint sworn on April 29, 1997 upon the grounds that:

1. a) He failed to accurately and comprehensively present the evidence in an affidavit he prepared and commissioned, sworn by his secretary, Mary Alvaro, on September 19, 1995, which he tendered on an *ex parte* motion on behalf of his client, Nadia Harbus;
   b) He failed to meaningfully reply to the Law Society regarding a complaint by Frances Gregory despite letters dated February 29, April 16 and June 10, 1996 and telephone messages/requests left on April 9, May 23 and May 27, 1996.

Further, on November 27, 1997, the Solicitor was suspended by Convocation for a period of one and a half months and indefinitely thereafter until he produced a medical report satisfactory to the Society showing that he was fit to practise law, and, pay the Law Society's costs in the amount of $750, because:

1. a) The Solicitor submitted a certified account for fees to the Ontario Legal Aid Plan for services provided to a legally aided client, Mr. Donald Masters, between January and August 1992, which sought payment of fees which were not properly payable in that:
      i) he billed for certain services at his Solicitor's tariff rate when the services had been provided by a law student; and
      ii) he billed for travel fees to attend court even though he was not entitled to such fees.

   b) He breached an agreement with the Ontario Legal Aid Plan to accept no new Legal Aid Certificates from January 5, 1994 to April 5, 1994, by performing work on the following Legal Aid files which had not been in his possession on January 5, 1994;
      i) E. Rogachevsky - Certificate No. 53-030836, and
      ii) J. Spichkin - Certificate No. 52-050545.

   c) He breached the terms of a suspension imposed on him by the Ontario Legal Aid Plan, whereby he was prohibited from performing work on any new or existing Legal Aid files during the period from April 1, 1996 to October 1, 1996, by providing services to two legally aided clients, S. Singh and J. Sidhu, between April 3, 1996 and April 18, 1996, inclusive.

What is noteworthy about this history is that the misconduct disclosed is both wide, persistent, and varied. Much of it is serious. It is clear that the Solicitor does not respond to the Law Society of Upper Canada in its attempts to get him to produce records, documents and to answer questions. Stanley Jenkins, a staff trustee at the Law Society of Upper Canada, indicated that since Mr. Paskar's most recent suspension, he has promised to produce a trust reconciliation on a number of occasions, but simply does not do so. He asked for client files and they came, but slowly. He still has a sign over his office saying, "Law Office", despite being faxed Law Society of Upper Canada Guidelines for suspended members, that advised taking such signs down.

We do not know whether the uncompleted trust reconciliations are recent or extensive. There is simply no evidence on the matter.

The fact that the Solicitor allowed himself to be used as a dupe, which led to disastrous consequences to Mr. Schetelig, is a very serious matter. It discloses that this solicitor is indeed a danger to the public. The ongoing relationship with Mr. Doobay is one which he ought to have known was inappropriate. In effect, he allowed Mr. Doobay to use his office, write on his letterhead, and put him in a position where he could prey on others. He did not take proper care.

The Solicitor's decision to act for Mr. Grant is inexplicable. Clearly this member has no understanding of, nor interest in, this most fundamental aspect of litigation law, and the integrity required to practise law in Ontario. Even at this hearing, as we observe him, we infer that he does not grasp the significance of this issue, nor the importance of it.

The Solicitor is now remorseful. He promises to do better. He asserts that his principal difficulty is that he cannot manage the practice on his own. We disagree. That is simply not his principal difficulty. His difficulties are far more pervasive and fundamental than that.

There are two aspects which indicate to us that disbarment is the only appropriate measure to take at this stage in Mr. Paskar's career.

First, the public needs protection from Mr. Paskar. We are satisfied that an employer, no matter how diligent, could not effectively control the many problems Mr. Paskar has exhibited in the past. He does not understand the ethics required of a lawyer, nor his obligation to the public and to his Society. The proposal for employee status is too little and comes too late.

Second, it is apparent to us that Mr. Paskar has not been deterred in the past by penalties imposed by the Society and we think he is not in fact deterrable.

Roland William Paskar was called to the Bar on April 11, 1986.

ALL OF WHICH is respectfully submitted

Clayton Ruby, Chair

DATED this 20th day of May, 1999.

It was moved by Mr. E. Ducharme, seconded by Mr. Crowe that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Counsel for the Society made submissions in support of the recommended penalty.

The solicitor sought a lesser penalty of permission to resign and made submissions on his own behalf.

A letter dated January 20th, 2000 from Dr. Koladich which was included in the affidavit of Roland William Paskar filed on the adjournment motion was marked Exhibit 2.

Ms. Cowie made submissions in reply.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:20 P.M.

CONVOCATION RECONVENED AT 2:10 P.M.

PRESENT:

The Treasurer, Braithwaite, Carey, Chahbar, DiGiuseppe, E. Ducharme, MacKenzie, Pilkington, Porter, Potter, Puccini, Ross, Lalonde and Laskin.

.....

Counsel, the solicitor, the reporter and the public withdrew.

It was moved by Ms. Ross, seconded by Mr. Porter that the solicitor be disbarred.

Lost

It was moved by Ms. Puccini, seconded by Mr. Carey that the solicitor be granted permission to resign.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be granted permission to resign.

.....

REGULAR CONVOCATION

Thursday, 22nd June, 2000
3:10 p.m.

PRESENT:

The Treasurer, Banack, Bindman, Bobesich, Braithwaite, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cronk, Crowe, Diamond, DiGiuseppe, E. Ducharme, Furlong, Gottlieb, Hunter, Krishna, Lalonde, Laskin, MacKenzie, Millar, Mulligan, Pilkington, Porter, Potter, Puccini, Ross, Simpson, Topp, White, Wilson and Wright.

.....

.....

IN PUBLIC

.....

MOTION - DRAFT MINUTES OF CONVOCATION

It was moved by Ms. Ross, seconded by Mr. Crowe that the Draft Minutes of Convocation of May 25th and 26th, 2000 be approved.

Carried

REPORT OF THE ADMISSIONS COMMITTEE

Mr. Millar presented the Report of the Admissions Committee for consideration by Convocation.

Admissions Committee
June 23, 2000

Report to Convocation

Purpose of Report: Decision-making and Information

Prepared by the Policy Secretariat

TABLE OF CONTENTS

POLICY

INFORMATION

TERMS OF REFERENCE/COMMITTEE PROCESS

The Admissions Committee met on June 8, 2000. The meeting was chaired by Derry Millar, Vice-Chair of the Committee. In attendance were:

Nancy Backhouse	(Chair)
Edward Ducharme	(Vice-Chair)
Derry Millar	(Vice-Chair)
Tom Carey	
George Hunter	
Gina Alexandris	(representing Dean Peter Hogg)
Dean Alison Harvison Young	
Stephanie Willson	

Bob Bernhardt
Ian Lebane
Susan Lieberman
Zelia Pereira
Elliot Spears
Charles Smith
Roman Woloszczuk

The Treasurer also attended the meeting briefly to speak about the aegrotat standing pass.

The Committee is reporting on the following issues:

For Decision

10 Year Rule: Draft By-Law 12 (3)
Retroactive Approval of Principals
BAC Rescheduling Requests
BAC Examination Appeal Amendments
Length of Articles
Summer Student Recruitment Policy
Barristers and Solicitors Oath
Queen's University proposal for joint LLB and Master of Public Administration Degree

For Information

Aegrotat Standing Pass
Government OSA Approval for Shorter BAC

POLICY

Ten Year Rule (By-Law 12)

Issue

1. Convocation approved a new comprehensive policy to modify the Ten Year Rule (Former Regulation 708, Sections 23 (7) (8) as it applies to applicants who have graduated from a Canadian university.

2. Subsequently, the Committee was of the opinion that By-Law 12 should be applicable also to applicants to the bar admission course with certificates from the National Committee on Accreditation. The Committee requests that Convocation:
   1. approve the policy to apply the ten year rule to NAC applicants, and
   2. pass the motion to approve By-Law 12 found at APPENDIX A.

Background

3. Former Regulation 708 stipulated that students-at-law must complete the bar admission course within ten years of graduation from an approved Canadian law school. In theory, the former Legal Education Committee could modify this requirement only under exceptional circumstances.

4. This regulation was not incorporated in the new by-laws made under the *1999 Amended Law Society Act* since the rule was consistently waived, usually unconditionally, because the consequences of the rule were very onerous. The only way to comply was to re-take a law degree. As well, no other Canadian law society has a comparable regulation that restricted entrance to law graduates.

5. On September 24, 1999 Convocation approved a comprehensive policy and guidelines developed by the Committee for an amended Ten Year Rule incorporated into Draft By-Law 12, (3).

6. The approved policy stipulates that if more than ten years has elapsed since an applicant to the bar admission course has graduated from an approved law school, the Director of Education may require as a condition for admission to the bar admission course, and following approved guidelines, that applicants complete such further studies as the Director considers necessary to ensure that their knowledge and skills are sufficiently current.

7. On January 13, 2000 the Committee proposed a further policy change to Draft By-Law 12 that would make it applicable to applicants with certificates from the National Committee on Accreditation.

Decision for Convocation

8. Is it the wish of Convocation that the ten year rule apply to applicants to the bar admission course with certificates from the National Committee on Accreditation?

9. If Convocation is in agreement with the proposed policy, the Committee requests that it approve the motion to pass By-Law 12 (3) at APPENDIX A.

Retroactive Approval of Principals

Issue

10. Currently, the Head of Articling has the mandate to grant bar admission course students retroactive approval of articling positions. However, there is no clear mandate for granting retroactive approval to articling principals. Convocation is asked to approve the Committee's recommendation to allow the Head of Articling to grant retroactive approval to articling principals.

Background

11. Students are required to submit the "*Articles of Clerkship*" form in order to obtain approval of their articling position. This form is at APPENDIX B

12. In the past, from time to time, due to administrative delays in processing applications, the Education Department has retroactively approved principals for relatively short periods of time.

13. These situations arise when both student and principal are ignorant of the requirement to have the principal approved, or when the principal is unaware of the need for the approval and the student assumes that the principal will complete all the necessary paperwork.

Requirements for Principals

14. Section 4 of the *Proposals for Articling Reform* adopted by Convocation in October, 1990 sets out the requirements necessary for articling principal and states:

> *The Articling Sub-Committee (now the Admissions Committee) should establish criteria for articling principals, particularly in the areas of experience, competence and ethical standards.*
> *In determining whether a member may serve as an articling principal, the Articling Sub-Committee should have regard to all of the circumstances, and place particular reliance upon the following three factors: experience, competence and ethical standards.*

15. Section 6.2 of the *Proposals for Articling Reform* further states:

> *The principal and student must discuss and file the Education Plan with the Articling Director (now the Head of Articling) within two weeks of the student's commencement of articles.*

16. The *Articling Handbook for Principals and Students (1999 Edition) page 5,* summarizes the eligibility criteria for principals:

> *Members of the profession wishing to serve as articling principals must apply in advance of the commencement of the student's articles. Application forms are available from the Articling Offices. Applications are considered on the basis of experience, competence and ethical standards. To be a principal, a member must have been actively engaged in the practice of law for three of the five years immediately preceding the commencement of the relevant articling period. All relevant information, including records maintained by the Law Society in connection with members' errors and omissions insurance claims, professional standards and discipline, is considered. Prospective principals, with a significant negative history in these areas may be denied the privilege of acting as an articling principal for a period of time.*
>
> *Principals are required to draft education plans setting out the experience they expect to provide to students in a number of skills areas. Mid-term and end-of-term evaluations provide students and principals with an opportunity to assess the quality of the articling experience against the objectives set out in the education plan.*

Past Admissions Committee Decision

17. On October 8, 1998, the Admissions and Equity Committee (now the Admissions Committee) made the following decision:

> *That the (Acting) Articling Director:*
> 1. *continue the practice of requiring requests for retroactive acceptance of articles to be made in writing by the student but, in future,*
> 2. *refer to the Committee only those cases where the (Acting) Articling Director's recommendation is not to grant the retroactive credit, and*
> 3. *grant retroactive credit on behalf of the Committee in appropriate cases*
>
> *Staff is directed to track increases in these requests and report back to the Committee any systemic problems that may become apparent.*

18. The above decision refers only to the retroactive approval of articling positions and remains silent on the issue of granting principals retroactive approval.

The Committee's recommendation

19. The Committee recommends to Convocation that the Head of Articling:

1. Be given the authority to grant retroactive approvals of principals if the eligibility requirements for principals of experience, competence and ethical standards are met as per the *Proposals for Articling Reform,* and

2. Refer to the Committee only those cases where the recommendation of the Head of Articling is not to grant the retroactive approval.

Decision for Convocation

20. Convocation has the following options:

1. Approve the Committee's recommendation as set in Paragraph 20.

2. Reject the Committee's recommendation.

Summer Student Recruitment Policy

Issue

21. Thirteen large Toronto law firms requested that the Law Society change the *Procedures Governing Recruitment of Second Year Law Students for Summer Positions* to allow Toronto firms to conduct on-campus interviews.

22. Toronto firms are not allowed to conduct on-campus interviews until November "interview week". However, firms outside Toronto, notably, US firms are not thus restricted.

Background

23. On May 1, 2000, thirteen larger Toronto law firms requested that Toronto law firms be allowed to conduct on-campus interviews of second year law students for summer jobs. They presented two main reasons for the request: (See letter at APPENDIX C.)

1. US firms are recruiting students as early as September, whereas Toronto firms can only interview in November. In this way, top candidates are given US offers before they have had a chance to receive Toronto offers.

2. Due to the short interview time currently allowed (2 ½ days), Toronto firms are not able to interview a wide range of candidates.

24. The law firms requested that they be allowed the same opportunity as the US firms: to receive resumes from students in advance, to conduct on-campus interviews and select candidates to be interviewed further. The customary "interview week" at a later date would still be retained for second interviews.

25. Since the law schools expressed concern over the logistics of on-campus interviews, the Committee at its meeting of May 9, 2000, requested that the law firms and the law schools together reach an agreement on the planning details.

26. Following the Committee's suggestion, law firm representatives and law school representatives met on May 17 to address mutual concerns. As a result of this meeting, a new set of procedures was drafted by the firms. (See proposed procedures at APPENDIX D)

27. The Career Development Professionals at the six Ontario law schools invited all Toronto law firms with summer student programs and the Law Society for a meeting on June 2. The purpose of the meeting was to review the proposed procedures.

28. At the meeting of June 2, there was a consensus among the law schools and law firms to implement on-campus interviews in the Year 2000 for recruitment of second year law students for the Summer of 2001. The Head of Articling prepared an account of this meeting and it can be found with related documents at APPENDIX E.

The Committee's Recommendation

29. The Committee recommends the *Procedures Governing the Recruitment of Students for Summer 2001 Positions in the City of Toronto* that can be found at APPENDIX D which has been accepted by both law schools and the Toronto law firms involved.

Decision for Convocation

30. Convocation has the following options:

1. Approve the *Procedures Governing the Recruitment of Students for Summer 2001 Positions in the City of Toronto* as stated in APPENDIX D.

2. Reject the *Procedures.*

BAC Rescheduling Requests

Issue

31. The new model of the bar admission course allows students to complete the three-part course in a different order than the customary of: firstly, Phase One; then Articling followed by Phase Three.

32. The Department of Education seeks a change to Recommendation 11 of *The Proposals for Articling Reform* to allow the routine acceptance of the order of phases students choose and allow a broader number of staff to approve student choices.

Background

33. Recommendation 11 of the Proposals for Articling Reform, as amended June 21, 1991, sets out the following:

> "The twelve month articling period (Phase Two) should be completed consecutively between the one month teaching term (Phase One) and the three month teaching term (Phase Three). Exceptions to this policy are possible. Applications should be made to the Articling Director."

34. The approved bar admission course reform contains several "models" or schedules for completing the course, among these is the "Student's Choice Model" whereby students may alter the order in which they complete the different phases of study.

35. Recommendation 11 allows only the Articling Director to approve exceptions to the order in which students complete the different phases.

36. Currently, rescheduling requests are routinely granted for students who wish to take Phase One, Phase Three and then articling. Rescheduling request to defer Phase One are only exceptionally granted. Students are often required to communicate with both the Head of Articling and the Registrar in order to re-arrange entry into the different phases of the bar admission course, thus doubling discussions and resources.

37. The Committee concluded that permission to commence articling prior to the completion of Phase One (the skills phase) for both the current model and the approved new model of the bar admission course should continue to be granted only in exceptional cases, as approved by the Head of Articling.

The Committee's Recommendation

38. The Committee requests that Recommendation 11 of the *Proposals for Articling Reform* be amended to allow the following:

1. That the Head of Articling, the Registrar, or their designates may approve student requests for the scheduling of the phases of the current and the approved new model of the bar admission course;

Decision for Convocation

39. Convocation has the following options:

1. Approve the Committee's recommendation.

2. Reject the Committee's recommendation.

BAC Examination Appeal Amendments

Issue

40. The Department of Education proposed four amendments to the examination appeal process at the bar admission course. Three amendments were administrative and will be implemented by the Department. Only one proposed amendment would require a change in the examination appeal policy.

41. The proposed amendment to allow the examination appeal process to lower examination scores is the change requires Convocation's approval.

Background

42. On October 29, 1999, Convocation approved an examination appeal process that applies to bar admission course examinations.

43. The appeal process is applicable to a failed licensing examination paper. A student may appeal the assessment of the mark on one or more questions. The grounds for appeal must be based upon an error made in the marking of specific questions within an examination paper. The bar admission examination appeal process can be found at APPENDIX F (1) .

44. The examination appeal policy states that: "The mark on the examination will not be lowered as a result of the appeal."

45. The Department of Education recommends that as a result of the appeal process, lowering the score of specific questions be allowed, not the overall licensing examination score. This recommendation originated from the members on the appeal panel who are of the opinion that this proposed change would achieve a fairer appeal process.(See APPENDIX F (2) for Proposed Bar Admission Course Examination Appeal Process)

Proposed Amendments

46. Four main amendments were proposed:

1. Clarification that students cannot appeal marks in both original marking and re-grade marking because the re-grade marks given to an answer supercede original marks given.
2. Clarification on the items that may/should be submitted with the appeal
3. Administrative changes to assist in the prompt processing of appeals
4. Provision for the appeal panel to lower the marks on either a specific question or on the overall examination. (This would be a policy change.)

The Committee's Recommendation

47. The Committee recommends to Convocation to permit that, as a result of the appeal process, a mark may be lowered for particular questions only.

Decision for Convocation

48. Convocation has the following options:

1. Approve the Committee's recommendation which would allow, as a result of the examination appeal process, that a mark may be lowered for particular questions only.

2. Reject the Committee's recommendation

Length of Articles

Issue

49. On the request of the Articling Working Group, opinions on the length of articling were surveyed among articling coordinators and principals. On the basis of that survey, the Head of Articling and Placement recommends that the length of the articling term in the new model of the bar admission course remain at twelve months.

Background

50. The background information and survey results prepared by the Head of Articling can be found at APPENDIX G.

The Committee's recommendation

51. The Committee agreed with the recommendation of the Head of Articling to retain the present length of the articling term in the new model of the bar admission course at twelve months with up to four weeks vacation.

Decision for Convocation

52. Convocation has the following options:

1. Accept the Committee's recommendation retaining the present length of articling at twelve months.

2. Reject the Committee's recommendation.

Barristers and Solicitors Oath

Issue

53. Convocation is asked to review the proposed oath and recommend appropriate changes to subsection 6 (6) of By- Law 11.

Background

54. On May 9, 2000 the Committee reviewed the solicitor's oath and requested a review of both solicitor's and barrister's oaths with the aim of consolidating and renewing them.

Considerations

55. There are several considerations that may be helpful when reviewing a professional oath:

1. Definition: The Concise Oxford Dictionary defines an oath as a: "Solemn appeal to God or revered or dreaded person or object in witness that statement is true or promise shall be kept."

2. Social significance: An oath is a public statement that confirms an individual's intention to the community.
3. Professional symbol: A professional oath binds the individual to abide by the values, rules and conduct of a professional body and it is an important symbolic differentiation of professions from occupations.

4. Relevance: Because the oath is symbolic, it is intended to capture in an over-arching way the heart of a profession's values.

Oaths at other Canadian Law Societies

56. An analysis of the oaths of seven other Canadian Law Societies reveals the following:

1. Most use the word "swear"instead of "promise", with "affirm" as optional.

2. Attributes: The adverbs most used are: honestly, truly, faithfully, with integrity.

3. Main conduct promised: The conduct that most oaths include are: not to promote frivolous suits, and not to pervert the law/ to uphold the rule of law.

4. Other promised conduct include: not to seek to destroy any persons' property, to preserve inviolate the secrets entrusted unless authorized by law, execute all mandates entrusted, upholds the rights and freedoms of all persons, uphold the interest of the citizens,

5. The profession: Two law societies refer to the ethical standards and rules of the profession and one included the promise not to compromise the honour and dignity of the profession

6. Administration of Justice: Two law societies refer to the administration of justice: uphold the rights and freedoms of all persons, maintain a respectful attitude in word and deed toward those charged with the administration of justice.

7. Mention of Canada and Province: most oaths refer by name to the country and/or the province.

Existing Oaths

57. LSUC Solicitor's Oath:

"You also do sincerely promise and swear that you will truly and honestly conduct yourself in the practice of a solicitor according to the best of your knowledge and ability. So help you God."

58. LSUC Barrister's Oath:

"You are called to the Degree of Barrister-at-law to protect and defend the rights and interest of such citizens as may employ you. You shall conduct all cases faithfully and to the best of your ability. You shall neglect no one's interest nor seek to destroy anyone's property. You shall not be guilty of champerty or maintenance. You shall not refuse causes of complaint reasonably founded, nor shall you promote suits upon frivolous pretences. You shall not pervert the law to favour or prejudice anyone, but in all things shall conduct yourself truly and with integrity. In fine, the Queen's interest and the interest of citizens you shall uphold and maintain according to the constitution and law of

this Province. All this you do swear to observe and perform to the best of your knowledge and ability. So help you God."

Proposed Single Oath

59. After careful analysis of the former historical oaths at the Society, oaths of the other Canadian law societies, consultation with the Equity Advisor and feedback from knowledgeable members, the following renewed and consolidated oath is proposed:

"I promise and swear (or affirm) that I will honestly and diligently and to the best of my ability execute the duties of Barrister and Solicitor, abiding by the ethical standards and rules of the legal profession whose honour and dignity I will not compromise; that I will not promote suits upon frivolous pretences but in all things I shall conduct myself truly and with integrity; that I will uphold and seek to improve the administration of justice and will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of Ontario.

(Optional) So help me God. "

The Committee's recommendation

60. The Committee recommends that Convocation give its approval to the single barristers and solicitors oath at paragraph 60 and recommends changes to subsection 6 (6) of By- Law 11 to correspond with it.

Decision for Convocation

61. Convocation has the following options:

1. Accept the proposed single at paragraph 60 recommended by the Committee.

2. Reject the Committee's recommended oath.

Queen's University Program Approval Request

Issue

62. Dean Alison Harvison Young of the Faculty of Law At Queen's University submitted to the Committee a proposal for a coordinated LLB/Master of Public Administration Co-operative Program. (See APPENDIX H).

Background

63. Since the Fall of 1997, a joint LLB and Master of Industrial Relations Program has been provided at the Faculty of Law at Queen's University.

The Committee's mandate

64. Section 11 of By-Law 9 indicates that the Committee is to develop for Convocation's approval listings of courses and university recognized by the Society as meeting the requirements for admission to the Bar Admission Course.

The Committee's Recommendation

65. The Committee recommends that Convocation approve Queen's University joint LLB/MPA coordinated program.

Decision for Convocation

66. Convocation has the following options:

1. Accept the Committee's recommendation to approve the proposal of Queen's University Faculty of Law as outlined at APPENDIX H; or

2. Reject the proposal.

INFORMATION

Aegrotat Standing Pass

Issue

67. The Education Department requested that the Committee review the aegrotat standing pass and for that purpose prepared the document entitled *Review of the Aegrotat Standing in Phase Three of the Bar Admission Course* at paragraph 73, sub-paragraphs 1 to 19.

Background

68. On November 11, 1998, Convocation approved that the passing mark at the Bar Admission Course be in the discretion of the Director of Education subject to the oversight of the Admissions and Equity Committee and that it would apply to the examinations for that year only.

69. On January 22, 1999 Convocation was informed that Department of Education applied an aegrotat standing calculation to the bar admission course. If a student has failed one or two examinations, and if the combined percentage under the passing standard is no more than 10%, then a pass was granted in those one or two failed examinations.

70. On June 25, 1999 Convocation approved a motion that made the qualified staff of the Department of Education responsible and accountable for implementing Convocation's educational policies based on the approved definition of the competent lawyer by setting of the passing score.

71. On September 24, 1999 the Admissions Committee reviewed and affirmed the Director of Education's plans for the continued application of the aegrotat pass for the next bar admission course.

Review Requested

72. At its meeting of May 9,2000 the Education Department submitted the following document:

Review of the Aegrotat Standing in Phase Three of the Bar Admission Course

1. The Education Department requested that the Admission Committee provide its annual review of the aegrotat standing and advise staff of any changes it would make to the current academic practice and procedure.

2. Statistical data on the aegrotat standing and how it assisted students in completing the Phase Three requirements of 41st Bar Admission Course - September 1999 to April 2000 is provided in APPENDIX I.

3. The practice of "aegrotat standing" was implemented in Phase Three 1998 to relieve students of having to rewrite one or two examinations when the student's overall performance in the eight Phase Three examinations met the criteria established for "aegrotat standing". The criteria was based on a student's ability to pass, at a minimum, six of the eight courses required. When a student had failed one or two examinations and the failed grade(s) (converted to 100%) resulted in a difference of 10% or less after being subtracted from the examination(s) passing grade(s) (converted to 100%), the aegrotat standing was granted and the student received a passing grade for the failed course(s).

4. In 1998-1999 (September 1998 to July 1999), 266 BAC students failed one or two examinations. Of this 266 total, 195 (73.3%) were granted aegrotat standing. The 195 students granted the standing represents 16.7% of the total enrolment of 1,165 for 1998. Also, 45 (16.9%) students rewrote their failed examination(s) and passed without the benefit of the aegrotat assessment. There was no appeal procedure practice in place. (APPENDIX J)

5. In 1999-2000 (September 1999 to April 2000), 361 BAC students failed one or two examinations. Of this 361 total, 245(67.9%) were granted aegrotat standing. The 245 students granted the standing represents 20.7% of the total enrolment of 1185 for 1999. There were 66(18.3%) students who rewrote their failed examination(s) and passed without the benefit of the aegrotat assessment. (APPENDIX J)

6. The introduction of the appeal process in October 1999 assisted students in attaining aegrotat standing and/or passing without the aegrotat assessment. (APPENDIX J)

Main Questions to Review

7. Should the practice and procedure of the aegrotat standing be continued in Phase Three 2000?

8. Should the assessment criteria for aegrotat standing in its present format be maintained or adjusted to a different criteria?

9. Does the title "aegrotat standing" appropriately define the practice or should the title be changed to more accurately identify the practice if it is maintained?

10. Should all courses be considered in the assessment for aegrotat standing or are there exceptions where one or more courses must be successfully completed by all students and are not eligible for the aegrotat assessment?

Options Considered by the Committee

11. Maintain the aegrotat standing process in its present form for Phase Three 2000 with no changes.

12. Eliminate the aegrotat standing as an assessment process.

13. Maintain the present established criteria for aegrotat standing at 10% for one or two failed examinations in Phase Three.

14. Change the criteria to a different level for assessment purposes. For example, consideration could be given to changing the measurement for standing from 10% to 5% for one or two failed examinations, or use 5% or 10% and allow for only one failed examination so that the student would have to pass seven of the eight examinations.

15. A change could be considered so that the criteria for the BAC students and the Transfer students who only write six of the eight examinations could differ.

16. Maintain the present title of "aegrotat standing"

17. The term "aegrotat" standing is normally used in situations where a student has failed to write an examination or has failed an examination and credit is granted for medical, compassionate or extenuating reasons or circumstances. Titles which more accurately describe our aegrotat practice and procedure for a student's overall performance in Phase These include: Cumulative Adapted Pass, Cumulative Adjudicated Pass, Cumulative Adjusted Pass, Cumulative Aggregated Pass, Cumulative Assessed Pass, Cumulative Assisted Pass, and Cumulative Relief Pass. The Department of Education recommends the following title change for the "aegrotat standing": Cumulative Adjusted Pass

18. Maintain the present eight substantive courses eligible for aegrotat assessment and the six for transfer candidates.

19. Consider any course(s) which all students must pass in order to qualify for the aegrotat standing. For example, Professional Responsibility focuses on the code of conduct for practitioner (ethics, client/colleague relationships, protecting the interest of the public, stressing practice skills/management competencies) and may be a course that all students must pass without relief.

Past Committee Decision

74. On May 9, 2000 the Admissions Committee decided to recommend to Convocation that the aegrotat would apply to all bar admission course subjects. At its meeting of June 8, 2000, the Committee changed its original recommendation to exclude Professional Responsibility from the aegrotat pass calculation.

The Committee's Decision

75. The Committee recommended to the Director of Education that the aegrotat standing pass should remain for the next bar admission course with three amendments:
    1. Its name should be changed to Cumulative Adjusted Pass.
    2. The standard should be raised to 5% from the current 10%.
    3. It should apply to all bar admission course subjects excluding Professional Responsibility.

Government OSA Approval for Shorter BAC

Issue

76. On March 28, 2000, Convocation approved a recommendation of the Committee to reduce the duration of Phase Three of the bar admission course from 12 weeks to 10 weeks.

77. The concern has since arisen that students at the bar admission course may not be eligible for Ontario Student Assistant Program (OSA) loans as these are not available for courses shorter than 12 weeks. (See OSA Eligibility Criteria at APPENDIX K).

78. The Registrar has written a letter to the appropriate branch of the Ministry of Education and Training requesting that the bar admission course be considered in its totality not in terms of its phases, thus it could be defined as an 18 week course. (See a copy of the letter at APPENDIX L)

APPENDIX A
THE LAW SOCIETY OF UPPER CANADA

BY-LAW 12
[BAR ADMISSION COURSE]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2000

MOVED BY

SECONDED BY

THAT By-Law 12 made by Convocation on January 28, 1999 and amended by Convocation on March 26, 1999 and December 10, 1999 be further amended as follows:

1. Section 3 of the By-Law is revoked and the following substituted:

Academic requirements for admission to Bar Admission Course

3. (1) A person may be admitted to the Bar Admission Course as a student-at-law if he or she has,

(a) not more than ten years before his or her application for admission to the Bar Admission Course as a student-at-law,

(i) graduated from a law course that is offered by a university in Canada and is approved by Convocation, or

(ii) received a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans; or

(b) (i) more than ten years before his or her application for admission to the Bar Admission Course as a student-at-law,

(A) graduated from a law course that is offered by a university in Canada and is approved by Convocation, or

(B) received a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans, and

(ii) completed such further studies as may be required by the director.

Requiring completion of further studies

(2) For the purposes of subclause (1) (b) (ii), in determining whether to require a person to complete further studies, and in determining what studies to require the person to complete, the director shall consider the following factors:

1. The period of time that has passed since the person graduated from the law course or received the certificate of qualification.

2. The extent to which the person has made use of legal skills and knowledge since he or she graduated from the law course or received the certificate of qualification.

3. The extent to which the person has engaged in activities that would enhance his or her ability to practice law in a competent manner if the person were to become a member.

Nature of further studies

(3) For the purposes of subclause (1) (b) (ii), the director may require a person to complete only studies that are related to the content of the Bar Admission Course.

Études exigées en vue de l'admission au Cours de formation professionnelle

3. (1) Est admissible au Cours de formation professionnelle l'étudiante ou l'étudiant au barreau qui :

a) s'il s'est écoulé dix ans ou moins depuis la présentation de sa demande d'admission au Cours à ce titre, est titulaire :

(i) soit d'un diplôme en droit, reconnu par le Conseil, d'une université canadienne,

(ii) soit d'un certificat de compétence délivré par le Comité national sur les équivalences des diplômes de droit, constitué par la Fédération des professions juridiques du Canada et le Conseil des doyens et des doyennes des facultés de droit du Canada;

b) (i) s'il s'est écoulé plus de dix ans depuis la présentation de sa demande d'admission au Cours à ce titre, d'une part, est titulaire :

(A) soit d'un diplôme en droit, reconnu par le Conseil, d'une université canadienne,

(B) soit d'un certificat de compétence délivré par le Comité national sur les équivalences des diplômes de droit, constitué par la Fédération des professions juridiques du Canada et le Conseil des doyens et des doyennes des facultés de droit du Canada,

(ii) d'autre part, a terminé les études supplémentaires qu'exige le directeur ou la directrice.

Études supplémentaires

(2) Pour l'application du sous-alinéa (1) b) (ii), le directeur ou la directrice tient compte des facteurs suivants en prenant la décision d'exiger qu'une personne termine des études supplémentaires et en précisant les études qu'elle doit terminer :

1. Le délai qui s'est écoulé depuis que la personne a reçu son diplôme en droit ou son certificat de compétence.

2. La mesure dans laquelle la personne s'est servie de ses compétences et de ses connaissances juridiques depuis qu'elle a reçu son diplôme en droit ou son certificat de compétence.

3. La mesure dans laquelle la personne s'est livrée à des activités susceptibles de rehausser sa capacité d'exercer la profession juridique avec compétence si elle devenait membre.

Nature des études supplémentaires

(3) Pour l'application du sous-alinéa (1) b) (ii), le directeur ou la directrice peut exiger qu'une personne ne termine que des études liées au contenu du Cours de formation professionnelle.

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

(1) Copy of the Articles of Clerkship form. (Appendix B)

(2) Copy of a letter from 13 of the larger Toronto law firms to the Law Society dated May 1, 2000 re: Procedures Governing Recruitment of Second Year Students for Summer Positions in Toronto. (Appendix C)

(3) A copy of proposed set of procedures re: recruitment of second year law students for summer positions drafted by the Toronto law firms. (Appendix D)

(4) Copy of the Summary of the CLCDN Meeting held on June 2, 2000. (Appendix E)

(5) Copy of the Bar Admission Examination Appeal Process. (As approved by Convocation on October 29, 1999). (Appendix F (1))

(6) Copy of Proposed Bar Admission Course Examination Appeal Process. (Appendix F (2))

(7) Background information and survey results prepared by the Head of Articling. (Appendix G)

(8) Copy of a proposal for a coordinated LLB/Master of Public Administration Cooperative Program from Dean Alison Harvison Young. (Appendix H)

(9) Copy of statistical data on the aegrotat standing - 41st Bar Admission Course Results - December 1999 to April 2000. (Appendix I)

(10) Copy of the 41st Bar Admission Course Examination Results. (Appendix J)

(11) Copy of the OSA Eligibility Criteria. (Appendix K)

(12) Copy of a letter from Mr. Roman Woloszczuk, Registrar, Bar Admission Course to Kelly Webb Bonisteel, Ministry of Education and Training dated May 17, 2000 re: Approval of the New Bar Admission Course. (Appendix L)

Re: Ten Year Rule

It was moved by Mr. Millar, seconded by E. Ducharme that the ten year rule apply to applicants to the bar admission course with certificates from the National Committee on Accreditation and that By-Law 23 (3) be approved.

Carried

Re: Retroactive Approval of Principals

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the Head of Articling be given the authority to grant retroactive approval of principals if the eligibility requirements of experience, competence and ethical standards for principals are met as per the Proposals for Articling Reform and refer to the Committee only those cases where the recommendation of the Head of Articling is not to grant the retroactive approval.

Carried

Re: Summer Student Recruitment Policy

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the Procedures Governing the Recruitment of Students for Summer 2001 Positions in the City of Toronto found at Appendix D of the Report be approved.

Carried

Re: BAC Rescheduling Requests

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that Recommendation 11 of the Proposals for Articling Reform be amended to allow that the Head of Articling, the Registrar, or their designates may approve new requests for the scheduling of the phases of the current and the approved new model of the bar admission course.

Carried

Re: BAC Examination Appeal Amendments

It was moved by Mr. Millar, seconded by Mr. E. Ducharme to permit that, as a result of the appeal process, a mark may be lowered for particular questions only.

Carried

Re: Length of Articles

The item re: Length of Articles was referred back to the Committee.

Re: Barristers and Solicitors Oath

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the single barristers and solicitors oath as set out in paragraph 59 be approved and that By-Law 11 subsection 6 (6) be amended accordingly.

The item re: Barristers and Solicitors Oath was deferred to the September Convocation.

Re: Queen's University Program Approval Request

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the Queen's University joint LLB/MPA coordinated program be approved.

The item Re: Queen's University Program was deferred to June 23rd Convocation.

FINAL REPORT OF THE TASK FORCE ON REVIEW OF THE RULES OF PROFESSIONAL CONDUCT

Mr. MacKenzie presented the proposed revised Rules of Professional Conduct for adoption.

Report to Convocation
June 23, 2000

Final Report of the Task Force on
Review of the Rules of Professional Conduct -
Rules Adoption

Purpose of Report: Decision

1. On June 2, 2000, Convocation completed the debate on the proposed revised Rules of Professional Conduct ("the rules"), based on the April 28, 2000 draft of the rules prepared by the Task Force on Review of the Rules of Professional Conduct ("the Task Force"), its report and two addendums to the report.

2. The Task Force is now requesting Convocation to:
   a. Adopt the rules[1] appearing in this report, which incorporate all amendments made by Convocation on May 25 and June 2, 2000 to the April 28 draft and which have been subject to a grammatical review by the Task Force's drafter, Paul Perell, and
   b. Choose a date on which the rules are effective.

3. With respect to b. above, the Task Force suggests that the date be November 1, 2000 to allow time for the following to occur:
   a. French translation of the rules;
   b. Publication and distribution of the rules to all members of the Law Society, as agreed upon by Convocation last year;
   c. A communications "roll-out" respecting the rules.

[1]Subsections 15(2) and (3) of By-Law 9 [Committees] read:
(2) Except when Convocation has established a committee other than a standing committee to prepare rules of professional conduct, subject to the approval of Convocation, the Professional Regulation Committee may prepare rules of professional conduct.
(3) Despite subsection (2), Convocation may at any time adopt rules of professional conduct. (Emphasis added)

4. The Task Force is of the view that particularly with respect to c. above, it is essential that the members of the Society receive the rules sufficiently in advance of the effective date so that they may have an opportunity to familiarize themselves with the rules.

DECISION FOR CONVOCATION

5. Convocation is requested to adopt the proposed revised Rules of Professional Conduct contained in this report as the Law Society's Rules of Professional Conduct and to fix the effective date for the rules as November 1, 2000.

Task Force on Review of the

Rules of Professional Conduct

Final Draft
June 23, 2000

(Includes matters approved by Convocation on May 25 and June 2, 2000)

RULES OF PROFESSIONAL CONDUCT

RULE 1 - CITATION AND INTERPRETATION

1.01 CITATION

1.01 These rules may be cited as the *Rules of Professional Conduct.*

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,

"associate" includes:

(a) a member who is an employee of a law firm; and

(b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law;

"client" includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work;

Commentary:

A solicitor and client relationship is often established without formality. For example, an express retainer or remuneration is not required for a solicitor and client relationship to arise. Also, in some circumstances, a lawyer may have legal and ethical responsibilities similar to those arising from a solicitor and client relationship. For example, a lawyer may meet with a prospective client in circumstances that impart confidentiality, and, although no solicitor and client relationship is ever actually established, the lawyer may have a disqualifying conflict of interest if he or she were later to act against the prospective client. It is, therefore, in a lawyer's own interest to carefully manage the establishment of a solicitor and client relationship.

"conduct unbecoming a barrister or solicitor" means conduct in a lawyer's personal or private capacity that tends to bring discredit upon the legal profession including, for example:

(a) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;

(b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another; or

(c) engaging in conduct involving dishonesty;

Commentary:

Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer, the Society may be justified in taking disciplinary action.

Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

"consent" means:

(a) a consent in writing, provided that where more than one person consents, each may sign a separate document recording his or her consent, or

(b) an oral consent, provided that each person giving the oral consent receives a separate letter recording his or her consent;

"independent legal advice" means a retainer where:

(a) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction;

(b) the client's transaction involves doing business with

(i) another lawyer,

(ii) a corporation or other entity in which the other lawyer has an interest other than a corporation or other entity whose securities are publicly traded, or

(iii) a client of the other lawyer;

(c) the retained lawyer has advised the client that the client has the right to independent legal representation;

(d) the client has expressly waived the right to independent legal representation and has elected to receive no legal representation or legal representation from the other lawyer;

(e) the retained lawyer has explained the legal aspects of the transaction to the client, who appeared to understand the advice given; and

(f) the retained lawyer informed the client of the availability of qualified advisers in other fields who would be in a position to give an opinion to the client as to the desirability or otherwise of the proposed investment from a business point of view;

Commentary:

Where a client elects to waive independent legal representation but to rely on independent legal advice only, the retained lawyer has a responsibility that should not be lightly assumed or perfunctorily discharged.

"independent legal representation" means a retainer where:

(a) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction; and

(b) the retained lawyer will act as the client's lawyer in relation to the matter;

" interprovincial law firm" means a law firm that carries on the practice of law in more than one province or territory of Canada;

"law firm" includes one or more members practising

(a) in a sole proprietorship,

(b) in a partnership,

(c) as a clinic under the *Legal Aid Services Act*,

(d) in a government, a Crown corporation, or any other public body, or

(e) in a corporation or other body;

"lawyer" means a member of the Society and includes a law student registered in the Society's pre-call training program;

"member" means a member of the Society and includes a law student registered in the Society's pre-call training program;

"professional misconduct" means conduct in a lawyer's professional capacity that tends to bring discredit upon the legal profession including:

(a) violating or attempting to violate one of the rules in the *Rules of Professional Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws;

(b) knowingly assisting or inducing another lawyer to violate or attempt to violate the rules in the *Rules of Professional Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws;

(c) knowingly assisting or inducing a non-lawyer partner or associate of a multi-discipline practice to violate or attempt to violate the rules in the *Rules of Professional Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws;

(d) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property;

(e) engaging in conduct that is prejudicial to the administration of justice;

(f) stating or implying an ability to influence improperly a government agency or official; or

(g) knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

"Society" means The Law Society of Upper Canada;

"tribunal" includes courts, boards, arbitrators, mediators, administrative agencies, and bodies that resolve disputes, regardless of their function or the informality of their procedures.

1.03 INTERPRETATION

Standards of the Legal Profession

1.03 (1) These rules shall be interpreted in a way that recognizes that:

(a) a lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public, and other members of the profession honourably and with integrity;

(b) a lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario;

(c) a lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations, and institutions;

(d) the rules are intended to express to the profession and to the public the high ethical ideals of the legal profession;

(e) the rules are intended to specify the bases on which lawyers may be disciplined; and

(f) rules of professional conduct cannot address every situation, and a lawyer should observe the rules in the spirit as well as in the letter.

General Principles

(2) In these rules, words importing the singular number include more than one person, party, or thing of the same kind and a word interpreted in the singular number has a corresponding meaning when used in the plural.

RULE 2 - RELATIONSHIP TO CLIENTS

2.01 COMPETENCE

Definitions

2.01 (1) In this rule,

"competent lawyer" means a lawyer who has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client including:

(a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;

(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client on appropriate courses of action;

(c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including:

(i) legal research,
(ii) analysis,
(iii) application of the law to the relevant facts,
(iv) writing and drafting,
(v) negotiation,
(vi) alternative dispute resolution
(vii) advocacy, and
(viii) problem-solving ability;

(d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client;

(e) performing all functions conscientiously, diligently, and in a timely and cost-effective manner;

(f) applying intellectual capacity, judgment, and deliberation to all functions;

(g) complying in letter and in spirit with the *Rules of Professional Conduct*;

(h) recognizing limitations in one's ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;

(i) managing one's practice effectively;

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and

(k) adapting to changing professional requirements, standards, techniques, and practices.

Commentary

As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with legal matters to be undertaken on the client's behalf.

A lawyer who is incompetent does the client a disservice, brings discredit to the profession, and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

A lawyer should not undertake a matter without honestly feeling competent to handle it or being able to become competent without undue delay, risk, or expense to the client. This is an ethical consideration and is to be distinguished from the standard of care that a tribunal would invoke for purposes of determining negligence.

> *A lawyer must be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task. If consulted in such circumstances, the lawyer should either decline to act or obtain the client's instructions to retain, consult, or collaborate with a lawyer who is competent for that task. The lawyer may also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, in such a situation, the lawyer should not hesitate to seek the client's instructions to consult experts.*

A lawyer should clearly specify the facts, circumstances, and assumptions upon which an opinion is based. Unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the lawyer should so state in the opinion.

A lawyer should be wary of bold and confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

In addition to opinions on legal questions, the lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, policy, or social implications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, where and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

In a multi-discipline practice, a lawyer must be particularly alert to ensure that the client understands that he or she is receiving legal advice from a lawyer supplemented by the services of a non-lawyer. If other advice or service is sought from non-lawyer members of the firm, it must be sought and provided independently of and outside the scope of the retainer for the provision of legal services and will be subject to the constraints outlined in the relevant by-laws and regulations governing multi-discipline practices. In particular, the lawyer should ensure that such advice or service of non-lawyers is provided from a location separate from the premises of the multi-discipline practice.

Whenever it becomes apparent that the client has misunderstood or misconceived the position or what is really involved, the lawyer should explain, as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.

The requirement of conscientious, diligent, and efficient service means that a lawyer should make every effort to provide service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

Competence

(2) A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary:

This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule.

Incompetent professional practice may give rise to disciplinary action under this rule.

In addition to this rule, the Law Society Act provides that the Society may conduct a review of a member's practice to determine if the member is meeting standards of professional competence. A review will be conducted in circumstances defined in the Society's by-laws.

A member may also be subject to a hearing at which it will be determined whether the member is failing or has failed to meet standards of professional competence.

The Act provides that a member fails to meet standards of professional competence if there are deficiencies in (1) the member's knowledge, skill, or judgment, (2) the member's attention to the interests of clients, (3) the records, systems, or procedures of the member's practice, or (4) other aspects of the member's practice, and the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

2.02 QUALITY OF SERVICE

Honesty and Candour

(1) When advising clients, a lawyer shall be honest and candid.

Commentary:

The lawyer's duty to the client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law, and the lawyer's own experience and expertise.

The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

Encouraging Compromise or Settlement

(2) A lawyer shall advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and shall discourage the client from commencing useless legal proceedings.

(3) The lawyer shall consider the use of alternative dispute resolution (ADR) for every dispute, and, if appropriate, the lawyer shall inform the client of ADR options and, if so instructed, take steps to pursue those options.

Threatening Criminal Proceedings

(4) A lawyer shall not advise, threaten, or bring a criminal or quasi-criminal prosecution in order to secure a civil advantage for the client.

Dishonesty or Fraud by Client

(5) When advising a client, a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or instruct the client on how to violate the law and avoid punishment.

Commentary:

A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client.

A bona fide test case is not necessarily precluded by subrule 2.02(5) and, so long as no injury to the person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.

Client Under a Disability

(6) When a client's ability to make decisions is impaired because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal lawyer and client relationship.

Commentary:

A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions, however, depends on such factors as his or her age, intelligence, experience, and mental and physical health, and on the advice, guidance, and support of others. Further, a client's ability to make decisions may change, for better or worse, over time. When a client is or comes to be under a disability that impairs his or her ability to make decisions, the impairment may be minor or it might prevent the client from having the legal capacity to give instructions or to enter into binding legal relationships. Recognizing these factors, the purpose of this rule is to direct a lawyer with a client under a disability to maintain, as far as reasonably possible, a normal lawyer and client relationship.

A lawyer with a client under a disability should appreciate that if the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, then the lawyer may need to take steps to have a lawfully authorized representative appointed, for example, a litigation guardian, or to obtain the assistance of the Office of the Public Guardian and Trustee or the Office of the Children's Lawyer to protect the interests of the client. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned.

Medical-Legal Reports

(7) A lawyer who receives a medical-legal report from a physician or health professional that is accompanied by a proviso that it not be shown to the client shall return the report immediately to the physician or health professional unless the lawyer has received specific instructions to accept the report on this basis.

Commentary:

The lawyer can avoid some of the problems anticipated by the rule by having a full and frank discussion with the physician or health professional, preferably in advance of the preparation of a medical-legal report, which discussion will serve to inform the physician or health professional of the lawyer's obligation respecting disclosure of medical-legal reports to the client.

(8) A lawyer who receives a medical-legal report from a physician or health professional containing opinions or findings that if disclosed might cause harm or injury to the client shall attempt to dissuade the client from seeing the report but, if the client insists, the lawyer shall produce the report.

(9) Where a client insists on seeing a medical-legal report about which the lawyer has reservations for the reasons noted in subrule (8), the lawyer shall suggest that the client attend at the office of the physician or health professional to see the report in order that the client will have the benefit of the expertise of the physician or health professional in understanding the significance of the conclusion contained in the medical-legal report.

Title Insurance in Real Estate Conveyancing

(10) A lawyer shall assess all reasonable options to assure title when advising a client about a real estate conveyance and shall advise the client that title insurance is not mandatory and is not the only option available to protect the client's interests in a real estate transaction.

Commentary:

A lawyer should advise the client of the options available to protect the client's interests and minimize the client's risks in a real estate transaction. The lawyer should be cognizant of when title insurance may be an appropriate option. Although title insurance is intended to protect the client against title risks, it is not a substitute for a lawyer's services in a real estate transaction.

The lawyer should be knowledgeable about title insurance and discuss with the client the advantages, conditions, and limitations of the various options and coverages generally available to the client through title insurance. Before recommending a specific title insurance product, the lawyer should be knowledgeable about theproduct and take such training as may be necessary in order to acquire the knowledge.

(11) A lawyer shall not receive any compensation, whether directly or indirectly, from a title insurer, agent or intermediary for recommending a specific title insurance product to his or her client.

(12) A lawyer shall disclose to the client that no commission or fee is being furnished by any insurer, agent, or intermediary to the lawyer with respect to any title insurance coverage.

Commentary:

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance of any hidden fees by the lawyer, including the lawyer's law firm, any employee or associate of the firm, or any related entity.

(13) If discussing TitlePlus insurance with the client, a lawyer shall fully disclose the relationship between the legal profession, the Society, and the Lawyers' Professional Indemnity Company (LPIC).

2.03 CONFIDENTIALITY

Confidential Information

2.03 (1) A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

Commentary:

A lawyer cannot render effective professional service to the client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express

request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

This rule must be distinguished from the evidentiary rule of lawyer and client privilege concerning oral or documentary communications passing between the client and the lawyer. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.

A lawyer owes the duty of confidentiality to every client without exception and whether or not the client is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences have arisen between them.

Generally, the lawyer should not disclose having been consulted or retained by a particular person about a particular matter unless the nature of the matter requires such disclosure.

A lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another client and should decline employment that might require such disclosure.

A lawyer should avoid indiscreet conversations, even with the lawyer's spouse or family, about a client's affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to the lawyer. Apart altogether from ethical considerations or questions of good taste, indiscreet shop-talk between lawyers, if overheard by third parties able to identify the matter being discussed, could result in prejudice to the client. Moreover, the respect of the listener for lawyers and the legal profession will probably be lessened.

Although the rule may not apply to facts that are public knowledge, nevertheless, the lawyer should guard against participating in or commenting on speculation concerning the client's affairs or business.

In some situations, the authority of the client to disclose may be implied. For example, some disclosure may be necessary in court proceedings, in a pleading or other court document. Also, it is implied that a lawyer may, unless the client directs otherwise, disclose the client's affairs to partners and associates in the law firm and, to the extent necessary, to non-legal staff, such as secretaries and filing clerks. But this implied authority to disclose places the lawyer under a duty to impress upon associates, employees, and students the importance of non-disclosure (both during their employment and afterwards) and requires the lawyer to take reasonable care to prevent their disclosing or using any information that the lawyer is bound to keep in confidence.

A lawyer may have an obligation to disclose information under subrule 4.06(3)(Security of Court Facilities). If client information is involved in those situations, the lawyer should be guided by the provisions of Rule 2.03.

The rule prohibits disclosure of confidential information because confidentiality and loyalty are fundamental to the relationship between a lawyer and client and legal advice cannot be given and justice cannot be done unless clients have a large measure of freedom to discuss their affairs with their lawyers. However, there are some very exceptional situations identified in the following subrules where disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and cannot otherwise be prevented. These situations will be extremely rare, and, even in these situations, the lawyer should not disclose more information than is required.

Justified or Permitted Disclosure

(2) When required by law or by order of a tribunal of competent jurisdiction, a lawyer shall disclose confidential information, but the lawyer shall not disclose more information than is required.

(3) Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required.

Commentary:

A lawyer employed or retained to act for an organization, including a corporation, confronts a difficult problem about confidentiality when he or she becomes aware that the organization may commit a dishonest, fraudulent, criminal, or illegal act.

This problem is sometimes described as the problem of whether the lawyer should "blow the whistle" on his or her employer or client. Although the Rules of Professional Conduct make it clear that the lawyer shall not knowingly assist or encourage any dishonesty, fraud, crime, or illegal conduct (rule 2.02 (6)), it does not follow that the lawyer should disclose to the appropriate authorities an employer's or client's proposed misconduct. Rather, the general rule, as set out above, is that the lawyer shall hold the client's information in strict confidence, and this general rule is subject to only a few exceptions. Assuming the exceptions do not apply, there are, however, several steps that a lawyer should take when confronted with the difficult problem of proposed misconduct by an organization. The lawyer should recognise that his or her duties are owed to the organization and not to the officers, employees, or agents of the organization. The lawyer should therefore ask that the matter be reconsidered, and the lawyer should, if necessary, bring the proposed misconduct to the attention of a higher (and ultimately the highest) authority in the organization despite any directions from anyone in the organization to the contrary. If these measures fail, then it may be appropriate for the lawyer to resign in accordance with the rules for withdrawal from representation (rule 2.09).

(4) Where it is alleged that a lawyer or the lawyer's associates or employees are:

(a) guilty of a criminal offence involving a client's affairs;

(b) civilly liable with respect to a matter involving a client's affairs; or

(c) guilty of malpractice or misconduct,

a lawyer may disclose confidential information in order to defend against the allegations, but the lawyer shall not disclose more information than is required.

(5) A lawyer may disclose confidential information in order to establish or collect the lawyer's fees, but the lawyer shall not disclose more information than is required.

Literary Works

(6) If a lawyer engages in literary works, such as a memoir or an autobiography, the lawyer shall not disclose confidential information without the client's or former client's consent.

Commentary:

The fiduciary relationship between lawyer and client forbids the lawyer from using any confidential information covered by the ethical rule for the benefit of the lawyer or a third person or to the disadvantage of the client.

2.04 AVOIDANCE OF CONFLICTS OF INTEREST

Definition

2.04 (1) In this rule,

a "conflict of interest" or a "conflicting interest" means an interest

(a) that would be likely to affect adversely a lawyer's judgment on behalf of, or loyalty to, a client or prospective client, or

(b) that a lawyer might be prompted to prefer to the interests of a client or prospective client.

Commentary:

Conflicting interests include, but are not limited to, the financial interest of a lawyer or an associate of a lawyer, and the duties and loyalties of a lawyer to any other client, including the obligation to communicate information. For example, there would be a conflict of interest if a lawyer, or a family member, or a law partner had a personal financial interest in the client's affairs or in the matter in which the lawyer is requested to act for the client, such as a partnership interest in some joint business venture with the client.

Avoidance of Conflicts of Interest

(2) A lawyer shall not advise or represent more than one side of a dispute.

(3) A lawyer shall not act or continue to act in a matter when there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

Commentary:

A client or the client's affairs may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflict of interest.

A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.

As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf should not be subject to other interests, duties, or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs. In some instances, each client's case may gather strength from joint representation. In the result, the client's interests may sometimes be better served by not engaging another lawyer, for example, when the client and another party to a commercial transaction are continuing clients of the same law firm but are regularly represented by different lawyers in that firm.

While this subrule does not require that a lawyer advise the client to obtain independent legal advice about the conflicting interest , in some cases, especially those in which the client is not sophisticated or is vulnerable, the lawyer should recommend such advice to ensure that the client's consent is informed, genuine, and uncoerced.

Acting Against Client

(4) A lawyer who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved in or associated with the client in that matter:

(a) in the same matter,

(b) in any related matter, or

(c) save as provided by subrule (5), in any new matter, if the lawyer has obtained from the other retainer relevant confidential information

unless the client and those involved in or associated with the client consent.

Commentary:

It is not improper for the lawyer to act against a client in a fresh and independent matter wholly unrelated to any work the lawyer has previously done for that person and where previously obtained confidential information is irrelevant to that matter.

(5) Where a lawyer has acted for a former client and obtained confidential information relevant to a new matter, the lawyer's partner or associate may act in the new matter against the former client if:

(a) the former client consents to the lawyer's partner or associate acting, or

(b) the law firm establishes that it is in the interests of justice that it act in the new matter, having regard to all relevant circumstances, including

(i) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to the partner or associate having carriage of the new matter will occur,

(ii) the extent of prejudice to any party,

(iii) the good faith of the parties,

(iv) the availability of suitable alternative counsel, and

(v) issues affecting the public interest.

Commentary:

The term "client" is defined in rule 1.02 to include a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work. Therefore, if a member of a law firm has obtained from a former client confidential information that is relevant to a new matter, no member of the law firm may act against the former client in the new matter unless the requirements of subrule (5) have been satisfied. In its effect, subrule (5) extends with necessary modifications the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rule 2.05) to the situation of a law firm acting against a former client.

Joint Retainer

(6) Before a lawyer accepts employment from more than one client in a matter or transaction, the lawyer shall advise the clients that:

(a) the lawyer has been asked to act for both or all of them,

(b) no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned, and

(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Commentary:

Although this subrule does not require that, before accepting a joint retainer, a lawyer advise the client to obtain independent legal advice about the joint retainer, in some cases, especially those in which one of the clients is less sophisticated or more vulnerable than the other, the lawyer should recommend such advice to ensure that the client's consent to the joint retainer is informed, genuine, and uncoerced.

(7) Where a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

Commentary:

Although all the parties concerned may consent, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses.

(8) Where a lawyer has advised the clients as provided under subrules (6) and (7) and the parties are content that the lawyer act, the lawyer shall obtain their consent.

(9) Save as provided by subrule (10), where clients have consented to a joint retainer and an issue contentious between them or some of them arises, their lawyer shall:

(a) not advise them on the contentious issue, and

(b) refer the clients to other lawyers, unless

(i) no legal advice is required, and

(ii) the clients are sophisticated,

in which case, the clients may settle the contentious issue by direct negotiation in which the lawyer does not participate.

Commentary:

The rule does not prevent a lawyer from arbitrating or settling or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are not under any legal disability and who wish to submit the dispute to the lawyer.

Where, after the clients have consented to a joint retainer, an issue contentious between them or some of them arises, the lawyer is not necessarily precluded from advising them on non-contentious matters.

(10) Where clients consent to a joint retainer and also agree that if a contentious issue arises their lawyer may continue to advise one of them and a contentious issue does arise, the lawyer may advise the one client about the contentious matter and shall refer the other or others to another lawyer.

Prohibition Against Acting for Borrower and Lender

(11) Subject to subrule (12), a lawyer or two or more lawyers practising in partnership or association shall not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.

(12) Provided that there is no violation of this rule, a lawyer may act for or otherwise represent both lender and borrower in a mortgage or loan transaction if:

(a) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction;

(b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price;

(c) the lender is an institution that lends money in the ordinary course of its business;

(d) the consideration for the mortgage or loan does not exceed $50,000; or

(e) the lender and borrower are not at "arm's length" as defined in the *Income Tax Act* (Canada).

Multi-discipline Practice

(13) A lawyer in a multi-discipline practice shall ensure that non-lawyer partners and associates observe this rule for the legal practice and for any other business or professional undertaking carried on by them outside the legal practice.

Unrepresented Persons

(14) When a lawyer is dealing on a client's behalf with an unrepresented person, the lawyer shall:

(a) urge the unrepresented person to obtain independent legal representation;

(b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer; and

(c) make clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client and accordingly his or her comments may be partisan.

Commentary:

If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in this rule about joint retainers.

2.05 CONFLICTS FROM TRANSFER BETWEEN LAW FIRMS

Definitions

2.05 (1) In this rule:

"client" includes anyone to whom a member owes a duty of confidentiality, whether or not a solicitor-client relationship exists between them;

"confidential information" means information obtained from a client that is not generally known to the public;

Commentary:

The duties imposed by this rule concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.

"matter" means a case or client file but does not include general "know-how" and, in the case of a government lawyer, does not include policy advice unless the advice relates to a particular case.

Application of Rule

(2) This rule applies where a member transfers from one law firm ("former law firm") to another ("new law firm"), and either the transferring member or the new law firm is aware at the time of the transfer or later discovers that

(a) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents its client ("former client");

(b) the interests of those clients in that matter conflict; and

(c) the transferring member actually possesses relevant information respecting that matter.

(3) Subrules (4) to (7) do not apply to a member employed by the federal, a provincial, or a territorial Attorney General or Department of Justice who, after transferring from one department, ministry, or agency to another, continues to be employed by that Attorney General or Department of Justice.

Commentary:

The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification.

Lawyers and support staff - This rule is intended to regulate members of the Society and articled law students who transfer between law firms. It also imposes a general duty on members to exercise due diligence in the supervision of non-lawyer staff, to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the member's firm and confidences of clients of other law firms in which the person has worked.

Government employees and in-house counsel - The definition of "law firm" includes one or more members of the Society practising in a government, a Crown corporation, any other public body, and a corporation. Thus, the rule applies to members transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

Law firms with multiple offices - The rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm, and a legal aid program with many community law offices. The more autonomous each unit or office is, the easier it should be, in the event of a conflict, for the new firm to obtain the former client's consent or to establish that it is in the public interest that it continue to represent its client in the matter.

Law Firm Disqualification

(4) Where the transferring member actually possesses relevant information respecting the former client that is confidential and that, if disclosed to a member of the new law firm, may prejudice the former client, the new law firm shall cease its representation of its client in that matter unless

(a) the former client consents to the new law firm's continued representation of its client; or

(b) the new law firm establishes that it is in the interests of justice that it act in the matter, having regard to all relevant circumstances, including,

(i) the adequacy and timing of the measures taken to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur,

(ii) the extent of prejudice to any party,

(iii) the good faith of the parties,

(iv) the availability of suitable alternative counsel, and

(v) issues affecting the public interest.

Commentary:

The circumstances enumerated in subrule (4)(b) are drafted in broad terms to ensure that all relevant facts will be taken into account. While clauses (ii) to (iv) are self-explanatory, clause (v) addresses governmental concerns respecting issues of national security, cabinet confidences, and obligations incumbent on Attorneys General and their agents in the administration of justice.

A.5 For greater certainty, subrule (4) is not intended to interfere with the Attorney General or his or her counsel or agent (including those occupying the offices of Crown Attorney, Assistant Crown Attorney, or part-time Assistant Crown Attorney) of their constitutional and statutory duties and responsibilities.

Transferring Lawyer Disqualification

(6) Where the transferring member actually possesses relevant information respecting the former client but that information is not confidential information which, if disclosed to a member of the new law firm, may prejudice the former client,

(a) the member shall execute an affidavit or solemn declaration to that effect, and

(b) the new law firm shall

(i) notify its client and the former client, or if the former client is represented in that matter by a member, notify that member, of the relevant circumstances and its intended action under this rule, and

(ii) deliver to the persons referred to in (i) a copy of any affidavit or solemn declaration executed under (a).

(7) A transferring member described in the opening clause of subrule (4) or (6) shall not, unless the former client consents,

(a) participate in any manner in the new law firm's representation of its client in that matter; or

(b) disclose any confidential information respecting the former client.

(8) No member of the new law firm shall, unless the former client consents, discuss with a transferring member described in the opening clause of subrule (4) or (6) the new law firm's representation of its client or the former law firm's representation of the former client in that matter.

Determination of Compliance

(9) Anyone who has an interest in, or who represents a party in, a matter referred to in this rule may apply to a tribunal of competent jurisdiction for a determination of any aspect of this rule.

Due Diligence

(10) A member shall exercise due diligence in ensuring that each member and employee of the member's law firm, each non-member partner and associate and each other person whose services the member has retained

(a) complies with this rule; and

(b) does not disclose

(i) confidential information of clients of the firm, and

(ii) confidential information of clients of another law firm in which the person has worked.

Commentary:

Matters to consider

When a law firm considers hiring a lawyer or articled law student ("transferring member") from another law firm, the transferring member and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring member is leaving and with respect to clients of a firm in which the transferring member worked at some earlier time. The transferring member and the new law firm need to identify, first, all cases in which

(a) the new law firm represents a client in a matter that is the same as or related to a matter in respect of which the former law firm represents its client;

(b) the interests of these clients in that matter conflict; and

c) the transferring member actually possesses relevant information respecting that matter.

When these three elements exist, the transferring member is personally disqualified from representing the new client, unless the former client consents.

Second, they must determine whether, in each such case, the transferring member actually possesses relevant information respecting the former client that is confidential and that, if disclosed to a member of the new law firm, may prejudice the former client. If this element exists, then the transferring member is disqualified unless the former client consents, and the new law firm is disqualified unless the former client consents or the new law firm establishes that its continued representation is in the public interest.

In determining whether the transferring member possesses confidential information, both the transferring member and the new law firm need to be very careful to ensure that they do not, during the interview process itself, disclose client confidences.

Matters to consider before hiring a potential transferee

After completing the interview process and before hiring the transferring member, the new law firm should determine whether a conflict exists.

A. WHERE A CONFLICT DOES EXIST:

If the new law firm concludes that the transferring member does actually possess relevant information respecting a former client that is confidential and that, if disclosed to a member of the new law firm, may prejudice the former client, then if the transferring member is hired, the new law firm will be prohibited from continuing to represent its client in the matter unless

(a) the new law firm obtains the former client's consent to its continued representation of its client in that matter; or

(b) the new law firm complies with subrule (4)(b), and, in determining whether continued representation is in the interests of justice, both clients' interests are the paramount consideration.

If the new law firm seeks the former client's consent to the new law firm continuing to act it will, in all likelihood, be required to satisfy the former client that it has taken reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur. The former client's consent must be obtained before the transferring member is hired.

Alternatively, if the new law firm applies under subrule (9) for a determination that it may continue to act, it bears the onus of establishing the matters referred to in subrule (4)(b). Ideally, this process should be completed before the transferring person is hired.

B. WHERE NO CONFLICT EXISTS:

Although subrule 2.05(6) does not require that the notice required by that subrule be in writing, it would be prudent for the new law firm to confirm these matters in writing. Written notification eliminates any later dispute about whether notice has been given and about its timeliness and content.

The new law firm might, for example, seek the former client's consent to the transferring member acting for the new law firm's client in the matter because, in the absence of such consent, the transferring member may not act.

If the former client does not consent to the transferring member acting, it would be prudent for the new law firm to take reasonable measures to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information. If such measures are taken, it will strengthen the new law firm's position if it is later determined that the transferring member did in fact possess confidential information which, if disclosed, may prejudice the former client.

A transferring member who possesses no such confidential information puts the former client on notice by executing an affidavit or solemn declaration and delivering it to the former client. A former client who disputes the allegation of no such confidential information may apply under subrule (9) for a determination of that issue.

C WHERE THE NEW LAW FIRM IS NOT SURE WHETHER A CONFLICT EXISTS

There may be some cases where the new law firm is not sure whether the transferring member actually possesses confidential information respecting a former client that, if disclosed to a member of the new law firm, may prejudice the former client. In such circumstances, it would be prudent for the new law firm to seek guidance from the Society before hiring the transferring member.

Reasonable measures to ensure non-disclosure of confidential information

As noted above, there are two circumstances in which the new law firm should consider the implementation of reasonable measures to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information:

(a) where the transferring member actually possesses confidential information respecting a former client that, if disclosed to a member of the new law firm, may prejudice the former client; and

(b) where the new law firm is not sure whether the transferring member actually possesses such confidential information, but it wants to strengthen itsposition if it is later determined that the transferring member did in fact possess such confidential information. It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken "to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information."

In the case of law firms with multiple offices, the degree of autonomy possessed by each office will be an important factor in determining what constitutes "reasonable measures". For example, the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm, or a legal aid program may be able to demonstrate that, because of its institutional structure, reporting relationships, function, nature of work, and geography, relatively fewer "measures" are necessary to ensure the non-disclosure of client confidences. If it can be shown that, because of factors such as the above, lawyers in separate units, offices, or departments do not "work together" with other lawyers in other units, offices or departments, this shall be taken into account in the determination of what screening measures are "reasonable".

The guidelines at the end of this Commentary, adapted from the Canadian Bar Association's Task Force report entitled: Conflict of Interest Disqualification: Martin v. Gray and Screening Methods (February 1993), are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

In cases where a transferring lawyer joining a government legal services unit or the legal department of a corporation actually possesses confidential information respecting a former client that, if disclosed to a member of the new "law firm", may prejudice the former client, the interests of the new client (Her Majesty or the corporation) must continue to be represented. Normally, this will be effected by instituting satisfactory screening measures, which could include referring the conduct of the matter to counsel in a different department, office or legal services unit. As each factual situation will be unique, flexibility will be required in the application of subrule (4)(b), particularly clause (v). Only in those situations wherethe entire firm must be disqualified pursuant to subrule (4), will conduct of the matter be required to be referred to outside counsel.

GUIDELINES

1. The screened member should have no involvement in the new law firm's representation of its client.

2. The screened member should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.

3. No member of the new law firm should discuss the current matter or the previous representation with the screened member.

4. The current matter should be discussed only within the limited group that is working on the matter.

5. The files of the current client, including computer files, should be physically segregated from the new law firm's regular filing system, specifically identified, and accessible only to those lawyers and support staff in the new law firm who are working on the matter or who require access for other specifically identified and approved reasons.

6. No member of the new law firm should show the screened member any documents relating to the current representation.

7. The measures taken by the new law firm to screen the transferring member should be stated in a written policy explained to all lawyers and support staff within the firm, supported by an admonition that violation of the policy will result in sanctions, up to and including dismissal.

8. Undertakings should be provided by the appropriate law firm members setting out that they have adhered to and will continue to adhere to all elements of the screen.

9. The former client, or if the former client is represented in that matter by a member, that member, should be advised

(a) that the screened member is now with the new law firm, which represents the current client, and

(b) of the measures adopted by the new law firm to ensure that there will be no disclosure of confidential information.

10. The screened member's office or work station and that of the member's secretary should be located away from the offices or work stations of lawyers and support staff working on the matter.

11. The screened member should use associates and support staff different from those working on the current matter.

12. In the case of law firms with multiple offices, consideration should be given to referring conduct of the matter to counsel in another office.

2.06 DOING BUSINESS WITH A CLIENT

Definitions

2.06 (1) In this rule,

"related persons" means related persons as defined in the *Income Tax Act (Canada)* and "related person" has a corresponding meaning; and

"syndicated mortgage" means a mortgage having more than one investor.

Investment by Client where Lawyer has an Interest

(2) Where a client intends to enter into a transaction with his or her lawyer or with a corporation or other entity in which the lawyer has an interest other than a corporation or other entity whose securities are publicly traded, the lawyer, before accepting any retainer

(a) shall disclose and explain the nature of the conflicting interest to the client or, in the case of a potential conflict, how and why it might develop later;

(b) shall recommend independent legal representation and shall require that the client receive independent legal advice, and

(c) where the client requests the lawyer to act, the lawyer shall obtain the client's written consent.

Commentary:

If the lawyer does not choose to make disclosure of the conflicting interest or cannot do so without breaching a confidence, the lawyer must decline the retainer.

The lawyer should not uncritically accept the client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined.

Generally, in disciplinary proceedings under this rule, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter and that the client's consent was obtained.

If the investment is by borrowing from the client, the transaction may fall within the requirements of subrules 2.06(4) or (6).

Certificate of Independent Legal Advice

(3) A lawyer retained to give independent legal advice shall, before any advance of funds has been made by the client,

(a) provide the client with a written certificate that the client has received independent legal advice, and

(b) obtain the client's signature on a copy of the certificate of independent legal advice and send the signed copy to the lawyer with whom the client proposes to transact business.

Borrowing from Clients

(4) A lawyer shall not borrow money from a client unless:

(a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public; or

(b) the client is a related person as defined by the *Income Tax Act (Canada)* and the lawyer is able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal advice or independent legal representation.

Commentary:

The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted.

Whether a person lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is to be considered a client within this rule is to be determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice in respect of the loan or investment, then the lawyer will be considered bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

(5) In any transaction, other than a transaction within the provisions of subrule (4), in which money is borrowed from a client by a lawyer's spouse or by a corporation, syndicate, or partnership in which either the lawyer or the lawyer's spouse has, or both of them together have, directly or indirectly, a substantial interest, the lawyer shall ensure that the client's interests are fully protected by the nature of the case and by independent legal representation.

Lawyers in Loan or Mortgage Transactions

(6) A lawyer engaged in the private practice of law in Ontario shall not directly, or indirectly through a corporation, syndicate, partnership, trust, or other entity in which the lawyer or a related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities

(a) hold a syndicated mortgage or loan in trust for investor clients unless each investor client receives

(i) a complete reporting letter on the transaction;

(ii) a trust declaration signed by the person in whose name the mortgage or any security instrument is registered; and

(iii) a copy of the duplicate registered mortgage or security instrument;

(b) arrange or recommend the participation of a client or other person as an investor in a syndicated mortgage or loan where the lawyer is an investor unless the lawyer can demonstrate that the client or other person had independent legal advice in making the investment; or

(c) sell mortgages or loans to, or arrange mortgages or loans for, clients or other persons except in accordance with the skill, competence, and integrity usually expected of a lawyer in dealing with clients.

Commentary:

Acceptable Mortgage or Loan Transactions

A lawyer may engage in the following mortgage or loan transactions in connection with the practice of law:

(a) a lawyer may invest in mortgages or loans personally or on behalf of a related person or a combination thereof;

(b) a lawyer may deal in mortgages or loans as an executor, administrator, committee, trustee of a testamentary or inter vivos trust established for purposes other than mortgage or loan investment or under a power of attorney given for purposes other than exclusively for mortgage or loan investment; and

(c) a lawyer may collect, on behalf of clients, mortgage or loan payments that are made payable in the name of the lawyer under a written direction to that effect given by the client to the mortgagor or borrower provided that such payments are deposited into the lawyer's trust account.

A lawyer may introduce a borrower (whether or not a client) to a lender (whether or not a client) and the lawyer may then act for either, and when subrule 2.04 (12) applies, the lawyer may act for both.

Disclosure

(7) Where a lawyer sells or arranges mortgages for clients or other persons, the lawyer shall disclose in writing to each client or other person the priority of the mortgage and all other information relevant to the transaction that is known to the lawyer that would be of concern to a proposed investor.

No Advertising

(8) A lawyer shall not promote, by advertising or otherwise, individual or joint investment by clients or other persons who have money to lend, in any mortgage in which a financial interest is held by the lawyer, a related person, or a corporation, syndicate, partnership, trust or other entity in which the lawyer or related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities.

Guarantees by a Lawyer

(9) Except as provided by subrule (10), a lawyer shall not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

(10) A lawyer may give a personal guarantee in the following circumstances:

(a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent, or child;

(b) the transaction is for the benefit of a non-profit or charitable institution where the lawyer as a member or supporter of such institution is asked, either individually or together with other members or supporters of the institution, to provide a guarantee; or

(c) the lawyer has entered into a business venture with a client and the lender requires personal guarantees from all participants in the venture as a matter of course and

(i) the lawyer has complied with rules 2.04 (Avoidance of Conflicts of Interest) and this rule (Doing Business with a Client), and

(ii) the lender and participants in the venture who are or were clients of the member have received independent legal representation.

2.07 PRESERVATION OF CLIENT'S PROPERTY

Preservation of Client's Property

2.07 (1) A lawyer shall care for a client's property as a careful and prudent owner would when dealing with like property and shall observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

Commentary:

The duties concerning safekeeping, preserving, and accounting for clients' monies and other property are set out in the by-laws made under the Law Society Act.

These duties are closely related to those regarding confidential information. The lawyer should keep the client's papers and other property out of sight as well as out of reach of those not entitled to see them and should, subject to any rights of lien, promptly return them to the client upon request or at the conclusion of the lawyer's retainer.

Notification of Receipt of Property

(2) A lawyer shall promptly notify the client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer's custody.

Identifying Client's Property

(3) A lawyer shall clearly label and identify the client's property and place it in safekeeping distinguishable from the lawyer's own property.

(4) A lawyer shall maintain such records as necessary to identify a client's property that is in the lawyer's custody.

Accounting and Delivery

(5) A lawyer shall account promptly for a client's property that is in the lawyer's custody and upon request shall deliver it to the order of the client.

(6) Where a lawyer is unsure of the proper person to receive a client's property, the lawyer shall apply to a tribunal of competent jurisdiction for direction.

Commentary:

The lawyer should be alert to claim on behalf of a client any privilege in respect of property seized or attempted to be seized by an external authority. In this regard, the lawyer should be familiar with the nature of the client's privilege and with such relevant statutory provisions as are found in the Income Tax Act (Canada).

2.08 FEES AND DISBURSEMENTS

Reasonable Fees and Disbursements

2.08 (1) A lawyer shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.

(2) A lawyer shall not charge a client interest on an overdue account save as permitted by the *Solicitors Act* or as otherwise permitted by law.

Commentary:

What is a fair and reasonable fee will depend upon such factors as:

(a) the time and effort required and spent;

(b) the difficulty and importance of the matter;

(c) whether special skill or service has been required and provided;

(d) the amount involved or the value of the subject-matter;

(e) the results obtained;

(f) fees authorized by statute or regulation;

(g) special circumstances, such as the loss of other retainers, postponement of payment, uncertainty of reward, or urgency.

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

Breach of this rule and misunderstandings about fees and financial matters bring the legal profession into disrepute and reflect adversely upon the general administration of justice. A lawyer should try to avoid controversy with a client about fees and should be ready to explain the basis for the charges (especially if the client is unsophisticated or uninformed about how a fair and reasonable fee is determined). A lawyer should inform a client about his or her rights to have an account assessed under the Solicitors Act.

Where possible to do so, a lawyer should give the client a fair estimate of fees and disbursements, pointing out any uncertainties involved, so that the client may be able to make an informed decision. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement the lawyer should forestall misunderstandings or disputes by giving the client an immediate explanation.

It is in keeping with the best traditions of the legal profession to provide services pro bono and to reduce or waive a fee where there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. A lawyer should provide public interest legal services and should support organizations that provide services to persons of limited means.

Contingent Fees

(3) A lawyer shall not, except as expressly permitted by law, acquire by purchase or otherwise any interest in the subject-matter of litigation being conducted by the lawyer.

(4) A lawyer shall not enter into an arrangement with the client for a contingent fee except in accordance with the provisions of the *Solicitors Act* or in accordance with the *Class Proceedings Act, 1992.*

Statement of Account

(5) In a statement of an account delivered to a client, a lawyer shall clearly and separately detail the amounts charged as fees and as disbursements.

Joint Retainer

(6) Where a lawyer is acting for two or more clients, the lawyer shall divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

Division of Fees and Referral Fees

(7) Where the client consents, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

(8) Where a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter and the referral was not made because of a conflict of interest, the referring lawyer may accept and the other lawyer may pay a referral fee provided that:

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and

(b) the client is informed and consents.

(9) A lawyer shall not directly or indirectly share, split, or divide his or her fees or give any financial or other reward to any person who is not a lawyer for the referral of clients or client matters.

Exception for Multi-discipline Practices

(10) Subrule (9) does not apply to multi-discipline practices of lawyer and non-lawyer partners where the partnership agreement provides for the sharing of fees and profits among members of the firm.

Appropriation of Funds

(11) The lawyer shall not appropriate any funds of the client held in trust or otherwise under the lawyer's control for or on account of fees except as permitted by the by-laws under the *Law Society Act.*

2.09 WITHDRAWAL FROM REPRESENTATION

Withdrawal from Representation

2.09 (1) A lawyer shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances.

Commentary:

Although the client has the right to terminate the lawyer-client relationship at will, the lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship.

No hard and fast rules can be laid down as to what will constitute reasonable notice before withdrawal. Where the matter is covered by statutory provisions or rules of court, these will govern. In other situations, the governing principle is that the lawyer should protect the client's interests to the best of the lawyer's ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril.

Optional Withdrawal

(2) Subject to the rules about criminal proceedings and the direction of the tribunal, where there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.

Commentary:

A lawyer who is deceived by the client will have justifiable cause for withdrawal, and the refusal of the client to accept and act upon the lawyer's advice on a significant point might indicate a loss of confidence justifying withdrawal. However, the lawyer should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

Non-payment of Fees

(3) Subject to the rules about criminal proceedings and the direction of the tribunal, where, after reasonable notice, the client fails to provide funds on account of disbursements or fees, a lawyer may withdraw unless serious prejudice to the client would result.

Withdrawal from Criminal Proceedings

(4) Where a lawyer has agreed to act in a criminal case and where the interval between a withdrawal and the trial of the case is sufficient to enable the client to obtain another lawyer and to allow such other lawyer adequate time for preparation, the lawyer who has agreed to act may withdraw because the client has not paid the agreed fee or for other adequate cause provided that the lawyer:

(a) notifies the client, preferably in writing, that the lawyer is withdrawing because the fees have not been paid or for other adequate cause;

(b) accounts to the client for any monies received on account of fees and disbursements;

(c) notifies Crown counsel in writing that the lawyer is no longer acting;

(d) in a case when the lawyer's name appears on the records of the court as acting for the accused notifies the clerk or registrar of the appropriate court in writing that the lawyer is no longer acting.

Commentary:

A lawyer who has withdrawn because of conflict with the client should not indicate in the notice addressed to the court or Crown counsel the cause of the conflict or make reference to any matter that would violate the privilege that exists between lawyer and client. The notice should merely state that the lawyer is no longer acting and has withdrawn.

(5) Where a lawyer has agreed to act in a criminal case and where the date set for trial is not far enough removed to enable the client to obtain another lawyer or to enable another lawyer to prepare adequately for trial and an adjournment of the trial date cannot be obtained without adversely affecting the client's interests, the lawyer who agreed to act may not withdraw because of non-payment of fees.

(6) Where the lawyer is justified in withdrawing from a criminal case for reasons other than non-payment of fees and there is not a sufficient interval between a notice to the client of the lawyer's intention to withdraw and the date when the case is to be tried to enable the client to obtain another lawyer and to enable such lawyer to prepare adequately for trial, the first lawyer, unless instructed otherwise by the client, should attempt to have the trial date adjourned and may withdraw from the case only with the permission of the court before which the case is to be tried.

Commentary:

Where circumstances arise that in the opinion of the lawyer require an application to the court for leave to withdraw, the lawyer should promptly inform Crown counsel and the court of the intention to apply for leave in order to avoid or minimize any inconvenience to the court and witnesses.

Mandatory Withdrawal

(7) Subject to the rules about criminal proceedings and the direction of the tribunal, a lawyer shall withdraw:

(a) if discharged by the client;

(b) if the lawyer is instructed by the client to do something inconsistent with the lawyer's duty to the tribunal and, following explanation, the client persists in such instructions;

(c) if the client is guilty of dishonourable conduct in the proceedings or is taking a position solely to harass or maliciously injure another;

(d) if it becomes clear that the lawyer's continued employment will lead to a breach of these rules; or

(e) if the lawyer is not competent to handle the matter.

Commentary:

When a law firm is dissolved it will usually result in the termination of the lawyer-client relationship as between a particular client and one or more of the lawyers involved. In such cases, most clients will prefer to retain the services of the lawyer whom they regarded as being in charge of their business before the dissolution. However, the final decision rests with the client, and the lawyers who are no longer retained by that client should act in accordance with the principles here set out, and, in particular, should try to minimize expense and avoid prejudice to the client.

Manner of Withdrawal

(8) When a lawyer withdraws, the lawyer shall try to minimize expense and avoid prejudice to the client and shall do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.

(9) Upon discharge or withdrawal, a lawyer shall:

(a) subject to the lawyer's right to a lien, deliver to or to the order of the client all papers and property to which the client is entitled;

(b) give the client all information that may be required in connection with the case or matter;

(c) account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;

(d) promptly render an account for outstanding fees and disbursements; and

(e) co-operate with the successor lawyer so as to minimize expense and avoid prejudice to the client.

Commentary:

The obligation to deliver papers and property is subject to a lawyer's right of lien. In the event of conflicting claims to such papers or property, the lawyer should make every effort to have the claimants settle the dispute.

A lawyer acting for several clients in a case or matter who ceases to act for one or more of them should co-operate with the successor lawyer or lawyers to the extent required by the rules and should seek to avoid any unseemly rivalry, whether real or apparent.

Where upon the discharge or withdrawal of the lawyer, the question of a right of lien for unpaid fees and disbursements arises, the lawyer should have due regard to the effect of its enforcement upon the client's position. Generally speaking, the lawyer should not enforce the lien if to do so would prejudice materially the client's position in any uncompleted matter.

Duty of Successor Lawyer

(10) Before agreeing to represent a client, a successor lawyer shall be satisfied that the former lawyer approves, has withdrawn, or has been discharged by the client.

Commentary:

It is quite proper for the successor lawyer to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former lawyer, especially if the latter withdrew for good cause or was capriciously discharged. But if a trial or hearing is in progress or imminent or if the client would otherwise be prejudiced, the existence of an outstanding account should not be allowed to interfere with the successor lawyer acting for the client.

RULE 3 - THE PRACTICE OF LAW

3.01 MAKING LEGAL SERVICES AVAILABLE

Making Services Available

3.01 Lawyers shall make legal services available to the public in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the profession.

Commentary:

It is essential that a person requiring legal services be able to find, with a minimum of difficulty or delay, a lawyer qualified to provide such services.

The lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services, by engaging in programmes of public information, education or advice concerning legal matters, and by being considerate of those who seek advice but are inexperienced in legal matters or cannot readily explain their problems.

Right to Decline Representation - The lawyer has a general right to decline a particular representation (except when assigned as counsel by a tribunal), but it is a right to be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation. Generally, the lawyer should not exercise the right merely because a person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the lawyer's private opinion about the guilt of the accused. A lawyer declining representation should assist in obtaining the services of another lawyer qualified in the particular field and able to act.

In a relatively small community where lawyers are well-known, a person seeking a lawyer will usually be able to make an informed choice and select a qualified lawyer in whom to have confidence. However, in larger centres, these conditions will often not occur, and as the practice of law becomes increasingly complex and the practice of many individual lawyers becomes restricted to particular fields of law, the reputations of lawyers and their competence or qualification in particular fields may not be sufficiently well-known to enable a person to make an informed choice. Thus, one who has had little or no contact with lawyers or who is a stranger in the community may have difficulty finding a lawyer with the special skill required for a particular task. Telephone directories, legal directories, and referral services may help find a lawyer, but not necessarily the right one for the client's need.

When a lawyer offers assistance to a client or prospective client in finding another lawyer, the assistance should be given willingly and, except in very special circumstances, without charge.

3.02 LAW FIRM NAME

Permissible Names

3.02 (1) A law firm name may include only the names of persons who are qualified to practise 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 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 deceased or retired members of the firm.

(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", or "John Doe and Company" and "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.

3.03 LETTERHEAD

Letterhead

3.03 (1) Subject to subrules (2) and (3) and rule 3.05, 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 phrase "multi-discipline practice" or "multi-discipline partnership" where applicable;

(j) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice; and

(k) a logo.

(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.

3.04 ADVERTISING

Advertising Services Permitted

3.04 (1) Subject to subrule (3), a lawyer or a law firm may advertise their services or fees in any medium including the use of brochures and similar documents provided that the advertising:

(a) is not false or misleading;

(b) is in good taste and is not such as to bring the profession or the administration of justice into disrepute; and

3. does not compare services or charges with other lawyers or law firms.

Advertising of Fees

(2) Subject to subrule (3), a lawyer or a law firm may advertise fees charged for their services subject to the following conditions:

(a) advertisement of fees for consultation or for specific services shall contain an accurate statement of the services provided for the fee and the circumstances, if any, in which higher fees may be charged;

(b) if fees are advertised, the fact that disbursements are an additional cost shall be made clear in the advertisement;

(c) advertisements shall not use words or expressions such as "from . . .", "minimum" or " . . . and up" or the like in referring to the fees to be charged;

(d) services covered by advertised fees shall be provided at the advertised rate to all clients who retain the advertising lawyer or law firm during the 30-day period following the last publication of the fee unless there are special circumstances which could not reasonably have been foreseen, the burden of proving which rests upon the lawyer.

Restrictions on Advertising

(3) A lawyer shall not:

(a) permit the lawyer's name to appear as solicitor, counsel, or Queen's Counsel on any advertising material offering goods, other than securities or legal publications, or services, other than legal services, to the public; and

(b) while in private practice, permit the lawyer's name to appear on the letterhead of a company as being its solicitor or counsel of a business, firm or corporation, other than the designation of honorary counsel or honorary lawyer on the letterhead of a non-profit or philanthropic organization that has been approved for such purpose by the standing committee of Convocation responsible for professional conduct.

Commentary:

The means by which it is sought to make legal services more readily available to the public must be consistent with the public interest and must not detract from the integrity, independence, dignity, or effectiveness of the legal profession.

3.05 ADVERTISING NATURE OF PRACTICE

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.

3.06 OFFERING PROFESSIONAL SERVICES

Offering Professional Services

3.06 (1) Subject to subrule (2), a lawyer may offer professional services to a prospective client by any means.

Restrictions

(2) In offering professional services, a lawyer shall not use means:

(a) that are false or misleading;

(b) that amount to coercion, duress, or harassment;

(c) that take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover;

(d) that are intended to influence a person who has retained another lawyer for a particular matter to change his or her lawyer for that matter, unless the change is initiated by the person or the other lawyer; or

(e) that otherwise bring the profession or the administration of justice into disrepute.

Commentary:

A person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering his or her assistance to such a person. Rather, the rule prohibits the lawyer from using unconscionable or exploitive means that bring the profession or the administration of justice into disrepute.

3.07 INTERPROVINCIAL LAW FIRMS

Interprovincial Law Firms

3.07 (1) Lawyers may enter into agreements with lawyers in other Canadian jurisdictions to form an interprovincial law firm, provided that they comply with the requirements of this rule.

Requirements

(2) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall comply with all the requirements of the Society.

(3) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall ensure that the books, records, and accounts pertaining to the practice in Ontario are available in Ontario on demand by the Society's auditors or their designated agents.

(4) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall ensure that his or her partners, associates, or employees who are not qualified to practise in Ontario are not held out as and do not represent themselves as qualified to practise in Ontario.

RULE 4 - RELATIONSHIP TO THE ADMINISTRATION OF JUSTICE

4.01 THE LAWYER AS ADVOCATE

Advocacy

4.01 (1) When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary:

The lawyer has a duty to the client to raise fearlessly every issue, advance every argument, and ask every question, however distasteful, which the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing where justice can be done. Maintaining dignity, decorum, and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.

This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals, arbitrators, mediators, and others who resolve disputes, regardless of their function or the informality of their procedures.

Role in Adversary Proceedings - In adversary proceedings the lawyer's function as advocate is openly and necessarily partisan. Accordingly, the lawyer is not obliged (save as required by law or under these rules and subject to the duties of a prosecutor set out below) to assist an adversary or advance matters derogatory to the client's case.

In adversary proceedings that will likely affect the health, welfare, or security of a child, a lawyer should advise the client to take into account the best interests of the child, where this can be done without prejudicing the legitimate interests of the client.

When acting as an advocate, a lawyer should refrain from expressing the lawyer's personal opinions on the merits of a client's case.

When opposing interests are not represented, for example, in without notice or uncontested matters or in other situations where the full proof and argument inherent in the adversary system cannot be achieved, the lawyer must take particular care to be accurate, candid, and comprehensive in presenting the client's case so as to ensure that the tribunal is not misled.

Duty as Defence Counsel - When defending an accused person, a lawyer's duty is to protect the client as far as possible from being convicted except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, and notwithstanding the lawyer's private opinion on credibility or the merits, a lawyer may properly rely on any evidence or defences including so-called technicalities not known to be false or fraudulent.

Admissions made by the accused to a lawyer may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits to the lawyer the factual and mental elements necessary to constitute the offence, the lawyer, if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, or to the form of the indictment, or to the admissibility or sufficiency of the evidence, but must not suggest that some other person committed the offence or call any evidence which, by reason of the admissions, the lawyer believes to be false. Nor may the lawyer set up an affirmative case inconsistent with such admissions, for example, by calling evidence in support of an alibi intended to show that the accused could not have done or, in fact, has not done the act. Such admissions will also impose a limit on the extent to which the lawyer may attack the evidence for the prosecution. The lawyer is entitled to test the evidence given by each individual witness for the prosecution and argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but the lawyer should go no further than that.

The lawyer should never waive or abandon the client's legal rights, for example, an available defence under a statute of limitations, without the client's informed consent.

In civil matters, it is desirable that the lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections, or from attempts to gain advantage from slips or oversights not going to the merits, or from tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

In civil proceedings, the lawyer has a duty not to mislead the tribunal about the position of the client in the adversary process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

(2) When acting as an advocate, a lawyer shall not:

(a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;

(b) knowingly assist or permit the client to do anything that the lawyer considers to be dishonest or dishonourable;

(c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence, or inducement affecting the impartiality of the officer;

(d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;

(e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct;

(f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument, or the provisions of a statute or like authority;

(g) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;

(h) deliberately refrain from informing the tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by an opponent;

(i) dissuade a witness from giving evidence or advise a witness to be absent;

(j) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;

(k) needlessly abuse, hector, or harass a witness;

(l) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge; and

(m) needlessly inconvenience a witness.

Commentary:

A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, where the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. Where the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused and, accordingly, the lawyer's comments may be partisan. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

Duty as Prosecutor

(3) When acting as a prosecutor, a lawyer shall act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary:

When engaged as a prosecutor, the lawyer's prime duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

Discovery Obligations

(4) Where the rules of a tribunal require the parties to produce documents or attend on examinations for discovery, a lawyer, when acting as an advocate

(a) shall explain to his or her client:

(i) the necessity of making full disclosure of all documents relating to any matter in issue; and

(ii) the duty to answer to the best of his or her knowledge, information, and belief, any proper question relating to any issue in the action or made discoverable by the rules of court or the rules of the tribunal;

(b) shall assist the client in fulfilling his or her obligations to make full disclosure; and

(c) shall not make frivolous requests for the production of documents or make frivolous demands for information at the examination for discovery.

Disclosure of Error or Omission

(5) A lawyer who has unknowingly done or failed to do something that if done or omitted knowingly would have been in breach of this rule and who discovers it, shall, subject to rule 2.03 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

Commentary:

If the client desires that a course be taken that would involve a breach of this rule, the lawyer must refuse and do everything reasonably possible to prevent it. If that cannot be done the lawyer should, subject to rule 2.09 (Withdrawal of Employment), withdraw or seek leave to do so.

Courtesy

(6) A lawyer shall be courteous, civil, and act in good faith to the tribunal and with all persons with whom the lawyer has dealings in the course of litigation.

Commentary:

Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative, or disruptive conduct by the lawyer, even though unpunished as contempt, might well merit discipline.

Undertakings

(7) A lawyer shall strictly and scrupulously carry out an undertaking given to the tribunal or to another lawyer in the course of litigation.

Commentary:

Unless clearly qualified, the lawyer's undertaking is a personal promise and responsibility.

Agreement on Guilty Plea

(8) Before a charge is laid or at any time after a charge is laid, a lawyer for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise.

(9) Where, following investigation,

(a) a lawyer for an accused or potential accused advises his or her client about the prospects for an acquittal or finding of guilt;

(b) the lawyer advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;

(c) the client voluntarily is prepared to admit the necessary factual and mental elements of the offence charged; and

(d) the client voluntarily instructs the lawyer to enter into an agreement as to a guilty plea

the lawyer may enter into an agreement with the prosecutor about a guilty plea.

Commentary:

The public interest in the proper administration of justice should not be sacrificed in the interest of expediency.

4.02 THE LAWYER AS WITNESS

Submission of Affidavit

4.02 (1) Subject to any contrary provisions of the law or the discretion of the tribunal before which a lawyer is appearing, a lawyer who appears as advocate shall not submit his or her own affidavit to the tribunal.

Submission of Testimony

(2) Subject to any contrary provisions of the law or the discretion of the tribunal before which a lawyer is appearing, a lawyer who appears as advocate shall not testify before the tribunal unless permitted to do so by the rules of court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

Commentary:

A lawyer should not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination, or challenge. The lawyer should not in effect appear as an unsworn witness or put the lawyer's own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer. There are no restrictions on the advocate's right to cross-examine another lawyer, however, and the lawyer who does appear as a witness should not expect to receive special treatment because of professional status.

Appeals

(3) A lawyer who is a witness in proceedings shall not appear as advocate in any appeal from the decision in those proceedings.

4.03 INTERVIEWING WITNESSES

Interviewing Witnesses

4.03 (1) Subject to subrule (2), a lawyer may seek information from any potential witness (whether under subpoena or not) but shall disclose the lawyer's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

(2) A lawyer shall not approach or deal with a person who is represented by another lawyer, save through or with the consent of that party's lawyer.

(3) Where a corporation or other organization has retained a lawyer on a matter, another lawyer seeking information about that matter shall not, without the consent of the lawyer representing the corporation or organization, approach or deal with

(a) directors, officers, or persons likely involved in the decision-making process concerning that matter; or

(b) employees and agents of the corporation or organization whose acts or omissions in connection with the matter are in issue or whose acts or omissions may expose the corporation or organization to civil or criminal liability.

Commentary:

This rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by counsel concerning the matter to which the communication relates. A lawyer may communicate with a represented person or an employee or agent of such a person, concerning matters outside the representation. Also, parties to a matter may communicate directly with each other.

The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

This rule applies to corporations and "other organizations". "Other organizations" include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies, and sole proprietorships.

In the case of a corporation or other organization (including, for example, an association or government department), this rule prohibits communications by a lawyer for another person or entity concerning the matter in question with persons likely involved in the decision-making process about the matter. If an agent or employee of the organization is represented in the matter by his or her counsel, the consent of that counsel to a communication will be sufficient for purposes of this rule.

A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the lawyer must comply with the requirements of rule 2.04 (avoidance of conflicts of interest), and particularly subrules 2.04(6) through (10). A lawyer must not represent that he or she acts for an employee of a client, unless the requirements of rule 2.04 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

4.04 COMMUNICATION WITH WITNESSES GIVING EVIDENCE

Communication with Witnesses Giving Evidence

4.04 Subject to the direction of the tribunal, the lawyer shall observe the following rules respecting communication with witnesses giving evidence:

(a) during examination-in-chief, the examining lawyer may discuss with the witness any matter that has not been covered in the examination up to that point;

(b) during examination-in-chief by another lawyer of a witness who is unsympathetic to the lawyer's cause, the lawyer not conducting the examination-in-chief may discuss the evidence with the witness;

(c) between completion of examination-in-chief and commencement of cross-examination of the lawyer's own witness, the lawyer ought not to discuss the evidence given in chief or relating to any matter introduced or touched on during the examination-in-chief;

(d) during cross-examination by an opposing lawyer, the witness's own lawyer ought not to have any conversation with the witness about the witness's evidence or any issue in the proceeding;

(e) between completion of cross-examination and commencement of re-examination the lawyer who is going to re-examine the witness ought not to have any discussion about evidence that will be dealt with on re-examination;

(f) during cross-examination by the lawyer of a witness unsympathetic to the cross-examiner's cause, the lawyer may discuss the witness's evidence with the witness;

(g) during cross-examination by the lawyer of a witness who is sympathetic to that lawyer's cause, any conversations ought to be restricted in the same way as communications during examination-in-chief of one's own witness; and

(h) during re-examination of a witness called by an opposing lawyer, if the witness is sympathetic to the lawyer's cause the lawyer ought not to discuss the evidence to be given by that witness during re-examination. The lawyer may, however, properly discuss the evidence with a witness who is adverse in interest.

Commentary:

If any question arises whether the lawyer's behaviour may be in violation of this rule, it will often be appropriate to obtain the consent of the opposing lawyer or leave of the tribunal before engaging in conversations that may be considered improper.

This rule applies with necessary modifications to examinations out of court.

4.05 RELATIONS WITH JURORS

Communications Before Trial

4.05 (1) When acting as an advocate, before the trial of a case, a lawyer shall not communicate with or cause another to communicate with anyone that the lawyer knows to be a member of the jury panel for that trial.

Commentary:

A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the juror or with any member of the juror's family. But a lawyer should not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.

Disclosure of Information

(2) When acting as an advocate, a lawyer shall disclose to the judge and opposing counsel any information of which the lawyer is aware that a juror or prospective juror:

(a) has or may have an interest, direct or indirect, in the outcome of the case;

(b) is acquainted with or connected in any manner with the presiding judge, any counsel or any litigant; or

(c) is acquainted with or connected in any manner with any person who has appeared or who is expected to appear as a witness

unless the judge and opposing counsel have previously been made aware of the information.

(3) A lawyer should promptly disclose to the court any information that the lawyer has about improper conduct by a member of a jury panel or by a juror toward another member of the jury panel, another juror, or to the members of a juror's family.

Communication During Trial

(4) Except as permitted by law, when acting as an advocate, a lawyer shall not during a trial of a case communicate with or cause another to communicate with any member of the jury.

(5) A lawyer who is not connected with a case before the court shall not communicate with or cause another to communicate with any member of the jury about the case.

Commentary:

The restrictions on communications with a juror or potential juror should also apply to communications with or investigations of members of his or her family.

4.06 THE LAWYER AND THE ADMINISTRATION OF JUSTICE

Encouraging Respect for the Administration of Justice

4.06 (1) A lawyer shall encourage public respect for and try to improve the administration of justice.

Commentary:

The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet for the same reason, a lawyer should not hesitate to speak out against an injustice.

The admission to and continuance in the practice of law implies on the part of a lawyer a basic commitment to the concept of equal justice for all within an open, ordered, and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and, because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby maintain public respect for it.

Criticizing Tribunals - Although proceedings and decisions of courts and tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate, or unsupported by a bona fide belief in its real merit, bearing in mind that in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, where a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to and should support the tribunal, both because its members cannot defend themselves and because in doing so the lawyer is contributing to greater public understanding of and therefore respect for the legal system.

A lawyer, by training, opportunity, and experience is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions, and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.

Seeking Legislative or Administrative Changes

(2) A lawyer who seeks legislative or administrative changes shall disclose the interest being advanced, whether the lawyer's interest, the client's interest, or the public interest.

Commentary:

The lawyer may advocate legislative or administrative changes on behalf of a client although not personally agreeing with them, but the lawyer who purports to act in the public interest should espouse only those changes that the lawyer conscientiously believes to be in the public interest.

Security of Court Facilities

(3) A lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility shall inform the local police force and give particulars.

Commentary:

Where possible, the lawyer should suggest solutions to the anticipated problem such as: (a) the necessity for further security, and (b) that judgment ought to be reserved.

Where possible, the lawyer should also notify other lawyers who are known to be involved in proceedings at the court facility where the dangerous situation is likely to develop. Beyond providing a warning of danger, this notice is desirable because it may allow them to suggest security measures that do not interfere with an accused's or a party's right to a fair trial.

If client information is involved in those situations, the lawyer should be guided by the provisions of Rule 2.03 (Confidentiality).

4.07 LAWYERS AS MEDIATORS

Role of Mediator

4.07 A lawyer who acts as a mediator shall, at the outset of the mediation, ensure that the parties to it understand fully that:

(a) the lawyer is not acting as a lawyer for either party but, as mediator, is acting to assist the parties to resolve the matters in issue; and

(b) although communications pertaining to and arising out of the mediation process may be covered by some other common law privilege, they will not be covered by the solicitor-client privilege.

Commentary:

In acting as a mediator, generally a lawyer should not give legal advice as opposed to legal information to the parties during the mediation process.

Generally, neither the lawyer-mediator nor a partner or associate of the lawyer-mediator should render legal representation or give legal advice to either party to the mediation, bearing in mind the provisions of rule 2.04 (Conflict of Interest) and its commentaries and the common law authorities.

Generally a lawyer-mediator should suggest and encourage the parties to seek the advice of separate counsel before and during the mediation process if they have not already done so.

Where in the mediation process the lawyer-mediator prepares a draft contract for the consideration of the parties, the lawyer-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

RULE 5 - RELATIONSHIP TO STUDENTS, EMPLOYEES, AND OTHERS

5.01 SUPERVISION

Application

5.01 (1) In this rule, a non-lawyer does not include a student-at-law.

Direct Supervision Required

(2) A lawyer shall assume complete professional responsibility for all business entrusted to him or her and shall directly supervise staff and assistants to whom particular tasks and functions are delegated.

Commentary:

A lawyer who practises alone or operates a branch or part-time office should ensure that all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

Where a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer may permit a non-lawyer to perform tasks delegated and supervised by a lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work. Generally, subject to the provisions of any statute, rule, or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which in the public interest, must be exercised by the lawyer whenever it is required.

A lawyer may permit a non-lawyer to act only under the supervision of a member of the Society. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer who uses a non-lawyer to educate the latter concerning the duties that may be assigned to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.

Permissible Delegation - The following examples, which are not exhaustive, illustrate situations where it may be appropriate to delegate work to non-lawyers subject to proper supervision.

Real Estate - A lawyer may permit a non-lawyer to attend to all matters of routine administration and to assist in more complex transactions relating to the sale, purchase, option, lease, or mortgaging of land, to draft statements of account and routine documents and correspondence, and to attend to registrations, provided that the lawyer should not delegate to a non-lawyer ultimate responsibility for review of a title search report or of documents before signing, or for the review and signing of a letter of requisition, a title opinion, or reporting letter to the client.

Corporate and Commercial - A lawyer may permit a non-lawyer to attend to all matters of routine administration and to assist in more complex matters and to draft routine documents and correspondence relating to corporate, commercial, and securities matters such as drafting corporate minutes and documents pursuant to corporation statutes, security instruments, security registration documents and contracts of all kinds, closing documents and statements of account, and to attend on filings.

Wills, Trusts and Estates - A lawyer may permit a non-lawyer to attend to all matters of routine administration, to assist in more complex matters, to collect information, draft routine documents and correspondence, to prepare income tax returns, to calculate such taxes, to draft executors' accounts and statements of account, and to attend to filings.

Litigation - A lawyer may permit a non-lawyer to attend to all matters of routine administration, and to assist in more complex matters, to collect information, draft routine pleadings, correspondence and other routine documents, research legal questions, prepare memoranda, organize documents, prepare briefs, draft statements of account and attend to filings. Generally, a non-lawyer shall not attend on examinations or in court except in support of a lawyer also in attendance. Permissible exceptions include law clerks appearing on:

(i) routine adjournments in provincial courts;

(ii) appearances before tribunals where statutes or regulations permit non-lawyers to appear, e.g., Small Claims Court, Coroners' Inquests, as agent on summary conviction matters where so authorized by the Criminal Code, and the Provincial Offences Act and administrative tribunals governed by the Statutory Powers Procedure Act;

(iii) routine examinations in uncontested matters such as for the purpose of obtaining routine admissions, attendance upon judgment debtor examinations and on watching briefs but not the conduct of an examination for discovery in a contested matter or a cross-examination of a witness in aid of a motion;

(iv) simple without notice matters or motions for a consent order before a master; and

(v) assessments of costs.

Delegation

(3) A lawyer shall not permit a non-lawyer to

(a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer is advised before any work commences;

(b) give legal opinions;

(c) give or accept undertakings, except with the express authorization of the supervising lawyer;

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

Commentary:

A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers, public officials, or with the public generally whether within or outside the offices of the law firm of employment.

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a support role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument, or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer, except where the non-lawyer is an employee of the lawyer;

(i) conduct negotiations with third parties, other than routine negotiations where the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose;

(k) sign correspondence containing a legal opinion, but the non-lawyer who has been specifically directed to do so by a supervising lawyer may sign correspondence of a routine administrative nature, provided that the fact the person is a non-lawyer is disclosed, and the capacity in which the person signs the correspondence is indicated;

(l) forward to a client any documents, other than routine documents, unless they have previously been reviewed by the lawyer; or

(m) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do.

Commentary:

A lawyer may, in appropriate circumstances, render service with the assistance of non-lawyers of whose competence the lawyer is satisfied. Though legal tasks may be delegated to such persons, the lawyer remains responsible for all services rendered and for all written materials prepared by non-lawyers.

(4) A lawyer shall not permit a non-lawyer to:

(a) provide advice to the client concerning any insurance, including title insurance, without supervision;

(b) present insurance options or information regarding premiums to the client without supervision;

(c) recommend one insurance product over another without supervision; and

(d) give legal opinions regarding the insurance coverage obtained.

Collection Letters

(5) No collection letter shall be sent out over the signature of a lawyer, unless the letter is on the lawyer's letterhead, prepared under the lawyer's supervision, and sent from the lawyer's office.

5.02 STUDENTS

Recruitment Procedures

5.02 (1) A lawyer shall observe the procedures of the Society about the recruitment of articling students and the engagement of summer students.

Duties of Principal

(2) A lawyer acting as a principal to a student shall provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Duties of Articling Student

(3) An articling student shall act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

5.03 SEXUAL HARASSMENT

Definition

5.03 (1) In this rule, sexual harassment is one incident or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

(a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the recipient(s) of the conduct;

(b) when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services;

(c) when submission to such conduct is made implicitly or explicitly a condition of employment;

(d) when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files, matters of promotion, raise in salary, job security, and benefits affecting the employee); or

(e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

Commentary:

Types of behaviour that constitute sexual harassment include, but are not limited to,

(a) sexist jokes causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that are by their nature clearly embarrassing or offensive,

(b) leering,

(c) the display of sexually offensive material,

(d) sexually degrading words used to describe a person,

(e) derogatory or degrading remarks directed towards members of one sex or one's sexual orientation,

(f) sexually suggestive or obscene comments or gestures,

(g) unwelcome inquiries or comments about a person's sex life,

(h) unwelcome sexual flirtations, advances, or propositions,

(i) persistent unwanted contact or attention after the end of a consensual relationship,

(j) requests for sexual favours,

(k) unwanted touching,

(l) verbal abuse or threats, and

(m) sexual assault.

Sexual harassment can occur in the form of behaviour by men towards women, between men, between women, or by women towards men.

Prohibition on Sexual Harassment

(2) A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.

5.04 DISCRIMINATION

Special Responsibility

(1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the *Ontario Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other members of the profession or any other person.

Commentary:

The Society acknowledges the diversity of the community of Ontario in which its members serve and expects members to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Rule 5.04 will be interpreted according to the provisions of the Ontario Human Rights Code and related case law.

The Ontario Human Rights Code defines a number of grounds of discrimination listed in rule 5.04. For example,

Age is defined as an age that is eighteen years or more, except in subsection 5(i) where age means an age that is eighteen years or more and less than sixty-five years.

The term disability is not used in the Code, but discrimination on the ground of handicap is prohibited. Handicap is broadly defined in s. 10 of the Code to include both physical and mental disabilities.

Family status is defined as the status of being in a parent-and-child relationship.

Marital status is defined as the status of being married, single, widowed, divorced, or separated and includes the status of living with a person of the opposite sex in a conjugal relationship outside marriage.

Record of offences is defined such that a prospective employer may not discriminate on the basis of a pardoned criminal offence (a pardon must have been granted under the Criminal Records Act (Canada) and not revoked) or provincial offences.

The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

There is no statutory definition of discrimination. Supreme Court of Canada jurisprudence defines discrimination as including:

> *Differentiation on prohibited grounds. Lawyers who refuse to hire employees of a particular race, sex, creed, sexual orientation, etc. would be differentiating on the basis of prohibited grounds.*
>
> *Adverse effect discrimination. An action or policy that is not intended to be discriminatory can result in an adverse effect that is discriminatory. If the application of a seemingly "neutral" rule or policy creates an adverse effect on a group protected by rule 5.04, there is a duty to accommodate. For example, while a requirement that all articling students have a driver's licence to permit them to travel wherever their job requires may seem reasonable, that requirement effectively excludes from employment persons with disabilities that prevent them from obtaining a licence. In such a case, the law firm would be required to alter or eliminate the requirement in order to accommodate the student unless the necessary accommodation would cause undue hardship.*

Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Ontario Human Rights Code requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer's direction or control.

Ontario human rights law excepts from discrimination special programs designed to relieve disadvantage for individuals or groups identified on the basis of the grounds noted in the Code.

In addition to prohibiting discrimination, rule 5.04 prohibits harassment on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or handicap. Harassment by superiors, colleagues, and co-workers is also prohibited.

Harassment is defined as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome" on the basis of any ground set out in rule 5.04. This could include, for example, repeatedly subjecting a client or colleague to jokes based on race or creed.

Services

(2) A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

Employment Practices

(3) A lawyer shall ensure that his or her employment practices do not offend this rule.

Commentary:

Discrimination in employment or in the provision of services not only fails to meet professional standards, it also violates the Ontario Human Rights Code and related equity legislation.

In advertising a job vacancy, an employer may not indicate qualifications by a prohibited ground of discrimination. However, where discrimination on a particular ground is permitted because of an exception under the Human Rights Code, such questions may be raised at an interview. For example, an employer may ask whether an applicant has been convicted of a criminal offence for which a pardon has not been granted. An employer may ask applicants not yet called in Ontario about Canadian citizenship or permanent residency. If an employer has an anti-nepotism policy, the employer may inquire about the applicant's possible relationship to another employee as that employee's spouse, child or parent. This is in contrast to questions about applicant's marital status by itself. Since marital status has no relevance to employment within a law firm, questions about marital status should not be asked.

An employer should consider the effect of seemingly "neutral" rules. Some rules, while applied to everyone, can bar entry to the firm or pose additional hardships on employees of one sex or of a particular creed, ethnic origin, marital or family status, or on those who have (or develop) disabilities. For example, a law office may have a written or unwritten dress code. It would be necessary to revise the dress code if it does not already accept that a head covering worn for religious reasons must be considered part of acceptable business attire. The maintenance of a rule with a discriminatory effect breaches rule 5.04 unless changing or eliminating the rule would cause undue hardship.

If an applicant cannot perform all or part of an essential job requirement because of a personal characteristic listed in the Ontario Human Rights Code, the employer has a duty to accommodate. Only if the applicant cannot do the essential task with reasonable accommodation may the employer refuse to hire on this basis. A range of appropriate accommodation measures may be considered. An accommodation is considered reasonable unless it would cause undue hardship.

The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in rule 5.04.

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law. However, the following principles are well established.

If a rule, requirement, or expectation creates difficulty for an individual because of factors related to the personal characteristics noted in rule 5.04, the following obligations arise:

The rule, requirement or expectation must be examined to determine whether it is "reasonable and bona fide". If the rule, requirement, or expectation is not imposed in good faith and is not strongly and logically connected to a business necessity, it cannot be maintained. There must be objectively verifiable evidence linking the rule, requirement, or expectation with the operation of the business.

If the rule, requirement, or expectation is imposed in good faith and is strongly logically connected to a business necessity, the next step is to consider whether the individual who is disadvantaged by the rule can be accommodated.

The duty to accommodate operates as both a positive obligation and as a limit to obligation. Accommodation must be offered to the point of undue hardship. Some hardship must be tolerated to promote equality; however, if the hardship occasioned by the particular accommodation at issue is "undue", that accommodation need not be made.

RULE 6 - RELATIONSHIP TO THE SOCIETY AND OTHER LAWYERS

6.01 RESPONSIBILITY TO THE PROFESSION GENERALLY

Integrity

6.01 (1) A lawyer shall conduct himself or herself in such a way as to maintain the integrity of the profession.

Commentary:

Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect credit on the legal profession, inspire the confidence, respect and trust of clients and the community, and avoid even the appearance of impropriety.

Meeting Financial Obligations

(2) A lawyer shall promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy when properly called upon to do so.

Commentary:

In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed, or undertaken on behalf of clients unless, before incurring such an obligation, the lawyer clearly indicates in writing that the obligation is not to be a personal one.

When a lawyer retains a consultant, expert, or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying: the fees, the nature of the services to be provided, and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, nevertheless, if it is reasonably possible to do so, the lawyer should help in making satisfactory arrangements for payment.

If there is a change of lawyer, the lawyer who originally retained a consultant, expert, or other professional should advise him or her about the change and provide the name, address, telephone number, fax number, and e-mail address of the new lawyer.

Duty to Report Misconduct

(3) A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege:

(a) the misappropriation or misapplication of trust monies;

(b) the abandonment of a law practice;

(c) participation in serious criminal activity related to a lawyer's practice;

(d) the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced; and

(e) any other situation where a lawyer's clients are likely to be severely prejudiced.

Commentary:

Unless a lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer).

Nothing in this paragraph is meant to interfere with the traditional solicitor-client relationship. In all cases the report must be made bona fide without malice or ulterior motive.

Often, instances of improper conduct arise from emotional, mental, or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports the Ontario Bar Assistance Program (OBAP), LINK, and other support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity, or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

The Society also recognizes that communications with the harassment and discrimination counsel appointed to assist in resolving complaints of discrimination or harassment against lawyers must generally remain confidential. Therefore, the harassment and discrimination counsel will not be called by the Society or by any investigative committee to testify at any conduct, capacity, or competence hearing without the consent of the person from whom the information was received. Notwithstanding the above, a lawyer serving as harassment and discrimination counsel has an ethical obligation to report to the Society upon learning that a lawyer is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice.

Encouraging Client to Report Dishonest Conduct

(4) A lawyer shall attempt to persuade a client who has a claim against an apparently dishonest lawyer to report the facts to the Society before pursuing private remedies.

(5) If the client refuses to report his or her claim against an apparently dishonest lawyer to the Society, the lawyer shall inform the client of the policy of the Lawyers' Fund for Client Compensation and shall obtain instructions in writing to proceed with the client's claim without notice to the Society.

(6) A lawyer shall inform a client of the provision of the Criminal Code of Canada dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration (section 141).

(7) If the client wishes to pursue a private agreement with the apparently dishonest lawyer, the lawyer shall not continue to act if the agreement constitutes a breach of section 141 of the Criminal Code of Canada.

6.02 RESPONSIBILITY TO THE SOCIETY

Communications from the Society

6.02 A lawyer shall reply promptly to any communication from the Society.

6.03 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

6.03 (1) A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Commentary:

The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their function properly.

Any ill feeling which may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice, or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

(2) A lawyer shall agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities, and similar matters that do not prejudice the rights of the client.

(3) A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities, or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

(4) A lawyer shall not use a tape recorder or other device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so.

Communications

(5) A lawyer shall not in the course of a professional practice send correspondence or otherwise communicate to a client, another lawyer, or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

(6) A lawyer shall answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer shall be punctual in fulfilling all commitments.

(7) A lawyer shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by a lawyer except through or with the consent of that lawyer.

Undertakings

(8) A lawyer shall not give an undertaking that cannot be fulfilled and shall fulfill every undertaking given.

Commentary:

Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as "on behalf of my client" or "on behalf of the vendor" does not relieve the lawyer giving the undertaking of personal responsibility.

6.04 OUTSIDE INTERESTS AND THE PRACTICE OF LAW

Maintaining Professional Integrity and Judgment

6.04 (1) A lawyer who engages in another profession, business, or occupation concurrently with the practice of law shall not allow such outside interest to jeopardize the lawyer's professional integrity, independence, or competence.

(2) A lawyer shall not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

Commentary:

The term "outside interest" covers the widest possible range of activities and includes activities that may overlap or be connected with the practice of law such as engaging in the mortgage business, acting as a director of a client corporation, or writing on legal subjects, as well as activities not so connected such as, for example, a career in business, politics, broadcasting or the performing arts. In each case the question of whether and to what extent the lawyer may be permitted to engage in the outside interest will be subject to any applicable law or rule of the Society.

Where the outside interest is not related to the legal services being performed for clients, ethical considerations will usually not arise unless the lawyer's conduct might bring the lawyer or the profession into disrepute or impair the lawyer's competence as, for example, where the outside interest might occupy so much time that clients' interests would suffer because of inattention or lack of preparation.

6.05 THE LAWYER IN PUBLIC OFFICE

Standard of Conduct

6.05 (1) A lawyer who holds public office shall, in the discharge of official duties, adhere to standards of conduct as high as those that these Rules require of a lawyer engaged in the practice of law.

Commentary:

The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by a failure to observe its ethical standards.

Generally, the Society will not be concerned with the way in which a lawyer holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action.

Conflict of Interest

(2) A lawyer who holds public office shall not allow professional or personal interests to conflict with the proper discharge of official duties.

Commentary:

The lawyer holding part-time public office must not accept any private legal business where duty to the client will, or may, conflict with official duties. If some unforeseen conflict arises, the lawyer should terminate the professional relationship, explaining to the client that official duties must prevail. The lawyer who holds a full-time public office will not be faced with this sort of conflict but must nevertheless guard against allowing independent judgment in the discharge of official duties to be influenced either by the lawyer's own interest, that of some person closely related to or associated with the lawyer, that of former or prospective clients, or former or prospective partners or associates.

Subject to any special rules applicable to the particular public office, the lawyer holding the office who sees that there is a possibility of a conflict of interest should declare the possible conflict at the earliest opportunity, and not take part in any consideration, discussion or vote concerning the matter in question.

(3) If there may be a conflict of interest, a lawyer who holds or who held public office shall not represent clients or advise them in contentious cases that the lawyer has been concerned with in an official capacity.

Appearances before Official Bodies

(4) Subject to the rules of the official body, when a lawyer or any of his or her partners or associates is a member of an official body, the lawyer shall not appear professionally before that body.

Commentary:

Subject to the rules of the official body, a partner or associate may appear professionally before a committee of the official body if the partner or associate is not a member of that committee, provided that in respect of matters in which the partner or associate appears, the lawyer does not sit on the committee, take part in the discussions of the committee's recommendations, or vote upon them.

Conduct after Leaving Public Office

(5) A lawyer who has left public office shall not act for a client in connection with any matter for which the lawyer had substantial responsibility before leaving public office.

Commentary:

It would not be improper for the lawyer to act professionally in the matter on behalf of the public body in question.

A lawyer who has acquired confidential information by virtue of holding public office should keep the information confidential and not divulge or use it, notwithstanding that the lawyer has ceased to hold such office.

6.06 PUBLIC APPEARANCES AND PUBLIC STATEMENTS

Communication with the Public

6.06 (1) Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.

Commentary:

Lawyers in their public appearances and public statements should conduct themselves in the same manner as with their clients, their fellow practitioners, the courts, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal, or the lawyer's office does not excuse conduct that would otherwise be considered improper.

A lawyer's duty to the client demands that, before making a public statement concerning the client's affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer.

Public communications about a client's affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that a lawyer's real purpose is self-promotion or self-aggrandizement.

Given the variety of cases that can arise in the legal system, particularly in civil, criminal, and administrative proceedings, it is impossible to set down guidelines that would anticipate every possible circumstance. Circumstances will arise where the lawyer should have no contact with the media and other cases where the lawyer is under a specific duty to contact the media to serve properly the client - the latter situation will arise more often in the context of administrative boards and tribunals where a particular tribunal is an instrument of government policy and hence is susceptible to public opinion.

A lawyer is often involved in a non-legal setting where contact is made with the media about publicizing such things as fund-raising, expansion of hospitals or universities, programs of public institutions or political organizations, or in acting as a spokesperson for organizations that, in turn, represent particular racial, religious, or other special interest groups. This is a well-established and completely proper role for the lawyer to play in view of the obvious contribution it makes to the community.

A lawyer is often called upon to comment publicly on the effectiveness of existing statutory or legal remedies, on the effect of particular legislation or decided cases, or to offer an opinion about cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

A lawyer is often involved as advocate for interest groups whose objective is to bring about changes in legislation, governmental policy, or even a heightened public awareness about certain issues. This is also an important role that the lawyer can be called upon to play.

Lawyers should be aware that when they make a public appearance or give a statement they will ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used, or under what headline it may appear.

Interference with Right to Fair Trial or Hearing

(2) A lawyer shall not communicate information to the media or make public statements about a matter before a tribunal if the lawyer knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Commentary:

Fair trials and hearings are fundamental to a free and democratic society. It is important that the public, including the media, be informed about cases before courts and tribunals. The administration of justice benefits from public scrutiny. It is also important that a person's, particularly an accused person's, right to a fair trial or hearing not be impaired by inappropriate public statements made before the case has concluded. Fair trials are fundamental to a free and democratic society.

6.07 PREVENTING UNAUTHORIZED PRACTICE

Preventing Unauthorized Practice

6.07 (1) A lawyer shall assist in preventing the unauthorized practice of law.

Commentary:

Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, regulation, and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of secrecy, the professional standard of care which the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include professional liability insurance, rights with respect to the assessment of bills, rules respecting the handling of trust monies, and requirements for the maintenance of compensation funds.

Disbarred Persons, Suspended Lawyers, and Others

(2) Without the express approval of Convocation, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, suspended, undertaken not to practise, or who has been involved in disciplinary action and been permitted to resign, and has not been reinstated or readmitted.

(3) Where a person has been suspended for non-payment of fees or for some reason not involving disciplinary action, the express approval referred to in subrule (2) may also be granted by a committee of Convocation appointed for this purpose.

6.08 RETIRED JUDGES RETURNING TO PRACTICE

Definitions

6.08 (1) In this rule, "retired appellate judge" means a lawyer

(a) who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario, or the Federal Court of Canada, Appeal Division,

(b) who has retired, resigned, or been removed from the Bench, and

(c) who has returned to practice.

(2) In this rule, "retired judge" means a lawyer

(a) who was formerly a judge of the Federal Court of Canada, Trial Division, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court, the Ontario Court of Justice, or the Superior Court of Justice,

(b) who has retired, resigned, or been removed from the Bench, and

(c) who has returned to practice.

Appearance as Counsel

(3) A retired appellate judge shall not appear as counsel or advocate in any court, or in chambers, or before any administrative board or tribunal without the express approval of Convocation. This approval may only be granted in exceptional circumstances and may be restricted as Convocation sees fit.

(4) A retired judge shall not appear as counsel or advocate

(a) before the court on which the judge served or any lower court; and

(b) before any administrative board or tribunal over which the court on which the judge served exercised an appellate or judicial review jurisdiction

for a period of two years from the date of his or her retirement, resignation, or removal without the express approval of Convocation, which approval may only be granted in exceptional circumstances and may be restricted as Convocation sees fit.

6.09 ERRORS AND OMISSIONS

Informing Client of Error or Omission

6.09 (1) When, in connection with a matter for which a lawyer is responsible, the lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer shall:

(a) promptly inform the client of the error or omission being careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan, or otherwise;

(b) recommend that the client obtain legal advice elsewhere concerning any rights the client may have arising from the error or omission; and

(c) advise the client that in the circumstances, the lawyer may no longer be able to act for the client.

Notice of Claim

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

Commentary:

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

1. Immediately arrange an interview with the client and advise the client that an error or omission may have occurred, which may form the basis of a claim by the client against the lawyer.

2. Advise the client to obtain an opinion from an independent lawyer and that, in the circumstances, the first lawyer might no longer be able to act for the client.

3. Subject to rule 2.03 (Confidentiality), inform the insurer of the facts of the situation.

4. Co-operate fully and as expeditiously as possible with the insurer in the investigation and eventual settlement of the claim.

5. Make arrangements to pay that portion of the client's claim that is not covered by the insurance immediately upon completion of the settlement of the client's claim.

Co-operation

(3) When a claim of professional negligence is made against a lawyer, he or she shall assist and co-operate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly.

Responding to Client's Claim

(4) If a lawyer is not indemnified for a client's errors and omissions claim or to the extent that the indemnity may not fully cover the claim, the lawyer shall expeditiously deal with the claim and shall not take unfair advantage that would defeat or impair the client's claim.

(5) In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, a lawyer has a duty to pay the balance.

6.10 RESPONSIBILITY IN MULTI-DISCIPLINE PRACTICES

Compliance with these Rules

6.10 A lawyer in a multi-discipline practice shall ensure that non-lawyer partners and associates comply with these rules and all ethical principles that govern a lawyer in the discharge of his or her professional obligations.

6.11 DISCIPLINE

Disciplinary Authority

6.11 (1) A lawyer is subject to the disciplinary authority of the Society regardless of where the lawyer's conduct occurs.

Professional Misconduct

(2) The Society may discipline a lawyer for professional misconduct.

Conduct Unbecoming a Lawyer

(3) The Society may discipline a lawyer for conduct unbecoming a lawyer.

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Concordance

REVISED RULES OF PROFESSIONAL CONDUCT	RULES OF PROFESSIONAL CONDUCT	NATURE OF CHANGE
1.01		New
1.02 "associate"		New
1.02 "client"	Rule 5, Commentary 16.	
1.02 "client" Commentary		New
1.02 "conduct unbecoming a lawyer"	Rule 1, Footnote 3.	New. Based on ABA Model Code, Rule 8.4
1.02 "conduct unbecoming a lawyer" Commentary	Rule 1, Commentary 2 Rule 1, Commentary 3	
1.02 "consent"		New

1.02 "independent legal advice"		New, but see Rule 5, Commentary 9 (b)
1.02 "independent legal advice" Commentary	Rule 5, Commentary 9 (c).	
1.02 "independent legal representation"		New, but see Rule 5, Commentary 9 (a)
1.02 "interprovincial law firm"	Rule 22, para. 1	
1.02 "law firm"	Rule 29 (1) (Definition)	Revised
1.02 "lawyer"	Interpretation and Rule 29(1)	Revised
1.02 "member"	Rule 29 (1) (Definition)	
1.02 "professional misconduct"	Rule 1, Footnote 3.	New. Based on ABA Model Code, Rule 8.4
1.02 "society"	Interpretation	
1.02 "tribunal"		New
1.03 (1)	Forward and Rule 1	New. Based on: Alberta Code of Professional Conduct, Chapter 1, Statement of Principle and Chapter 3, Statement of Principle; Special Committee to Review the Rules of Professional Conduct - Structure of the Revised Rules, para. 1.1.
1.03 (2)	Interpretation	
2.01 (1)	Forward	Revised Rule 2, Commentaries 1, 4, 5 and 8 deleted.
2.01 (1) Commentary	Rule 2, Commentary 10 Rule 3, Commentary 2 Rule 2, Commentary 6 - Rule 3, Commentary 3 Rule 3, Commentary 4 Rule 3, Commentary 9 Rule 2, Commentary 2 Rule 2, Commentary 7 Rule 2, Commentary 3	New for Multi-Discipline Practices Revised Rule 2 (b) deleted

2.01 (2)	Rule 2 (a)	Revised
2.01 (2) Commentary	Rule 2, Commentary 9	Revised
2.02 (1)	Rule 3	
2.02 (1) Commentary	Rule 3, Commentary 1	
2.02 (2)	Rule 3, Commentary 5 Rule 10, Commentary 6	
2.02 (3)	Rule 10, Commentary 6A	Revised
2.02 (4)	Rule 3, Commentary 8	Revised
2.02 (5)	Rule 3, Commentary 6	Revised
2.02 (5) Commentary	Rule 3, Commentary 6 Rule 3, Commentary 7	Revised Revised
2.02 (6)		New. Based on American Bar Association Model Code Rule 1.16
2.02 (6) Commentary		New. Based on American Bar Association Model Code Rule 1.16
2.02 (7)	Rule 26, Para. 1	Revised
2.02 (7) Commentary	Rule 26, Commentary 1	Revised
2.02 (8)	Rule 26, Para. 2	Revised
2.02 (9)	Rule 26, Commentary 2	Revised
2.02 (10)	Rule 30, Para. 1	
2.02 (10) Commentary	Rule 30, Commentary 1 Rule 30, Commentary 2	
2.02 (11)	Rule 30, Para. 2	
2.02 (12)	Rule 30, Para. 2	
2.02 (12) Commentary	Rule 30, Commentary 3	Revised
2.02 (13)	Rule 30, Para. 4	

2.03 (1)	Rule 4	Revised
2.03 (1) Commentary	Rule 4, Commentary 1 Rule 4, Commentary 2 Rule 4, Commentary 4 Rule 4, Commentary 3 Rule 4, Commentary 6 Rule 4, Commentary 7 Rule 4, Commentary 8 Rule 4, Commentary 9	Revised New
2.03 (2)	Rule 4, Commentary 10	Revised
2.03 (3)	Rule 4, Commentary 11	Revised
2.03 (3) Commentary		New
2.03 (4)	Rule 4, Commentary 12	Revised
2.03 (5)	Rule 4, Commentary 12	
2.03 (6)	Rule 4, Commentary 5	Revised
2.03 (6) Commentary	Rule 4, Commentary 5	Revised
2.04 (1)	Rule 5, Commentary 1	Rule 5, Commentary 12 deleted; but see rule 2.07 (1).
2.04 (1) Commentary	Rule 5, Commentary 3 Rule 5, Commentary 7	
2.04 (2)	Rule 5	Revised
2.04 (3)	Rule 5	Revised
2.04 (3) Commentary	Rule 5, Commentary 2 Rule 5, Commentary 4	Revised New Revised New
2.04 (4)	Rule 5, Commentary 13	Revised
2.04 (4) Commentary	Rule 5, Commentary 13	
2.04 (5)		New
2.04 (5) Commentary		New
2.04 (6)	Rule 5, Commentary 5	

2.04 (6) Commentary		New
2.04 (7)	Rule 5, Commentary 5	Revised
2.04 (7) Commentary	Rule 5, Commentary 5	Revised
2.04 (8)	Rule 5, Commentary 5	
2.04 (9)	Rule 5, Commentary 6	Revised
2.04 (9) Commentary	Rule 5, Commentary 11 Rule 5, Commentary 6	
2.04 (10)	Rule 5, Commentary 6	
2.04 (11)		New
2.04 (12)		New
2.04 (13)		New for multi-discipline practice.
2.04 (14)	Rule 5, Commentary 14	New See Alberta Rules C 1, Rule 5, Commentary
2.04 (14) Commentary	Rule 5, Commentary 14	Revised
2.05 (1)	Rule 29 (1)	Revised
2.05 (1) Commentary	Rule 29, Commentary 2	Revised
2.05 (2)	Rule 29 (2)	
2.05 (3)	Rule 29 (3)	
2.05 (3) Commentary	Rule 29, Commentary 1	Revised
2.05 (4)	Rule 29 (4)	Revised
2.05 (4) Commentary	Rule 29, Commentary 3	
2.05 (5)		New
2.05 (6)	Rule 29 (5)	
2.05 (7)	Rule 29 (6)	
2.05 (8)	Rule 29 (7)	
2.05 (9)	Rule 29 (8)	Revised. Rule 29, Commentary 3 deleted

2.05 (10)	Rule 29 (9)	Revised (in particular for multi-discipline practice).
2.05 (10) Commentary	Rule 29, Commentary 2 Rule 29, Commentary 3 Rule 29, Commentary 4	Revised
2.06 (1)	Rule 23, Para. 1	
2.06 (2)		New, but see Rule 5, Commentaries 8 and 10
2.06 (2) Commentary	Rule 5, Commentary 10 Rule 5, Commentary 17 Rule 5, Commentary 8	Revised
2.06 (3)	Rule 5, Commentary 9 (b)	
2.06 (4)	Rule 7, Para. 1	Revised. Rule 7 Commentary 3 deleted
2.06 (4) Commentary	Rule 7, Commentary 1 Rule 7, Para. 3	Revised Rule 7, Commentary 4 deleted Rule 7, Commentary 2 deleted
2.06 (5)	Rule 7, Para. 2	
2.06 (6)	Rule 23, Para. 5 Rule 23, Para. 2	Revised
2.06 (6) Commentary	Rule 23, Para. 7	Revised
2.06 (7)	Rule 23, Para. 3	
2.06 (8)	Rule 23, Para. 4 Rule 23, Para. 5	
2.06 (9)	Rule 23, Para. 6 (a)	Revised
2.06 (10)	Rule 23, Para. 6 (b)	Revised
2.07(1)	Rule 6	Revised
2.07 (1) Commentary	Rule 6, Commentary 1 Rule 6, Commentary 5	
2.07 (2)	Rule 6, Commentary 2	
2.07 (3)	Rule 6, Commentary 3	
2.07 (4)	Rule 6, Commentary 4	

2.07 (5)	Rule 6, Commentary 4	
2.07 (6)	Rule 6, Commentary 4	Revised
2.07 (6) Commentary	Rule 6, Commentary 6	
2.08 (1)	Rule 9 (a), (c)	Revised
2.08 (2)	Rule 9, Commentary 6	
2.08 (2) Commentary	Rule 9, Commentary 1 Rule 9, Commentary 8 Rule 9, Commentary 5 Rule 9, Commentary 2	Rule 9, Commentary 9 deleted Revised.
2.08 (3)	Rule 9, Commentary 10	
2.08 (4)	Rule 9, Commentary 10	
2.08 (5)	Rule 9, Commentary 4	
2.08 (6)	Rule 9, Commentary 3	
2.08 (7)	Rule 9 (b)	Revised
2.08 (8)	Rule 9, Commentary 7	Revised
2.08 (9)	Rule 9, Commentary 7	Revised
2.08 (10)		New for multi-discipline practice.
2.08 (11)	Rule 9 (d)	
2.09(1)	Rule 8	Revised
2.09 (1) Commentary	Rule 8, Commentary 1 Rule 8, Commentary 7	
2.09 (2)	Rule 8, Commentary 4	Revised
2.09 (2) Commentary	Rule 8, Commentary 4	
2.09 (3)	Rule 8, Commentary 5	Revised
2.09 (4)	Rule 8, Commentary 6	
2.09 (4) Commentary	Rule 8, Commentary 6	Revised
2.09 (5)	Rule 8, Commentary 6	Revised
2.09 (6)	Rule 8, Commentary 6	Revised

2.09 (6) Commentary	Rule 8, Commentary 6	
2.09 (7)	Rule 8, Commentary 3	Revised
2.09 (7) Commentary	Rule 8, Commentary 12	
2.09 (8)	Rule 8, Commentary 2	
2.09 (9)	Rule 8, Commentary 8	Revised
2.09 (9) Commentary	Rule 8, Commentary 8 Rule 8, Commentary 9 Rule 8, Commentary 10	
2.09 (10)	Rule 8, Commentary 11	Revised
2.09 (10) Commentary	Rule 8, Commentary 11	
3.01	Rule 12, Para. 1	Revised
3.01 Commentary	Rule 12, Commentary 1 Rule 12, Commentary 3 Rule 12, Commentary 5 Rule 12, Commentary 1 Rule 12, Commentary 2	 Revised Revised Rule 12, Commentary 2 deleted
3.02 (1)	Rule 12, Para. 7 (b)	
3.02 (2)	Rule 12, Para. 7 (a)	Revised
3.02 (3)	Rule 12, Para. 7 (e)	
3.02 (4)	Rule 12, Para. 7 (b)	
3.02 (5)	Rule 12, Para. 7 (c)	
3.02 (6)	Rule 12, Para. 7 (d)	
3.02 (7)	Rule 12 Para. 7 (f)	
3.02 (8)		New
3.03 (1)	Rule 12, Para. 7 (h)	Revised
3.03 (2)	Rule 12, Para. 7 (g)	
3.03 (3)	Rule 12, Para. 7 (i)	Revised for multi-discipline practices
3.04 (1)	Rule 12, Para. 2	Revised

3.04 (2)	Rule 12, Para. 3	Revised
3.04 (3)	Rule 12, Para. 5 (a) Rule 12, Para. 5 (b)	Revised
3.04 (3) Commentary	Rule 12, Commentary 4	Revised
3.05 (1)	Rule 12, Para. 8 (a)	Revised
3.05 (2)	Rule 12,Para. 8 (a)	Revised
3.05 (3)	Rule 12, Para. 8 (a)	Revised
3.05 (4)	Rule 12, Para. 8 (b)	Revised
3.05 (5)	Rule 12, Para. 8 (b)	Revised
3.05 (6)		New for multi-discipline practice.
3.06 (1)		New Rule 12, Para. 4 deleted Rule 12, Para. 6 deleted
3.06 (2)		Revised and new. Rule 12, Paras. 5 (c), (d), (e), (f), and (g) replaced. See Alberta Rule 5 (Accessibility and Advertisement of Legal Services)
3.06 (2) Commentary		New
3.07 (1)	Rule 22, Para. 1	
3.07 (2)	Rule 22, Para. 2	
3.07 (3)	Rule 22, Para. 3	
3.07 (4)	Rule 22, Para. 4	
4.01 (1)	Rule 10	

4.01 (1) Commentary	Rule 10, Commentary 1 Rule 10, Commentary 2 Rule 10, Commentary 13 Rule 21, Para. 3 Rule 10, Commentary 10 Rule 10, Commentary 11 Rule 10, Commentary 5 Rule 10, Commentary 4	Revised; see para. 17 of October 15, 1998 draft *American College of Trial Lawyers Canadian Code of Trial Conduct.* The commentary about taking into account the best interests of a child is new.
4.01 (2)	Rule 10, Commentary 2	Revised para. 4.01 (2)(g) Revised para. 4.01 (2)(h) Revised para. 4.01 (2)(i) Revised para. 4.01 (2)(l)
4.01 (2) Commentary		New
4.01 (3)		New
4.01 (3) Commentary	Rule 10, Commentary 3	Revised
4.01 (4)		New
4.01 (5)	Rule 10, Commentary 3 (a)	
4.01 (5) Commentary	Rule 10, Commentary 3 (b)	
4.01 (6)	Rule 10, Commentary 7	Revised
4.01 (6) Commentary	Rule 10, Commentary 7	
4.01 (7)	Rule 10, Commentary 8	Revised
4.01 (7) Commentary	Rule 10, Commentary 8	
4.01 (8)		New
4.01 (9)	Rule 10, Commentary 12	Revised.
4.01 (9) Commentary	Rule 10, Commentary 12	Revised.
4.02 (1)	Rule 10, Commentary 16 (a), (c)	
4.02 (2)	Rule 10, Commentary 16 (b), (c)	
4.02 (2) Commentary	Rule 10, Commentary 16 (b), (c)	Revised
4.02 (3)	Rule 10, Commentary 16 (b), (c)	
4.03 (1)	Rule 10, Commentary 14	

4.03 (2)	Rule 10, Commentary 14	Revised
4.03 (3)		New
4.03 (3) Commentary		New
4.04	Rule 10, Commentary 15	Revised
4.04 Commentary	Rule 10, Commentary 15	Revised New
4.05		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (1) Commentary		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (2)		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (3)		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (4)		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (5)		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (5) Commentary		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.06 (1)	Rule 11	
4.06 (1) Commentary	Rule 11, Commentary 1 Rule 11, Commentary 2 Rule 11, Commentary 5 Rule 11, Commentary 3	Revised Revised
4.06 (2)	Rule 11, Commentary 4	Revised
4.06 (2) Commentary	Rule 11, Commentary 4	

4.06 (3)	Rule 11, Commentary 6	Revised New
4.06 (3) Commentary	Rule 11, Commentary 6	Revised New
4.07	Rule 25 Rule 25, Commentary 3	Rule 25, Commentary 4 deleted Rule 25, Commentary 2 deleted Revised
4.07 Commentary	Rule 25, Commentary 1 Rule 25, Commentary 4 Rule 25, Commentary 5	 Revised
5.01 (1)	Rule 16, Commentary 4	Rule 16, Commentary 1 deleted
5.01 (2)	Rule 19, Commentary 2 Rule 16, Para. 4	
5.01 (2) Commentary	Rule 19, Commentary 2 - Rule 16, Para. 2 Rule 16, Para. 3 Rule 16, Commentary 2 Rule 16, Commentary 2 (a) Rule 16, Commentary 2 (b) Rule 16, Commentary 2 (c) Rule 16, Commentary 2 (d)	Revised New, but based on Rule 16, Para. 1 Revised Revised Revised
5.01 (3)	Rule 16, Commentary 3	Revised Provision about non-lawyer not being permitted to set fees deleted; 5.01(3)(m) based on part of Rule 16, Para. 2
5.01 (3) Commentary	Rule 16, Commentary 3. Rule 16, Para. 1	
5.01 (4)	Rule 30, Para. 3	Revised
5.01 (5)	Rule 19, Commentary 3	
5.02 (1)	Rule 13, Commentary 7	Revised
5.02 (2)	Rule 24, Para. 1	Revised
5.02 (3)	Rule 24, Para. 2	
5.03 (1)	Rule 27, Commentary 1	Revised

5.03 (1) Commentary	Rule 27, Commentary 2 Rule 27, Commentary 3	
5.03 (2)	Rule 27	Revised
5.04 (1)	Rule 28	
5.04 (1) Commentary	Rule 28, Commentary	Revised by the addition of commentary taken from the Law Society's five bulletins about Rule 28.
5.04 (2)	Rule 28, Commentary	
5.04 (3)	Rule 28, Commentary	Revised by the addition of commentary taken from the Law Society's five bulletins about Rule 28.
5.04 (3) Commentary	Rule 28, Commentary	
6.01 (1)	Rule 13	Revised
6.01 (1) Commentary	Forward Rule 1, Commentary 1 Rule 1, Commentary 2 Rule 1, Commentary 3	Revised
6.01 (2)	Rule 13, Commentary 6	Revised
6.01 (2) Commentary	Rule 13, Commentary 6	New commentary about relationship with consultants
6.01 (3)	Rule 13, Commentary 1	Revised
6.01 (3) Commentary	Rule 13, Commentary 1 Rule 13, Commentary 1A	New commentary about harassment and discrimination counsel.
6.01 (4)	Rule 13, Commentary 2	
6.01 (5)	Rule 13, Commentary 2	
6.01 (6)	Rule 13, Commentary 2	
6.01 (7)	Rule 13, Commentary 2	
6.02	Rule 13, Commentary 3	

6.03 (1)	Rule 14 Rule 14, Commentary 9	Revised
6.03 (1) Commentary	Rule 14, Commentary 1 Rule 14, Commentary 2 Rule 14, Commentary 8	
6.03 (2)	Rule 14, Commentary 3	Revised
6.03 (3)	Rule 14, Commentary 4	
6.03 (4)	Rule 14, Commentary 4	
6.03 (5)	Rule 14, Commentary 4	Revised
6.03 (6)	Rule 14, Commentary 5	Revised
6.03 (7)	Rule 14, Commentary 7	
6.03 (8)	Rule 14, Commentary 6	
6.03 (8) Commentary	Rule 14, Commentary 6	
6.04 (1)	Rule 17	
6.04 (2)	Rule 17, Commentary 2	
6.04 (2) Commentary	Rule 17, Commentary 1 Rule 17, Commentary 3	
6.05 (1)	Rule 18	
6.05 (1) Commentary	Rule 18, Commentary 1 Rule 18, Commentary 2	
6.05 (2)	Rule 18, Commentary 3	
6.05 (2) Commentary	Rule 18, Commentary 3 Rule 18, Commentary 4	
6.05 (3)	Rule 18, Commentary 5	Revised
6.05 (4)	Rule 18, Commentary 6	Revised
6.05 (4)	Rule 18, Commentary 6	
6.05 (5)	Rule 18, Commentary 7	

6.05 (5) Commentary	Rule 18, Commentary 7 Rule 18, Commentary 8	
6.06 (1)		New, but see Rule 21, Commentary 1 Rule 21, Para. 3 moved to Rule 4.01 (1) Commentary
6.06 (1) Commentary	Rule 21, Para. 1 Rule 21, Para. 2 Rule 21, Para. 5 Rule 21, Commentary 5 Rule 21, Commentary 2 Rule 21, Commentary 3 Rule 21, Commentary 4 Rule 21, Commentary 6	 Revised Revised
6.06 (2)		New
6.06 (2) Commentary		New
6.07 (1)	Rule 19	
6.07 (1) Commentary	Rule 19, Commentary 1	
6.07 (2)	Rule 20	Revised.
6.07 (3)		New
6.08 (1)	Rule 15, Para. 1	
6.08 (2)	Rule 15, Para. 2	
6.08 (3)	Rule 15, Para. 1	
6.08 (4)	Rule 15, Para. 2	
6.09 (1)	Rule 3, Commentary 10	Revised.
6.09 (2)	Rule 3, Commentary 10	
6.09 (2) Commentary	Rule 5, Commentary 15	Revised
6.09 (3)	Rule 3, Commentary 10	Revised
6.09 (4)	Rule 3, Commentary 10	
6.09 (5)	Rule 3, Commentary 10	Revised
6.10		New for multi-discipline practice

6.11 (1)		New, based on ABA Model Code, Rule 8.5
6.11 (2)		New
6.11 (3)		New

Index

Witnesses,

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It was moved by Mr. MacKenzie, seconded by Mr. Millar and Ms. Ross that the revised Rules as amended by Mr. Varro's memorandum dated June 20th be adopted and come into effect November lst, 2000.

Carried

Amendments to Rules (Memorandum from Jim Varro dated June 20th, 2000)

Page 30 - In subrule 2.05 (5), the first line should read

"For greater certainty, subrule (4) is not intended to interfere with the discharge by an Attorney General or his..."

Page 45 - In subrule 2.08 (7), the first four words of the second line should read

"....the same law firm,..."

Page 95 - In subrule 6.06(2) commentary, the last sentence "Fair trials are fundamental to a free and democratic society" be deleted, as these words appear in the first sentence of the commentary.

REPORT OF THE FINANCE & AUDIT COMMITTEE

May 2000 Report

Mr. Krishna presented the May Report of the Finance & Audit Committee.

Finance and Audit Committee
May 9, 2000

Report to Convocation

Purpose of Report: Decision Making
Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. e Finance and Audit Committee ("the Committee") met on May 9, 2000. Committee members in attendance were:
Krishna V. (c), Crowe M (v-c), Swaye G. (v-c), Cass R., Murphy D., Puccini H., White D., Wilson R.. Staff in attendance were: Saso J, Tysall W., Corrick K., Crossley K., Grady F., White R., Cawse A.

2. The Committee is reporting on the following matters:
For Decision
- Supplemental Life and Disability Insurance for Members.

Information
- General Fund Financial Statements for the Quarter ended March 31, 2000.
- Lawyers Fund for Client Compensation Financial Statements for the Quarter ended March 31, 2000.
- Investment Compliance Report for the Quarter ended March 31, 2000.
- Lawyer Referral Service 1-900 number.
- Investment Policy

FOR DECISION

SUPPLEMENTAL LIFE AND DISABILITY INSURANCE FOR MEMBERS

4. During Convocation on February 18, 2000, it was suggested that the Law Society should have an insurance policy in place to cover members killed or injured in the course of carrying out professional duties. The Treasurer referred this matter to the Finance and Audit Committee.

5. The Finance Department and the Human Resources Department, together with AON Consulting, our benefits consultant, have explored the feasibility of the Law Society offering this kind of life and disability insurance program. AON Consulting has indicated the initial phase of any such insurance undertaking would require a viability report costing between $1,000 and $1,500 to determine the program's parameters, scope and timing. If it is determined that such a program is in fact viable additional considerations include:

- Life and disability insurance coverage is available to all members in the marketplace. In particular the Canadian Bar Association, Ontario offers this type of coverage to its members. If the Law Society were to implement an insurance program it may impact the Association's program.
- Obtaining the underwriting information required for this type of coverall insurance program is complicated by:
  - The difficulty in defining the parameters for "in the course of carrying out professional duties", or similar qualification for coverage.
  - Potential insurers requiring information on individual lawyer's incomes to comply with Insurance Bureau coverage regulations, and to set premiums.
  - Potential insurers requiring information on individual lawyer's health conditions.
- To ascertain potential premiums for this type of policy, AON Consulting has estimated that it will cost between $37,000 and $52,500, depending on benefit lines offered, number of carriers, contracts required etc. None of these costs have been provided for in the 2000 Operating Budget.

Request of Convocation:

6. Based on the level of initial costs and the existence of viable alternatives, the Committee recommends that Convocation not proceed with the development of this program.

FOR INFORMATION

GENERAL FUND FINANCIAL STATEMENTS FOR THE QUARTER ENDED MARCH 31, 2000

7. The financial statements for the General Fund for the quarter ended March 31, 2000 are attached as page 6.

LAWYERS FUND FOR CLIENT COMPENSATION STATEMENT OF CHANGES IN FUND BALANCE FOR THE QUARTER ENDED MARCH 31, 2000

8. The Statement of Changes in Fund Balance for the Lawyers Fund for Client Compensation for the quarter ended March 31, 2000 is attached as page 9.

INVESTMENT COMPLIANCE REPORTS

9. The Investment Compliance Reports for the General and Compensation Funds for the three months ended March 31, 2000 are attached at page 10. There were no breaches of the Investment Policy.

LAWYER REFERRAL SERVICE

10. The Committee reviewed the draft report from the Government and Public Affairs Committee which seeks Convocation's approval of a 1-900 number for the Lawyer Referral Service ("LRS").

11. The introduction of a 1-900 number will result in callers being charged $6 per call. It is envisaged that these revenues will allow LRS to become self funding. The nominal charge per call will also deter calls that don't meet LRS objectives, resulting in LRS service levels improving.

12. The Committee supported and endorsed the LRS report based on the financial projections.

INVESTMENT POLICY

13. The Committee reviewed the draft revised Investment Policy, which expands the investment mix to include fixed income investments with longer maturities, and a small amount of equities. The draft Policy also entails retaining an Investment Counsellor and Portfolio Manager for the long term component of the portfolio. The Committee requested that the draft Investment Policy be reviewed by a specialist in the field, who could provide further information and direction on such issues and risks, returns and ethical investment programs.

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

(1) Financial statements for the General Fund for the quarter ended March 31, 2000; the financial statements for the Lawyers Fund for Client Compensation for the quarter ended March 31, 2000; and the investment Compliance Reports for the General and Compensation Funds for the three months ended March 31, 2000. (pages 6 - 13)

Re: Supplemental Life and Disability Insurance for Members

Mr. Krishna advised that the Finance & Audit Committee recommended that the Law Society not proceed with the development of a supplemental life and disability insurance program based on the level of initial costs and the existence of viable alternatives.

FINANCE & AUDIT COMMITTEE REPORT - JUNE 2000

Finance and Audit Committee
June 8, 2000

Report to Convocation

Purpose of Report: Decision
Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on June 8, 2000. Committee members in attendance were Krishna V. (c), Crowe M., (v-c), Swaye G. (v-c), Cass R., Chahbar A., Epstein S., Murphy D., Puccini H., Wardlaw J., Wilson R.,Wright B.. Staff in attendance were: Saso J., Tysall W., Heins M., Strom M., Grady F., Cawse A.

2. The Committee is reporting on the following matters:

Decision

- Lawyer's Professional Indemnity Company, Letters Patent and Bylaws - Confidential
- J. Shirley Denison Fund Application - Confidential

Information

- OCAT Funding Request
- OBAP Funding Request
- Investment Policy
- Heritage Challenge Fund

FOR DECISION

LAWYER'S PROFESSIONAL INDEMNITY COMPANY ("LPIC"), LETTERS PATENT AND BYLAWS - IN CAMERA

3. Mr. Malcolm Heins and Ms. Michelle Strom from LPIC set out the consequences, background, and reasons for changes to LPIC's Letters Patent and Bylaws. They will make a similar presentation to Convocation. Drafts of the suggested amendments with a covering memorandum are attached at Page 5 (confidential). A LPIC shareholder's resolution is required to make these amendments.

4. The Finance and Audit Committee recommends that Convocation approve the amended Letters Patent and Bylaws of LPIC as detailed on pages 6 to 11.

J. SHIRLEY DENISON FUND - IN CAMERA

5. A memorandum addressing an application for a grant from the J. Shirley Denison Fund, is attached from page 12 (confidential). Guidelines used in assessing applications to the Fund are set out on page 12.

1. The Finance and Audit Committee recommends that Convocation approve the staff recommendation concerning the application to the J. Shirley Denison Fund as detailed on pages 13 and 14.

FOR INFORMATION

ONTARIO CENTRE FOR ADVOCACY TRAINING ("OCAT")

7. The Law Society has received funding requests from OCAT for an operating grant of $50,000, and a Bar Admissions Training Grant of $5,000 for the 2001 year. These amounts are being considered in advance of the Law Society's 2001 budget to allow OCAT to complete their financial plans and programming for the 2001 year. The request is being referred to the Admissions Committee to assess whether the continuation of these grants meets the Law Society's policy and strategic plan objectives.

ONTARIO BAR ASSISTANCE PROGRAM ("OBAP")

8. The Law Society has received funding requests from OBAP for an operating grant of $60,000 for the 2001 year. These amounts are being considered in advance of the Law Society's 2001 budget to allow OBAP to complete their financial plans and programming for the 2001 year. The request is being referred to the Professional Development and Competence Committee to assess whether the continuation of these grants meets the Law Society's policy and strategic plan objectives.

INVESTMENT POLICY

9. Mr. Andrew Smith from James P. Marshall, Investment Consultants attended the meeting to provide his report on the draft revised Investment Policy, and answer questions from the Committee.

APPLICATION FOR A HERITAGE GRANT

10. The Ontario Heritage Fund, under the Ministry of Citizenship, Culture and Recreation has directed $5million in potential grants which will match money raised by eligible applicants to assist in the preservation and enhancement of heritage in Ontario communities. The Law Society has submitted an application for the maximum grant of $200,000 to assist in the restoration and preservation of the perimeter fence of Osgoode Hall. $250,000 was allocated to this project in the 2000 Capital Budget, with a further $250,000 anticipated for the 2001 budget.

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REPORT OF THE PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE

Mr. DiGiuseppe presented the Report of the Professional Development & Competence Committee for Convocation's consideration.

Professional Development & Competence Committee
June 8, 2000

Report to Convocation

Purpose of Report: Decision Making
Information

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

TABLE OF CONTENTS

INFORMATION

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on June 8, 2000. Kim Carpenter-Gunn chaired the meeting. Other Committee members in attendance were Earl Cherniak (Vice-Chair), Stephen Bindman, Dino DiGiuseppe, Greg Mulligan, Marilyn Pilkington, Judith Potter, and Bill Simpson. Eleanore Cronk (Chair) and Seymour Epstein attended a portion of the meeting. Staff in attendance were Scott Kerr, Janine Miller, Elliot Spears, Sophia Sperdakos, Ursula Stojanowicz, and Paul Truster. A portion of the meeting was held in conjunction with the Professional Regulation Committee.

2. The Committee is reporting on the following matters:

Policy - For Decision

- Report of the Working Group on Long-Term Delivery of County and District Library Services; Proposed By-Law regarding county libraries; Proposed Amendments to Regulation 708 regarding county libraries; and Proposed Amendments to By-law 9

- Protocol for Complainants in the Law Society's Conduct, Competence, and Capacity Processes [detailed report in the Professional Regulation Committee materials]

- Publications Protocol for Law Society CLE

- French Version of By-Law 28

- Increased Funding for LINK

Information

- Working Group on Protocol for Members Involved in Law Society Complaints, Investigations, and Hearings Processes

POLICY - FOR DECISION

REPORT OF THE WORKING GROUP ON THE LONG -TERM DELIVERY OF COUNTY AND DISTRICT LIBRARY SERVICES

(i) Report of the Libraries Working Group

1. On January 23, 1998 Convocation adopted the recommendations of the Professional Development and Competence Committee calling for the formation of a working group on the future delivery of services to the county and district law libraries. The working group's mandate was to,
   a) establish policy objectives for the libraries;
   b) consider broad alternative approaches to the delivery of library services in the light of stated policy objectives; and
   c) consider the costs of viable alternatives.

2. Convocation has considered two reports from the working group, the Phase I report on October 23, 1998 and the Phase II report on May 28, 1999, and approved a number of recommendations broadly outlining the nature of the new system for delivering library services and adopting the principles of universal access and universal funding. In May, 1999 Convocation requested that the working group explore a number of matters regarding the appropriate administrative structure for the library system and an appropriate business plan.

3. The working group on the administrative structure has completed its report, entitled *Beyond 2000 - A Fresh Start for Ontario Courthouse Libraries* (the "Libraries Report") , which was provided to Convocation in May 2000 under separate cover. Benchers were requested to review the report for consideration at June 23, 2000 Convocation. Benchers are requested to bring the copy of the report they received in May to Convocation in June as the report is not being re-distributed.

4. The Committee has considered the Libraries Report and the recommendations set out in Chapter 2, page 7 and recommends them for approval by Convocation.

5. A further matter the Committee is raising for Convocation's consideration concerns the wording of one of the requests to Convocation already approved by the Committee for inclusion in the Libraries Report, and set out in the report (Chapter 2, page7). It reads as follows:

   > Convocation is requested to
   >
   > ...
   >
   > d. authorize the Law Society to enter into a unanimous shareholders agreement with respect to the corporation.

6. The use of the term "Law Society" in this context means Convocation. Because, however, Convocation will not meet in July and August, it is proposed that the request to Convocation should be reworded to read as follows:

   > d. authorize *the Treasurer, on behalf of* the Law Society to enter into a unanimous shareholders agreement with respect to the corporation.

7. A second matter for consideration relates to the appointment of the first Law Society Director to the Corporation. If the Libraries Report is approved on June 23, 2000 and steps are to be taken over the summer to incorporate "LibraryCo", one of the necessary first steps will be the Law Society's appointment of the first Law Society director. To ensure that this necessary step is not held up due to the summer recess of Convocation the Committee recommends that Convocation approve the following as part of the Libraries Report recommendations:

> Convocation is requested to
>
> ...
>
> e. authorize the Treasurer, on behalf of the Law Society, to name the first Law Society Director of the corporation.

8. At its meeting on June 8, 2000 the Committee considered a further recommendation concerning the distribution of funds for "LibraryCo" during the remainder of the 2000 fiscal year. The proposed recommendation confirms that funds referred to as the "surplus library funds" in the Phase I Libraries Working Group Report, and elsewhere, including Convocation, are earmarked for incorporating LibraryCo and financing operations for the balance of the fiscal year 2000. The Committee approved the following motion for inclusion in the recommendations to Convocation:

> f. Funds required for the incorporation of LibraryCo for its operations during the balance of the fiscal year 2000 be advanced by the Law Society from funds allocated for County and District library purposes, on the approval of the Society's Chief Financial Officer.

Request to Convocation

9. Convocation is requested to review the Libraries Report and, if appropriate, approve the recommendations set out Chapter 2 of the report, page 7, and the additional recommendations set out in paragraphs 6, 7, and 8 above. For Convocation's convenience, the recommendations are all set out below:

Convocation is requested to consider the report and, if appropriate,

a. approve the report, including the recommendations for the governance structure set out in Chapter 4;

b. authorize the drafting of amendments to Regulation 708 to remove provisions relating to county law libraries;

c. approve the making of a By-law on county law libraries to include, among other provisions,

   (i) an obligation on the Society to establish a corporation under the *Ontario Business Corporations Act*, consisting of fifteen directors;

   (ii) A description of the share structure of the corporation, including the number of classes of shares, the rights, etc. attaching to each class of shares, and the holders of each class of shares;

(iii) a list of the objects of the corporation;

(iv) a requirement on the corporation to submit to Convocation an annual report, which includes audited financial statements, and an annual budget;

(v) a provision that county law libraries shall be operated by their associations in accordance with policies, priorities, guidelines and standards established by the corporation;

(vi) a provision, carried over from Regulation 708, dealing with the "ownership" of the library materials of the county law libraries;

(vii) a provision dealing with access to county law libraries (the "universal access" provision);

(viii) a provision specifying that the money required for the purposes of the corporation shall be paid out of money appropriated therefor by Convocation; and

(ix) a provision permitting Convocation to suspend or reduce funding of the corporation in specified circumstances.

d. authorize the Treasurer on behalf of the Law Society to enter into a unanimous shareholders agreement with respect to the corporation;

e. authorize the Treasurer, on behalf of the Law Society, to name the first Law Society Director of the corporation.

Convocation is further requested to authorize that,

f. funds required for the incorporation of LibraryCo for its operations during the balance of the fiscal year 2000 be advanced by the Law Society from funds allocated for County and District library purposes, on the approval of the Society's Chief Financial Officer.

(ii) Making of the Libraries By-law (Proposed By-law 29)

10. In the normal course, By-laws relating to policies adopted by Convocation are drafted following the passage of a policy and submitted to a subsequent Convocation for consideration and approval.

11. Because the Libraries Report is being considered in June, however, the first subsequent Convocation at which a library By-law could be considered is September, 2000. The working group and the Committee are of the view that if Convocation approves the Libraries Report in June every effort should be made to make and approve the necessary By-law at the same time so that valuable time is not lost over the summer.

12. The Committee has reviewed the draft By-law set out in Appendix 1 and recommends that if Convocation approves the Libraries Report, it also approve the making of By-law 30 regarding libraries, at the same time.

Request to Convocation

13. If Convocation approves the Libraries Report and recommendations it is also requested to consider the motion set out in Appendix 1 to make By-Law 30 and, if appropriate, approve it.

(iii) Proposed Amendments to Regulation 708

14. Regulation 708, which deals with county and district law associations and law libraries, is set out at Appendix 2. If Convocation approves the Libraries Report and recommendations, it will be necessary to seek amendments to those aspects of Regulation 708 that deal with libraries.

Request to Convocation

15. The following amendments to Regulation 708 are proposed:

(1) In section 24,

a. delete "sections 25 to 35" in the first line and substitute "section 25"; and

b. delete "'Committee' means the Libraries and Reporting Committee".

(2) In subsection 25 (3),

a. delete "Chief Librarian" in the first and third lines and substitute "Secretary"; and

b. delete "and in either case, proof of the condition of its funds and that proper accommodation has been provided for its library, together with an undertaking that the association has knowledge of and will comply with the regulations applicable to county law libraries and with such other particulars as are required by the Committee" at the end.

(3) Revoke sections 26 to 35.

(iv) Amendments to Existing By-Law 9

16. If Regulation 708 is amended as proposed above, a consequential amendment to By-Law 9, namely, the deletion of subsection 14 (3) thereof, will be necessary. It is proposed that this amendment to By-Law 9 be made at the same time as the new by-law dealing with county law libraries is made, but that its "commencement" be delayed until the day on which the amendments to Regulation 708 come into force. The motion and By-law 9 are set out at Appendix 3.

Request to Convocation

17. Convocation is requested to approve the motion set out in Appendix 3 to amend By-law 9 and to delay "commencement" of the amendment until the day on which the amendments to Regulation 708 come into force.

PROTOCOL FOR COMPLAINANTS IN THE LAW SOCIETY'S CONDUCT, COMPETENCE, AND CAPACITY PROCESSES

1.. In November 1997, the Law Society adopted a Protocol for complainants in the discipline process, which sets out a scheme for informing and communicating with complainants. Much of the Protocol was a codification and refinement of processes already in place in the Society's investigatory and discipline departments.

2. As the Protocol pre-dated the amendments to the *Law Society Act* (the "*Act*") in force February 1, 1999 and the Project 200 operational reorganization, a working group of the Professional Development and Competence Committee and the Professional Regulation Committee was established to review the Protocol and propose appropriate changes.

3. The working group reported to the Committees in January 2000, which then reported to Convocation. This resulted in approval in principle to amendments to the Protocol and in specific amendments to the Rules of Practice and Procedure, essentially to permit complainants to be advised of the fact of proceedings in respect of capacity and competence, which otherwise are held *in camera.*

4. The Committees are now requesting that Convocation approve amendments to the language of the Protocol in respect of the implementation of policies approved in January and make further amendments to the Rules of Practice and Procedure to deal with the issue of what information complainants should receive in connection with the results of a capacity or competence proceeding.

5. The Professional Regulation Committee's report to Convocation contains the material for Convocation's consideration.

Request to Convocation

6. Convocation is requested to consider the report and recommendations of the Professional Regulation Committee and the Professional Development and Competence Committee, as set out in the Professional Regulation Committee's report to Convocation, and if appropriate, approve it.

BY-LAW 28 - FRENCH TRANSLATION

1. By-Law 28 [Requalification] was made by Convocation on October 29, 1999 and amended by Convocation on December 10, 1999. A French version of the By-law has now been prepared and is set out in Appendix 4.

Request to Convocation

2. Convocation is requested to approve the motion set out in Appendix 4 to further amend By-law 28 by adding the French version.

PUBLICATIONS PROTOCOL FOR LAW SOCIETY CLE

1. In June 1999 an issue was raised as to the scope and role of publications in the operations of the Law Society's CLE department. The Committee received a few submissions concerning the issue and the manner in which authors are chosen.

2. The Committee agreed to review the issue, but recommended that in the interim the CLE department proceed with its publications. In June 1999 Convocation passed a motion that "the current policy of the CLE department with respect to publications should continue as is and that the issue will be reviewed by the PD&C Committee, which will report back to Convocation in the fall."

3. The Committee established a working group to consider a protocol for CLE publications. The working group has met on a number of occasions and has developed a proposal, which is set out at Appendix 5. The publications protocol is based on the assumption that the CLE department should continue to "publish" educational materials.

4. The proposed protocol does not include a tender process for the selection of authors. At an earlier stage there had been a suggestion that there be such a process. There was general agreement in the working group, however, with which the Committee agrees, that a tender process is neither necessary nor practical, nor the only reasonable quality control mechanism that can be employed.

5. The Committee has reviewed the proposed publications protocol and recommends that Convocation approve it.

Request to Convocation

6. Convocation is requested to consider the proposed publications protocol for Law Society CLE, set out at Appendix 5 and, if appropriate, approve it.

FUNDING FOR LINK

1. In the advisory and compliance unit budget materials presented to the Committee in May, 2000, $150,000 was set out as the proposed Law Society funding to be contributed to the LINK program. If this amount is ultimately approved by Convocation it will represent an increase of approximately $45,000 from previous years.

2. This possible increase was reflected in the budget materials in anticipation of a formal request from LINK for such an increase. Scott Kerr and Ron Manes are both members of the LINK board.

3. A formal request for the additional funding has now been received in a letter from Laurence A. Pattillo, writing on behalf of the Board of Directors. The letter is contained at Appendix 6.

4. The Committee reviewed the materials and considered the impact on the request of the Law Society's strategic planning process and the 2001 budget process, both of which are ongoing. Because of these ongoing processes, the Committee is of the view that it would be inappropriate to recommend an increase to the LINK funding at this time.

5. The Committee considered and approved the following motion for recommendation to Convocation as follows:

> Pending the completion of the strategic planning process and the 2001 budget planning process there should be no increase in Law Society funding to LINK.

Request to Convocation

6. Convocation is requested to consider the motion set out in paragraph 5 above and, if appropriate, approve it.

III INFORMATION

WORKING GROUP ON PROTOCOL FOR MEMBERS INVOLVED IN THE LAW SOCIETY'S COMPLAINTS, INVESTIGATIONS, AND HEARINGS PROCESSES

1. The Professional Development and Competence Committee and the Professional Regulation Committee have agreed that work should begin on the drafting of a "protocol" for members in the Society's investigations and discipline process, an idea which had been raised earlier by benchers in Convocation.[1] A working group of the Committees will be established to consider the scope and content of such a protocol, mindful of the processes which have already been codified, in particular at the hearing stage, through the Rules of Practice and Procedure.

2. The working group will report to the Committees in the new committee year.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTION 62 (0.1) OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2000

MOVED BY

SECONDED BY

THAT, pursuant to the authority contained in paragraphs 1 and 27 of subsection 62 (0.1) of the *Law Society Act*, By-Law 30 [County Law Libraries] be made as follows:

BY-LAW 30

COUNTY LAW LIBRARIES

INTERPRETATION

Definitions
1. In this By-Law

"association" means a county or district law association formed under Regulation 708 of the Revised Regulations of Ontario, 1990 or any predecessor of it;

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[1]When the complainants' Protocol was adopted by Convocation in November 1997, the suggestion for a members' protocol was referred to the Professional Regulation Committee. At May 29, 1998 Convocation, when amendments to the complainants' Protocol were made, the Committee discussed in its report its consideration of a members' protocol. Convocation at that time agreed with the Committee to defer the matter pending assessment at an operational level of certain process and procedural issues largely focussing on the hearing stage.

"Corporation" means the corporation established as required under section 3;

"county law library" means a law library established by an association;

"trustees", where an association is incorporated, means the directors of the corporation.

Interpretation: "county law library funded by the Corporation"

2. In this By-Law, "county law library funded by the Corporation" means a county law library established under Regulation 708 of the Revised Regulations of Ontario, 1990 or any predecessor of it and in existence on the day on which this By-Law comes into force or a county law library established with the approval of the Corporation after the day on which this By-Law comes into force.

LIBRARY CORPORATION

Corporation to be established

3. (1) The Society shall cause a corporation to be established in accordance with this section for the purposes of,

(a) establishing and administering a system for the provision of law library services and programs by county law libraries funded by the Corporation;

(b) establishing policies and priorities for the provision of law library services and programs by county law libraries funded by the Corporation based on the financial resources available to the Corporation;

(c) providing to associations funding to pay for the operation of county law libraries funded by the Corporation;

(d) monitoring and supervising the provision of law library services and programs by county law libraries funded by the Corporation, including establishing guidelines and standards for the organization and operation of county law libraries funded by the Corporation and for the provision of law library services and programs by county law libraries funded by the Corporation; and

(e) advising Convocation on all aspects of the provision of law library services and programs by county law libraries funded by the Corporation, including anything that affects or may affect the demand for or quality of law library services and programs.

Classes of shares

(2) The Corporation shall have two classes of shares as follows:

1. A class of shares to be issued to the Society.

2. A class of shares to be issued to the County and District Presidents' Association giving the Association the exclusive right to elect one director.

Directors

(3) The Corporation shall consist of fifteen directors.

COUNTY LAW LIBRARIES

Application to establish county law library

4. (1) An association that wishes to establish a county law library to be operated by the association and funded by the Corporation shall apply to the Corporation for its approval to establish the county law library.

Same

(2) An application under subsection (1) shall contain the information required by the Corporation.

Operation of county law library

5. (1) A county law library funded by the Corporation shall be operated by the association in accordance with any guidelines and standards established by the Corporation.

Provision of law library services and programs

(2) A county law library funded by the Corporation shall provide library services and programs in accordance with any guidelines, standards, policies and priorities established by the Corporation.

Library materials

6. (1) The trustees of an association shall continue to hold in trust for the Society all library materials of its county law library that the trustees held in trust for the Society before the day on which this By-Law comes into force.

Same

(2) The trustees of an association shall hold the library materials of its county law library in trust for the Society.

Return of library materials

(3) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from Corporation to return the library materials of an association's county law library to the Society, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library to the Society, subject to any contrary directions from the Society.

Same

(4) If the trustees of an association do not return the library materials of the association's county law library to the Society, as required under subsection (3), the Society may take such steps as it considers advisable to obtain the library materials, and any expense incurred in so doing shall be paid by the association to the Society.

Access to law library services and programs

7. A county law library funded by the Corporation shall give access to its law library services and programs to,

(a) every member of the Society, regardless of whether a member is also a member of an Association;

(b) judges of Ontario courts;

(c) Ontario justices of the peace; and

(d) members of boards, commissions or other tribunals established or provided for under Acts of Parliament or the Legislature in Ontario.

FINANCING

Provision of funds by Society

8. The money required by the Corporation for its purposes shall be paid out of such money as is appropriated therefor by Convocation

Suspension, reduction of funding

9. (1) Despite section 8, Convocation may, in respect of a fiscal year, suspend or reduce funding of the Corporation if,

(a) the Corporation does not comply or has not complied with section 10, 11 or 12; or

(b) the Corporation fails or has failed to provide to Convocation information requested under section 13.

Notice to Corporation

(2) Before taking action under subsection (1), Convocation shall give the board of directors of the Corporation notice of its intent and a reasonable opportunity to comply with the relevant provisions of this By-Law or to provide the required information.

Budget

10. (1) The Corporation shall submit its annual budget for the next fiscal year to the Finance and Audit Committee by such date as may be specified by the Chair of the Finance and Audit Committee.

Same

(2) The Corporation's annual budget shall be is such form as may be specified by the Chair of the Finance and Audit Committee.

Financial statements

11. (1) For the purposes of clause 12 (2) (a), the Corporation shall prepare annual financial statements for each fiscal year in accordance with generally accepted accounting principles.

Audit

(2) For the purposes of clause 12 (2) (a), the financial statements of the Corporation shall be audited by a public accountant.

Annual report

12. (1) The Corporation shall submit an annual report to Convocation within four months after the end of its fiscal year.

Contents

(2) The annual report shall contain,

(a) the audited financial statements of the Corporation;

(b) a report on the affairs of the Corporation; and

(c) such other information as Convocation may request.

Other reports

13. Convocation may at any time require the Corporation to report to it on any aspect of its affairs or to provide information on its activities, operations and financial affairs as Convocation may request.

APPENDIX 2

REGULATION 708
OF THE REVISED REGULATIONS OF ONTARIO, 1990

COUNTY AND DISTRICT LAW ASSOCIATIONS

DEFINITIONS

24. In this section and in sections 25 to 35,

"association" means a county or district law association;

"Committee" means the Libraries and Reporting Committee;

"county" includes a union of counties and a territorial district;

"trustees" where an association is incorporated, means the directors of the corporation.

FORMATION

25. (1) The members of the Society in any county or any part thereof may, with the approval of Convocation, form an association and elect the trustees thereof.

(2) At the time of the formation of an association or at any time thereafter, upon and in accordance with the request of Convocation, the trustees shall cause the association to be incorporated.

(3) Upon formation, an association shall send to the Chief Librarian a certified copy of its constitution and by-laws and thereafter shall send all amendments thereto as they are made, and, upon incorporation, an association shall send to the Chief Librarian a certified copy of its letters patent and by-laws and thereafter shall send all amendments thereto as they are made, and, in either case, proof of the condition of its funds and that proper accommodation has been provided for its library, together with an undertaking that the association has knowledge of and will comply with the regulations applicable to county law libraries and with such other particulars as are required by the Committee.

TWO LIBRARIES IN ONE COUNTY

26. Where sittings of the Ontario Court (General Division) are held in two or more places in a county, the association of that county may establish a library in each such place, and, where more than one library has been so established, the amount of the annual grant from the Society to the association may be increased by an amount not exceeding 50 per cent of the grant that would otherwise be made.

BOOKS HELD IN TRUST

27. The trustees of an association shall hold the books of its library in trust for the Society and in case of the dissolution or winding-up of an association or the disposal of its property, it shall return the books to the Society.

APPLICATION OF FUNDS

28. At least one-half of the fees received by an association from its members and the whole of the aid at any time granted to the association by the Society shall be applied in the purchase, binding and repairing of books for its library and in paying for telephone service and the salary of its librarian.

ANNUAL REPORTS

29. (1) Every association shall make a report to the Society before the end of February in each year showing the state of its finances and of its library as of the close of the previous calendar year, together with such other information as may be required by the Committee.

(2) If the Committee is satisfied that an association has complied with the regulations applicable to county law libraries, it shall make a report thereon to Convocation.

FIRST-YEAR GRANTS

30. The Society's grant in aid to an association for its first year shall be a sum equal to double the amount of,

(a) the contributions in money actually paid to the association; or

(b) the value of the books actually given to the association from all local sources,

but the amount of such grant shall not exceed $100 for each member of the Society in the county who is a member of the association.

ANNUAL GRANTS

31. (1) The Society's grant in aid to an association in each year after the first year shall be $3,000.

(2) A grant in aid under subsection (1) shall not be paid until the Committee makes a report to Convocation under section 29.

(3) Convocation, having regard to the report of the Chief Librarian on the condition of an association's library and the association's library requirements, may vary the amount of a grant in aid to the association under subsection (1).

(4) Where an association has complied with the regulations applicable to county law libraries, all sums making up the annual grant payable to the association shall, on the recommendation of the Committee, be paid before the end of March.

SPECIAL GRANTS

32. (1) When any association that has been established for at least two years and that has regularly made the required returns and that has complied with the requirements of the regulations applicable to county law libraries satisfies Convocation that the association is unable to purchase such reports or text books as are necessary to make the library thoroughly efficient and useful having regard to the locality in which the library is established and the number of members of the Society who are members of the association, or that it requires financial assistance in any way, Convocation, on the recommendation of the Committee, may make a special grant either of books or of money to the association or may advance by way of a loan without interest to the association a sum not exceeding the estimated amount of the next three years annual grants.

(2) Any loan made under subsection (1) shall be repaid out of future annual grants or otherwise in such manner as Convocation may direct.

(3) Security may be required to be given to the satisfaction of the Committee for the due expenditure of any money grant or loan made under this section or for the repayment of any such loan.

SUSPENSION, REDUCTION, ETC., OF GRANTS

33. (1) Where an association does not comply with the regulations applicable to county law libraries, Convocation may suspend all or part of any grant otherwise payable for such time as Convocation directs or may make a reduced grant or may refuse to make any grant.

(2) Where the failure to comply consists only in the failure of an association to transmit to the Chief Librarian of the Society its annual report on or before the end of February and where this failure is rectified before the end of May in the same year, the Committee shall make a special report to Convocation and Convocation may either refuse to make the annual grant or may grant a lesser sum than the sum that would otherwise be payable.

(3) Where the failure to comply continues beyond the end of May, the grant that would otherwise have been payable to the association except for such default shall, if made, be reduced by 10 per cent.

USE

34. County law libraries are for the use of,

(a) paid-up members of any county law association;

(b) members of the Society from outside the county while in the county on legal business;

(c) Ontario Court (General Division) judges, Ontario Court (Provincial Division) judges, and justices of the peace; and

(d) the members of administrative or quasi-judicial boards or commissions or other tribunals established or provided for by any Act while exercising their functions in the county.

35. (1) If in the opinion of the Committee a county law library is not being properly cared for or for any other reason it is not being satisfactorily maintained, the Committee may, with the approval of Convocation, require the trustees of the association to return the books comprising its library to the Chief Librarian at Osgoode Hall at the expense of the association in which case the trustees shall so do.

(2) If the trustees do not return the books when required or if there are no trustees capable of acting or willing to act, Convocation may make such steps to obtain the books as they consider advisable, and any expense incurred in so doing shall be paid by the association to the Society.

APPENDIX 3

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 9
[COMMITTEES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2000

MOVED BY

SECONDED BY

THAT, on the day on which amendments to Regulation 708 of the Revised Regulations of Ontario, 1990, revoking sections 26 to 35, come into force, By-Law 9 [Committees] made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999, May 28, 1999 and December 10, 1999 be further amended as follows:

1. Section 14 of the By-Law is amended by deleting subsection (3).

BY-LAW 9

Made: January 28, 1999
Amended:
February 19, 1999
March 26, 1999
May 28, 1999
December 10, 1999

COMMITTEES

GENERAL

Powers of committees
1. Unless a by-law expressly authorizes a standing committee to exercise a power, the exercise of a power by a standing committee is subject to the approval of Convocation.

STANDING COMMITTEES

Establishment of standing committees
2. The following standing committees are hereby established:

1. Admissions Committee.

2. Finance and Audit Committee.

3. Government and Public Affairs Committee.

4. Lawyers Fund for Client Compensation Committee.

5. Legal Aid Services Committee

6. Litigation Committee.

7. Professional Development and Competence Committee.

8. Professional Regulation Committee.

9. Equity and Aboriginal Issues Committee.

Composition

3. (1) Each standing committee shall consist of at least six persons appointed by Convocation.

Benchers

(2) Each standing committee must include at least five benchers.

Appointment of persons to standing committees

(3) Convocation may appoint persons to a standing committee at any time.

Treasurer's recommendations for appointment

(4) The Treasurer shall recommend to Convocation all persons for appointment to standing committees.

Treasurer

4. The Treasurer is a member of every standing committee.

Term of office

5. Subject to section 6, a person appointed to a standing committee under section 3 shall hold office until his or her successor is appointed.

Removal from office

6. Convocation may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

Chairs and vice-chairs

7. (1) For each standing committee, Convocation shall appoint,

(a) one bencher, who is a member of the standing committee, as chair of the standing committee; and

(b) one or more benchers, who are members of the standing committee, as vice-chairs of the standing committee.

Term of office

(2) Subject to subsection (3), the chair and vice-chairs of a standing committee hold office until their successors are appointed.

Appointment at pleasure

(3) The chair and vice-chairs of a standing committee hold office at the pleasure of Convocation.

Vacancy

(4) If the chair or a vice-chair of a standing committee for any reason is unable to act, the Treasurer may appoint another member of the standing committee as the chair or a vice-chair and, subject to subsection (3), that member shall hold office as chair or vice-chair until his or her successor is appointed.

Appointment under subs. (4) subject to ratification

(5) The appointment of a member of a standing committee as the chair or a vice-chair of the committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

Quorum

8. (1) Four members of a standing committee who are benchers constitute a quorum for the purposes of the transaction of business.

Meetings by telephone conference call, etc.

(2) Any meeting of a standing committee may be conducted by means of such telephone, electronic or other communication facilities as permit all person participating in the meeting to communicate with each other simultaneously.

Right to attend meeting

9. (1) Subject to subsection (2), no person other than a member of a standing committee may attend a meeting of the committee.

Same

(2) The following persons who are not members of a standing committee may attend a meeting of the committee:

1. A bencher.

2. An officer or employee of the Society.

3. Any person not mentioned in paragraph 1 or 2 with the permission of the chair of the committee.

Voting rights

10. Only members of a standing committee may vote at meetings of the committee.

ADMISSIONS COMMITTEE

Mandate

11. The mandate of the Admissions Committee is to develop, for Convocation's approval,

(a) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;

(b) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;

(c) policies to govern the transfer to the Society of persons qualified to practise law in any province or territory of Canada; and

(d) policies respecting the Bar Admission Course.

FINANCE AND AUDIT COMMITTEE

Mandate

12. The mandate of the Finance and Audit Committee is,

(a) to receive and review interim and annual financial statements for the Society and the Lawyers' Professional Indemnity Company;

(b) to review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Society;

(c) to recommend the appointment of the external auditor and to review the proposed audit scope, audit fees and the annual auditor's management letter;

(d) to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item; and

(e) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Mandate

13. (1) The Lawyers Fund for Client Compensation Committee is responsible to Convocation for the administration of the Lawyers Fund for Client Compensation.

Powers

(2) The Lawyers Fund for Client Compensation Committee may make such arrangements and take such steps as it considers advisable to carry out its responsibilities.

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Mandate

14. (1) The mandate of the Professional Development and Competence Committee is to develop for Convocation's approval policy options on all matters relating to the professional competence of members.

Guidelines for professional competence

(2) Subject to the approval of Convocation, the Professional Development and Competence Committee may prepare guidelines for professional competence.

Functions of Libraries and Reporting Committee

(3) The Professional Development and Competence Committee shall perform the functions assigned to the Libraries and Reporting Committee under Regulation 708 of the Revised Regulations of Ontario, 1990.

PROFESSIONAL REGULATION COMMITTEE

Mandate

15. (1) The mandate of the Professional Regulation Committee is to develop for Convocation's approval,

(a) policy options on all matters relating to regulation of the profession in the areas of professional conduct and fitness to practise; and

(b) policies and guidelines for the prosecution of unauthorized practice.

Rules of professional conduct

(2) Except when Convocation has established a committee other than a standing committee to prepare rules of professional conduct, subject to the approval of Convocation, the Professional Regulation Committee may prepare rules of professional conduct.

Authority of Convocation

(3) Despite subsection (2), Convocation may at any time adopt rules of professional conduct.

GOVERNMENT AND PUBLIC AFFAIRS COMMITTEE

Mandate

16. The mandate of the Government and Public Affairs Committee is,

(a) to develop and maintain an effective working relationship with the Government of Ontario, the Attorney General of Ontario, the Ontario Public Service and all elected officials of the Ontario Legislature for the purpose of ensuring that the Society's policies and positions on matters affecting the interests of the public and the profession are understood before decisions affecting those matters are made;

(b) to ensure that the Society's legislative agenda is effectively presented to the Government of Ontario for its consideration and approval;

(c) to develop and maintain an effective working relationship with the Government of Canada and the Attorney General of Canada with respect to federal initiatives affecting matters within the Society's jurisdiction;

(d) to develop, for Convocation's approval, a public affairs mandate for the Society, which identifies the constituencies that the Society should address and sets out the outcomes that should be achieved with each constituency; and

(e) to develop a long range and comprehensive public affairs strategy consistent with the Society's public affairs mandate approved by Convocation.

EQUITY AND ABORIGINAL ISSUES COMMITTEE

Mandate

16.1 The mandate of the Equity and Aboriginal Issues Committee is,

(a) to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal peoples and French-speaking peoples; and

(b) to consult with the Treasurer's Equity Advisory Group, Roti io' ta'-kier, AJEFO, women and equity-seeking groups in the development of such policy options.

Transition: membership on Admissions and Equity Committee

17. (1) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Admissions and Equity Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Admissions Committee as established by this By-Law.

Same: membership on Finance and Audit Committee

(2) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Finance and Audit Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Finance and Audit Committee as established by this By-Law.

Same: membership on Lawyers Fund for Client Compensation Committee

(3) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Lawyers Fund for Client Compensation Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Lawyers Fund for Client Compensation Committee as established by this By-Law.

Same: membership on Litigation Committee

(4) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Litigation Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Litigation Committee as established by this By-Law.

Same: membership on Professional Development and Competence Committee.

(5) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Professional Development and Competence Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Professional Development and Competence Committee as established by this By-Law.

Same: membership on Professional Regulation Committee

(6) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Professional Regulation Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Professional Regulation Committee as established by this By-Law.

Same: membership on Government and Public Affairs Committee

(7) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Public Affairs Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Government and Public Affairs Committee as established by this By-Law.

Membership on Legal Aid Services Committee

(8) A person who, immediately before the day paragraph 5 of section 2 comes into force, was a member, the chair or a vice-chair of the Legal Aid Committee continued under subsection 18 (1), shall be deemed to be a member, the chair or a vice-chair of the Legal Aid Services Committee established under paragraph 5 of section 2.

Legal Aid Committee continued

18. (1) The Legal Aid Committee established before the day this By-Law comes into force is continued as the Legal Aid Committee.

Function

(2) The Legal Aid Committee continued under subsection (1) is responsible to Convocation for the supervision of the Ontario Legal Aid Plan under the *Legal Aid Act*.

Membership

(3) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Legal Aid Committee as it was constituted immediately before that day, shall continue as a member, the chair or a vice-chair of the Legal Aid Committee continued under subsection (1).

Application of By-Law

(4) Section 1, subsections 3 (2) and (3), section 5 and subsection 7 (2) apply, with necessary modifications, to the Legal Aid Committee continued under subsection (1) and to the members, chair and vice-chair thereof.

Quorum

(5) Four members of the Legal Aid Committee continued under subsection (1) constitute a quorum for the purposes of the transaction of business.

Legal Aid Committee dissolved

(6) The Legal Aid Committee continued under subsection (1) is dissolved on April 1, 1999.

Commencement

19. (1) Except as provided in subsection (2), this By-Law comes into force on February 1, 1999.

Same

(2) Paragraph 5 of section 2 and subsection 17 (8) come into force on April 1, 1999.

RÈGLEMENT ADMINISTRATIF N^{O} 9

LES COMITÉS

DISPOSITIONS GÉNÉRALES

Pouvoirs des comités

1. Sauf autorisation expresse par règlement administratif, l'exercice de tout pouvoir par un comité permanent est subordonné à l'approbation du Conseil.

COMITÉS PERMANENTS

Constitution des comités permanents

2. Sont constitués les comités permanents suivants :

1. le Comité d'admission

2. le Comité des finances et de la vérification

3. le Comité chargé des relations avec le gouvernement et des affaires publiques

4. le Comité du Fonds d'indemnisation avec la clientèle

5. le Comité des services d'aide juridique

6. le Comité du contentieux

7. le Comité du perfectionnement professionnel et de la compétence

8. le Comité de réglementation de la profession

9. le Comité sur l'équité et les affaires autochtones.

Composition

3. (1) Chaque comité permanent est composé d'au moins six personnes nommées par le Conseil.

Conseillers

(2) Chaque comité permanent est composé d'au moins cinq conseillers et conseillères.

Nomination aux comités permanents

(3) Le Conseil peut nommer toute personne aux comités permanents.

Recommandations du trésorier : nomination

(4) Le trésorier ou la trésorière recommande au Conseil toutes les personnes à nommer aux comités permanents.

Trésorier

4. Le trésorier ou la trésorière est membre de tous les comités permanents.

Mandat

5. Sous réserve de l'article 6, les personnes nommées aux comités permanents aux termes de l'article 3 occupent leurs fonctions jusqu'à la nomination de leurs successeurs.

Expulsion

6. Le Conseil peut expulser des comités permanents les membres qui n'assistent pas à trois réunions consécutives d'un même comité.

Présidence et vice-présidence

7. (1) À chaque comité permanent, le Conseil nomme :

a) un membre du comité permanent ayant le titre de conseiller à la présidence;

b) un ou plusieurs membres du comité permanent ayant le titre de conseiller à la vice-présidence.

Mandat

(2) Sous réserve du paragraphe (3), les personnes assumant la présidence et la vice-présidence des comités permanents occupent leurs fonctions jusqu'à la nomination de leurs successeurs.

Mandat amovible

(3) Les personnes assumant la présidence et la vice-présidence des comités permanents occupent leurs fonctions au gré du Conseil.

Vacance

(4) En cas d'empêchement de l'une quelconque des personnes assumant la présidence ou la vice-présidence d'un comité permanent, le trésorier ou la trésorière peut nommer à sa place un autre membre du comité. Sous réserve du paragraphe (3), cette personne exerce les fonctions reliées à la présidence ou à la vice-présidence jusqu'à la nomination de son successeur.

Ratification des nominations visées au par. (4)

(5) Toute nomination visée au paragraphe (4) est subordonnée à la ratification du Conseil à la première réunion ordinaire qui suit la nomination.

Quorum

8. (1) Le quorum pour les affaires courantes des comités permanents est de quatre conseillers et conseillères.

Réunion par téléconférence, etc.

(2) Les réunions des comités permanents peuvent avoir lieu avoir lieu par téléconférence ou par d'autres moyens de communication, notamment électroniques, afin que toutes les personnes y participant puissent communiquer les unes avec les autres simultanément.

Droit d'assister aux réunions

9. (1) Sous réserve du paragraphe (2), seuls les membres des comités permanents ont le droit d'assister aux réunions de leurs comités permanents respectifs.

Idem

(2) Bien que n'étant pas membres des comités permanents, les personnes suivantes peuvent assister à leurs réunions :

1. les conseillers et les conseillères;

2. la direction et le personnel du Barreau;

3. outre les personnes mentionnées aux dispositions 1 et 2, celles qui y sont autorisées par les présidents et présidentes des comités.

Droit de vote

10. Seuls les membres des comités permanents ont le droit de voter aux réunions des comités.

COMITÉ D'ADMISSION

Mandat

11. Le Comité d'admission élabore et soumet à l'approbation du Conseil :

a) les conditions d'admission au Cours de formation professionnelle applicables aux personnes qui n'ont pas été reçues au barreau ni admises comme procureurs ailleurs;

b) les listes de cours et d'universités reconnus par le Barreau et satisfaisant aux conditions d'admission au Cours de formation professionnelle;

c) les politiques régissant l'admission au Barreau, par voie de transfert, des personnes habiles à pratiquer le droit dans une province ou un territoire canadiens;

d) les politiques concernant le Cours de formation professionnelle..

COMITÉ DES FINANCES ET DE LA VÉRIFICATION

Mandat

12. Le Comité des finances et de la vérification a le mandat suivant :

a) recevoir et examiner les états financiers provisoires et annuels du Barreau et de l'Assurance de la responsabilité civile professionnelle des avocats;

b) examiner l'intégrité et l'efficacité des politiques concernant les opérations financières, les mécanismes de contrôle interne et la présentation de l'information financière du Barreau;

c) recommander la nomination d'un vérificateur ou d'une vérificatrice externe et examiner l'étendue proposée de la vérification, les honoraires demandés et la lettre du rapport annuel remise à la direction;

d) examiner les plans et projections budgétaires annuels du Barreau, ainsi que les budgets de dépenses spéciales ou extraordinaires requis pour les besoins du Barreau, en particulier ce qui concerne le Fonds d'indemnisation de la clientèle, conseiller le Conseil en la matière et recommander l'approbation du budget annuel ou de tout poste budgétaire spécial ou extraordinaire;

e) examiner les plans proposés pour les dépenses survenant au cours de l'exercice qui ne figurent pas dans le budget annuel ou tout autre budget approuvé par le Conseil pour l'exercice, conseiller le Conseil en la matière et recommander l'approbation de telles dépenses par le Conseil.

COMITÉ DU FONDS D'INDEMNISATION DE LA CLIENTÈLE

Mandat

13. (1) Le Comité du Fonds d'indemnisation de la clientèle répond au Conseil de l'administration du Fonds d'indemnisation de la clientèle.

Pouvoirs

(2) Le Comité du Fonds d'indemnisation de la clientèle peut prendre toutes mesures et dispositions qu'il juge utiles pour l'exercice de ses fonctions.

COMITÉ DU PERFECTIONNEMENT PROFESSIONNEL ET DE LA COMPÉTENCE

Mandat

14. (1) Le Comité du perfectionnement professionnel et de la compétence élabore et soumet à l'approbation du Conseil des options stratégiques sur les questions relevant de la compétence professionnelle des membres.

Lignes de conduite sur la compétence professionnelle

(2) Sous réserve de l'approbation du Conseil, le Comité du perfectionnement professionnel et de la compétence peut rédiger des lignes de conduite traitant de la compétence professionnelle.

Fonctions du Comité des bibliothèques

(3) Le Comité du perfectionnement professionnel et de la compétence s'acquitte des fonctions assignées au Comité des bibliothèques et de la publication des décisions judiciaires par le Règlement 708 des Règlements refondus de l'Ontario de 1990.

COMITÉ DE RÉGLEMENTATION DE LA PROFESSION

Mandat

15. (1) Le Comité de réglementation de la profession élabore et soumet à l'approbation du Conseil :

a) des options stratégiques sur toutes les questions relatives à la réglementation de la profession en matière de déontologie et d'aptitude professionnelle;

b) des lignes de conduite relatives à la poursuite des personnes se livrant à l'exercice illégal de la profession.

Règles de déontologie

(2) Le Comité de réglementation de la profession peut, sous réserve de l'approbation du Conseil, rédiger les règles de déontologie, sauf si le Conseil charge un comité autre qu'un comité permanent de les rédiger.

Pouvoir du Conseil

(3) Malgré le paragraphe (2), le Conseil peut adopter des règles de déontologie.

COMITÉ CHARGÉ DES RELATIONS AVEC LE GOUVERNEMENT ET DES AFFAIRES PUBLIQUES

Mandat

16. Le Comité chargé des relations avec le gouvernement et des affaires publiques a le mandat suivant :

a) établir et entretenir des relations de travail fructueuses avec le gouvernement de l'Ontario, le procureur général de l'Ontario, la fonction publique de l'Ontario et tous les membres élus de l'Assemblée législative de l'Ontario afin de faire comprendre les politiques et positions du Barreau concernant les questions d'intérêt public et professionnel avant que des décisions ne soient prises à leur égard;

b) s'assurer que les propositions législatives du Barreau soient présentées efficacement au gouvernement de l'Ontario en vue de leur examen et de leur approbation;

c) établir et entretenir des relations de travail fructueuses avec le gouvernement du Canada et le procureur général du Canada à l'égard des initiatives fédérales qui concernent des questions relevant de la compétence du Barreau;

d) formuler et faire approuver par le Conseil le mandat du Barreau dans le domaine des affaires publiques, avec définition des groupes auprès desquels le Barreau devrait intervenir et les résultats à obtenir à l'égard de chaque groupe;

e) élaborer une stratégie globale à long terme dans le domaine des affaires publiques qui soit conforme au mandat du Barreau approuvé par le Conseil en la matière.

COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES

Mandat

16.1 Le mandat du Comité sur l'équité et les affaires autochtones est :

a) d'élaborer et de soumettre à l'approbation du Conseil un choix de politiques destinées à promouvoir l'équité et la diversité dans la pratique du droit et à aborder toutes les questions touchant les peuples autochtones et les personnes d'expression française; et

b) de consulter le Groupe-conseil du trésorier sur l'équité, Roti io' ta'-kier, l'AJEFO, les groupements féminins et les groupes luttant pour l'équité lors de l'élaboration de ces politiques.

Transition : membres du Comité d'admission et d'équité

17. (1) Les personnes qui, immédiatement avant l'entrée en vigueur du présent règlement administratif, étaient membres, président ou vice-présidents du Comité d'admission et d'équité, tel que constitué immédiatement avant cette date, sont réputés être membres, président ou vice-présidents du Comité d'admission constitué en vertu du présent règlement administratif.

Idem : membres du Comité des finances et de la vérification

(2) Les personnes qui, immédiatement avant l'entrée en vigueur du présent règlement administratif, étaient membres, président ou vice-présidents du Comité des finances et de la vérification, tel que constitué immédiatement avant cette date, sont réputés être membres, président ou vice-présidents du Comité des finances et de la vérification constitué en vertu du présent règlement administratif.

Idem : membres du Comité du Fonds d'indemnisation de la clientèle

(3) Les personnes qui, immédiatement avant l'entrée en vigueur du présent règlement administratif, étaient membres, président ou vice-présidents du Comité du Fonds d'indemnisation de la clientèle, tel que constitué immédiatement avant cette date, sont réputés être membres, président ou vice-présidents du Comité du Fonds d'indemnisation de la clientèle constitué en vertu du présent règlement administratif.

Idem : membres du Comité du contentieux

(4) Les personnes qui, immédiatement avant l'entrée en vigueur du présent règlement administratif, étaient membres, président ou vice-présidents du Comité du contentieux, tel que constitué immédiatement avant cette date, sont réputés être membres, président ou vice-présidents du Comité du contentieux constitué en vertu du présent règlement administratif.

Idem : membres du Comité du perfectionnement professionnel et de la compétence

(5) Les personnes qui, immédiatement avant l'entrée en vigueur du présent règlement administratif, étaient membres, président ou vice-présidents du Comité du perfectionnement professionnel et de la compétence, tel que constitué immédiatement avant cette date, sont réputés être membres, président ou vice-présidents du Comité du perfectionnement professionnel et de la compétence constitué en vertu du présent règlement administratif.

Idem : membres du Comité de réglementation de la profession

(6) Les personnes qui, immédiatement avant l'entrée en vigueur du présent règlement administratif, étaient membres, président ou vice-présidents du Comité de réglementation de la profession, tel que constitué immédiatement avant cette date, sont réputés être membres, président ou vice-présidents du Comité de réglementation de la profession constitué en vertu du présent règlement administratif.

Idem : membres du Comité chargé des relations avec le gouvernement et des affaires publiques

(7) Les personnes qui, immédiatement avant l'entrée en vigueur du présent règlement administratif, étaient membres, président ou vice-présidents du Comité des affaires publiques, tel que constitué immédiatement avant cette date, sont réputés être membres, président ou vice-présidents du Comité chargé des relations avec le gouvernement et des affaires publiques constitué en vertu du présent règlement administratif.

Membres du Comité des services d'aide juridique

(8) Les personnes qui, immédiatement avant l'entrée en vigueur de la disposition 5 de l'article 2, étaient membres, président ou vice-présidents du Comité de l'aide juridique, maintenu aux termes du paragraphe 18 (1), sont réputés être membres, président ou vice-présidents du Comité des services d'aide juridique constitué en vertu de la disposition 5 de l'article 2.

Maintien du Comité de l'aide juridique

18. (1) Le Comité de l'aide juridique constitué avant l'entrée en vigueur du présent règlement administratif est maintenu sous le nom de Comité de l'aide juridique.

Fonctions

(2) Le Comité de l'aide juridique maintenu en vertu du paragraphe (1) répond au Conseil de la supervision du Régime d'aide juridique de l'Ontario aux termes de la *Loi sur l'aide juridique*.

Membres

(3) Les personnes qui, immédiatement avant l'entrée en vigueur du présent règlement administratif, étaient membres, président ou vice-présidents du Comité de l'aide juridique, tel que constitué immédiatement avant cette date, sont réputés être membres, président ou vice-présidents du Comité de l'aide juridique maintenu en vertu du paragraphe (1).

Champ d'application du règlement administratif

(4) L'article 1, les paragraphes 3 (2) et (3), l'article 5 et le paragraphe 7 (2) s'appliquent, avec les adaptations nécessaires, au Comité de l'aide juridique maintenu en vertu du paragraphe (1) et à ses membres, président et vice-présidents.

Quorum

(5) Le quorum pour les affaires courantes du Comité de l'aide juridique maintenu en vertu du paragraphe (1) est de quatre membres.

Dissolution du Comité de l'aide juridique

(6) Le Comité de l'aide juridique maintenu en vertu du paragraphe (1) est dissout le 1er avril 1999.

Entrée en vigueur

19. (1) Sous réserve du paragraphe (2), le présent règlement administratif entre en vigueur le 1er février 1999.

Idem

(2) La disposition 5 de l'article 2 et le paragraphe 17 (8) entrent en vigueur le 1er avril 1999.

APPENDIX 4

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 28
[REQUALIFICATION]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 28, 2000

MOVED BY

SECONDED BY

THAT By-Law 28 [Requalification] made by Convocation on October 29, 1999 and amended by Convocation on December 10, 1999 be further amended by adding the following French version:

RÈGLEMENT ADMINISTRATIF N^{O} 28

REQUALIFICATION PROFESSIONNELLE

Définitions

1. Dans le présent règlement administratif, le terme «gouvernement» s'entend du gouvernement du Canada, des gouvernements provinciaux et territoriaux canadiens, et du gouvernement de toute ville, cité, municipalité ou village, ou de toute autre entité similaire de toute province ou de tout territoire du Canada.

Délégation des pouvoirs et fonctions de secrétaire

2. Une ou un employé du Barreau qui occupe le poste d'avocat-conseil ou d'avocate-conseil du Comité chargé de la compétence professionnelle peut, sous réserve des modalités édictées par le ou la secrétaire, exercer ses pouvoirs et fonctions conformément à l'article 49.1 de la *Loi sur le Barreau* et au présent règlement administratif.

Durée de la période continue

3. La durée de la période continue visée à l'article 49.1 (1)de la Loi est de cinq années.

Exigence de rapport relatif à l'usage des habiletés juridiques

4. (1) À chaque année, les membres déposent auprès du Barreau un rapport indiquant qu'ils ont fait un usage considérable et régulier de leurs habiletés juridiques durant l'année en question et détaillant la façon dont ils ont fait usage de ces habiletés.

Rapport annuel des membres

(2) Le rapport exigé au paragraphe (1) est rédigé selon le Formulaire 17A [Rapport annuel des membres].

Usage considérable et régulier des habiletés juridiques

5. (1) Sont considérés faire un usage considérable et régulier de leurs habiletés juridiques au cours d'une année donnée les membres qui s'adonnent, pour un total d'au moins 600 heures ou quatre mois complets d'exercice par année, à l'une ou plusieurs des activités suivantes :

1. L'exercise de la profession d'avocat à titre privé.

2. Être à l'emploi d'une entité, notamment d'un service de consultation juridique, d'un gouvernement ou d'un organisme gouvernemental, à titre d'avocat ou d'avocate.

3. Travailler pour le compte d'un cabinet offrant des services à caractère juridique dans une des fonctions énumérées à l'Annexe 1.

4. Être à l'emploi d'un gouvernement ou d'un organisme gouvernemental dans une des fonctions énumérées à l'Annexe 2.

5. Occuper un poste de député ou de députée siégeant au parlement du Canada ou à l'une des assemblées législatives des provinces ou territoires du Canada.

6. Occuper un des postes à caractère éducatif énumérés à l'Annexe 3.

7. Suivre des études juridiques supérieures.

8. Sous réserve du paragraphe (2), être à l'emploi d'une des entités énumérées à l'Annexe 4 et occuper une des fonctions visées à l'Annexe 4.

9. Sous réserve du paragraphe (2), exercer toute autre activité qui, de l'avis du ou de la secrétaire, exige du membre un usage considérable et régulier de ses habiletés juridiques.

Stagiaires, secrétaires et techniciens juridiques

(2) Ne sont pas considérés faire un usage considérable et régulier de leurs habiletés juridiques les membres qui occupent un poste de secrétaire juridique, de technicien ou de technicienne juridique, ou de stagiaire en droit.

Examen d'autres facteurs

(3) Dans le contexte de l'alinéa 9 du paragraphe (1), afin d'établir si un membre fait un usage considérable et régulier de ses habiletés juridiques, le ou la secrétaire tient compte des facteurs suivants :

1. la similitude entre l'activité en question et les activités énumérées aux alinéas 1 à 8 du paragraphe (1);

2. la mesure dans laquelle cette activité exige habituellement du membre qu'il

   i. s'adonne à la recherche et à l'analyse juridiques, et à la résolution de problèmes à caractère juridique,

   ii. communique verbalement ou par écrit,

   iii. assure l'organisation et la gestion du travail juridique,

   iv. reconnaisse et résoude des dilemmes d'ordre éthique, et

   v. se tienne à jour dans le (les) domaine(s) du droit relié(s) à l'activité en question;

3. la mesure dans laquelle cette activité exige du membre de posséder et de mettre en application les habiletés, attributs et valeurs que l'on trouve dans la définition du juriste compétent contenue dans le Code de déontologie du Barreau;

4. tout autre facteur permettant d'établir si l'activité en question fait appel de manière considérable et régulière aux habiletés juridiques de ce membre.

Période

(4) Au cours d'une année civile, nonobstant le paragraphe (1), sont considérés faire un usage considérable et régulier de leurs habiletés juridiques les membres qui, sur une période moindre que celle mentionnée au paragraphe (1) mais qui est suffisante de l'avis du ou de la secrétaire, exercent une ou plusieurs des activités mentionnées au paragraphe (1).

Examen des rapports par le secrétaire

6. (1) Conformément à l'article 4, le ou la secrétaire examine tout rapport déposé auprès du Barreau.

Avis au membre

(2) Si le ou la secrétaire doit étudier le rapport d'un membre déposé aux termes de l'article 4 afin d'établir si une activité exercée par un membre constitue un usage considérable et régulier de ses habiletés juridiques au sens de l'alinéa 9 du paragraphe 5 (1), ou d'établir si le membre a exercé une ou plusieurs des activités énumérées au paragraphe 5 (1) sur une période suffisante à la lumière des critères du paragraphe 5 (4), et si le ou la secrétaire est d'avis que le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année en question conformément aux paragraphes 5 (1) ou (4), le ou la secrétaire avise alors le membre par écrit.

Transmission de l'avis

(3) Sont considérés comme étant suffisants les avis

(a) remis au membre en mains propres,

(b) transmis par courrier régulier à la dernière adresse connue du membre (apparaissant aux registres du Barreau),

(c) transmis par télécopieur au dernier des numéros de télécopieur connus du membre (apparaissant aux registres du Barreau).

Idem

(4) Sont réputés avoir été reçus par le membre les avis expédiés selon le paragraphe (2)

(a) le cinquième jour après avoir été mis à la poste, si transmis par courrier régulier,

(b) le jour suivant sa transmission, si transmis par télécopieur.

Requête à un comité de trois conseillers

(5) Sous réserve du paragraphe (12), si un membre reçoit un avis conformément au paragraphe (2), il peut déposer une requête d'examen auprès d'un comité, formé de trois conseillères ou conseillers nommés à cet effet par le Conseil, visant à établir si le membre a fait un usage considérable et régulier de ses habiletés juridiques au cours d'une année donnée.

Délai de la requête

(6) Sous réserve du paragraphe (13), une requête déposée aux termes du paragraphe (5) est introduite par la présentation par le membre d'un avis écrit au secrétaire ou à la secrétaire dans un délai de trente jours suivant la date de la réception par le membre de l'avis indiqué au paragraphe (2).

Parties

(7) Sont parties à la requête le ou la secrétaire et le membre visé par la requête introduite aux termes du paragraphe (5).

Procédure

(8) Avec les adaptations nécessaires, les règles de pratique et de procédure s'appliquent à l'examen de la requête déposée auprès du comité de trois conseillers et conseillères comme si l'examen constituait l'audition d'une requête effectuée conformément au paragraphe 49.1 (4) de la Loi.

Idem

(9) Advenant le silence des règles de pratique et de procédure quant à une question de procédure, la *Loi sur l'exercice des compétences légales* s'applique à l'examen par un comité formé de trois conseillers ou conseillères d'une requête déposée conformément au paragraphe (5).

Décision

(10) Après l'examen d'une requête déposée conformément au paragraphe (5), le comité formé de trois conseillers ou conseillères,

(a) conclut que le membre a fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année; ou

(b) conclut que le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année.

Décision définitive

(11) Toute décision rendue par le comité formé de trois conseillers ou conseillères relativement à une requête d'examen déposée conformément au paragraphe (5) est définitive.

Suspension, en raison d'une ordonnance, du droit de déposer une requête

II Si une ordonnance rendue aux termes de l'alinéa 47 (1) (a) de la Loi est en vigueur au moment où le membre reçoit l'avis mentionné au paragraphe (2), le droit du membre selon le paragraphe (5) de déposer une requête auprès d'un comité formé de trois conseillers ou conseillères aux fins d'établir s'il a fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année est suspendu jusqu'à ce que l'ordonnance cesse de s'appliquer.

Période d'introduction d'une requête en cas de suspension du droit de dépôt de requête

(13) Conformément au paragraphe (12), en cas de suspension du droit de déposer une requête en vertu du paragraphe (5), le membre doit présenter par écrit, auprès du ou de la secrétaire, toute requête d'examen en vertu du paragraphe (5) dans un délai de 30 jours à compter de la date où le membre se voit restaurer ses droits et privilèges.

Application de l'article 6

(14) Cet article s'applique au rapport d'un membre visé à l'article 4 à l'égard de l'année civile 1999 et de toute année subséquente.

Évaluation de l'usage d'habiletés juridiques de 1995 à 1998

7. (1) Le ou la secrétaire examine, relativement aux années civiles 1995, 1996, 1997 et 1998, tout renseignement relatif à l'usage d'habiletés juridiques fourni par les membres quant à chacune de ces années.

Application de l'article 5

(2) Avec les adaptations nécessaires, l'article 5 s'applique à l'examen par le ou la secrétaire de tout renseignement fourni conformément au paragraphe (1).

Avis au membre relativement à l'usage insuffisant des habiletés juridiques en 1995, 1996, 1997 et 1998

(3) À l'égard des renseignements fournis par un membre relativement aux années civiles 1995, 1996, 1997 et 1998, si le ou la secrétaire doit établir, aux fins de l'alinéa 9 du paragraphe 5 (1), si une activité exercée par un membre constitue un usage considérable et régulier de ses habiletés juridiques ou si aux fins du paragraphe 5 (4) un membre a exercé l'une ou plusieurs des activités visées au paragraphe 5 (1), et si le ou la secrétaire est d'avis qu'au cours des années 1995, 1996, 1997 et 1998 le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques aux termes des paragraphes 5 (1) ou (4), sous réserve des paragraphes (5), (5.1) et (6), le ou la secrétaire avise le membre par écrit avant le 1er janvier 2000.

Avis au membre : usage insuffisant de ses habiletés juridiques au cours des autres années

(4) À l'égard des renseignements fournis par un membre relativement aux années 1995, 1996, 1997 et 1998, si le ou la secrétaire doit établir, aux fins de l'alinéa 9 du paragraphe 5 (1), si une activité exercée par un membre constitue un usage considérable et régulier de ses habiletés juridiques ou si aux fins du paragraphe 5 (4) le membre a exercé sur une période suffisante l'une ou plusieurs des activités visées au paragraphe 5 (1), et si le ou la secrétaire est d'avis que le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques conformément aux paragraphes 5 (1) ou (4) uniquement au cours des années 1996, 1997 et 1998, uniquement au cours des années 1997 et 1998, ou uniquement au cours de l'année 1998, sous réserve des paragraphes (5), (5.1) et (6), le ou la secrétaire avise le membre par écrit avant le 31 janvier 2000.

Avis reporté

(5) Si en date du 22 décembre 1999 un membre n'a pas fourni au Barreau les renseignements relatifs à l'usage de ses habiletés juridiques au cours des années civiles 1995, 1996, 1997 ou 1998, le ou la secrétaire n'est pas tenu de donner un avis au membre conformément au paragraphe (3) ou (4) dans le délai prescrit mais, sous réserve du paragraphe (6), donne un avis au membre conformément au paragraphe (3) ou (4) dans un délai raisonnable, au plus tard 60 jours après la date où le membre fournit les renseignements en question.

Avis non requis

(6) Si le membre a fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année civile 1999, la ou le secrétaire n'est pas tenu de remettre un avis au membre conformément au paragraphe (3) ou (4).

Application des paragraphes 6 (3) et (4)

(7) Avec les adaptations nécessaires, les paragraphes 6 (3) et (4) s'appliquent aux avis visés aux paragraphes (3) et (4).

Requête au comité de trois conseillers

(8) Tout membre qui reçoit un avis aux termes du paragraphe (3) ou (4) peut déposer une requête d'examen auprès d'un comité formé de trois conseillères ou conseillers nommés par le Conseil afin d'établir si le membre a fait un usage considérable et régulier de ses habiletés juridiques durant au moins une ou plusieurs années relativement aux années pour lesquelles le membre a reçu un avis visé au paragraphe (3) ou (4).

Délai du dépôt de la requête

(9) Le membre introduit par écrit, auprès du ou de la secrétaire, toute requête visée au paragraphe (8),

(a) si le membre reçoit un avis visé au paragraphe (3) ou (4) dans le délai prescrit à cet égard,

(i) trente jours à compter de la date où le membre a reçu un avis selon le paragraphe (3) ou (4);

(ii) trente jours à compter de la date où le membre a reçu un avis selon le paragraphe 6 (2) précisant que le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année 1999.

(b) si le membre reçoit un avis selon le paragraphe (3) ou (4) dans les délais prescrits au paragraphe (5), dans un délai de trente jours à compter de la date où le membre a reçu l'avis.

Idem

(10) Si un membre désire déposer une requête en vertu du paragraphe (8) et si l'alinéa (9) (a) s'applique en l'espèce au membre, ce dernier avise par écrit le ou la secrétaire s'il désire se prévaloir des sous-paragraphes (i) ou (ii) dans un délai de trente jours à compter de la date à laquelle le membre reçoit un avis conformément au paragraphe (3) ou (4).

Application de certains paragraphes

(11) Avec les adaptations nécessaires, les paragraphes 6 (7), (8), (9), (10) et (11) s'appliquent aux requêtes déposées en vertu du paragraphe (8).

Requalification professionnelle

8. (1) Les critères de requalification professionnelle prévus à l'article 49.1 de la Loi sont :

(a) être à l'emploi d'une compagnie, du gouvernement ou d'un organisme gouvernemental en qualité d'avocat et procureur pour une période continue d'un an;

(b) (i) avoir complété un cours d'enseignement individuel offert par le Barreau et qui porte sur l'ensemble des domaines suivants :

(A) les questions réglementaires s'inscrivant dans l'exercice du droit,

(B) l'administration d'un cabinet juridique, y compris la gestion des dossiers,

(C) la comptabilité.

(ii) avoir réussi un examen de comptabilité ainsi qu'un ou plusieurs examens dans les domaines mentionnés aux sous-subdivisions (A) et (B) du sous-paragraphe (i),

(iii) avoir complété 10 heures de formation juridique continue, y compris au moins 5 heures de cours ou de cours retransmis sur vidéo, dans le(s) domaine(s) des règles juridiques de fond auxquelles le membre envisage de consacrer au moins 25 pour cent de sa pratique,

(iv) avoir complété la lecture du matériel préparé par le Barreau concernant deux domaines des règles juridiques de fond,

(v) lorsque le membre appartient à une catégorie énumérée au sous-paragraphe (2),

(A) suivre un atelier mis sur pied par le Barreau concernant l'ouverture d'un cabinet juridique, ou terminer la lecture du matériel préparé par le Barreau portant sur l'ouverture d'un cabinet juridique et réussir un examen portant sur ces lectures,

(B) avoir complété 10 heures de formation juridique continue, y compris au moins 5 heures de cours ou de cours retransmis sur vidéo dans le domaine de l'administration d'un cabinet juridique, y compris la gestion des dossiers.

Catégories de membres

(2) Aux fins du sous-paragraphe 8 (1) (b) (v), les membres se répartissent selon les catégories suivantes :

1. Un membre qui, immédiatement avant la période continue où il ou elle n'a pas fait un usage considérable et régulier de ses habiletés juridiques, a exercé le droit dans le cadre d'un cabinet privé pendant trois ans ou moins.

2. Un membre qui, immédiatement avant la période continue où il ou elle n'a pas fait un usage considérable et régulier de ses habiletés juridiques, a exercé le droit dans le cadre d'un cabinet privé durant plus de trois ans, mais moins de dix ans et qui, pendant les trois-quarts de ces années ou plus, exerçait le droit dans le cadre d'un cabinet privé à titre d'employé.

3. Un membre qui n'a pas fait un usage considérable et régulier de ses habiletés juridiques pour une période continue de dix ans ou plus.

4. Un membre qui, immédiatement avant la période continue pendant laquelle il ou elle n'a pas fait un usage considérable et régulier de ses habiletés juridiques, a été soumis à une révision par le Barreau conformément au Programme d'inspection professionnelle ou en vertu de l'article 42 de la Loi.

Période de requalification professionnelle

(3) Le membre doit satisfaire aux critères de requalification professionnelle définis au paragraphe (1) au cours de l'année précédant immédiatement le retour du membre à l'exercice privé du droit.

Interprétation

(4) Aux fins du paragraphe (1), on entend par «réussir»,

(a) dans le cas d'un examen de comptabilité, répondre correctement à 50 pour cent des questions de l'examen; et

(b) dans tous les autres cas, de l'avis du ou de la secrétaire, faire une démonstration suffisante des connaissances de la matière de l'examen.

Requête d'attestation relative aux exigences de requalification

9. (1) Un membre dépose par écrit auprès du ou de la secrétaire une requête d'attestation qu'il répond aux exigences de requalification professionnelle et, pour étayer la requête, dépose auprès du Barreau,

(a) dans le cas d'une requête d'attestation visée à l'alinéa 8 (1) (a), une preuve écrite démontrant que le membre a été à l'emploi d'une compagnie, d'un gouvernement ou d'un organisme gouvernemental à titre de procureur ou de procureure ou d'avocat ou d'avocate sur une période continue d'une année, tel qu'exigé à l'alinéa 8 (1) (a); et

(b) dans le cas d'une requête d'attestation visée à l'alinéa 8 (1) (b),

(i) une preuve écrite que le membre a suivi un cours de formation juridique continue de 10 heures, tel qu'exigé en vertu du sous-paragraphe 8 (1) (b) (iii),

(ii) un certificat prouvant que le membre a complété la lecture des documents exigés en vertu du sous-paragraphe 8 (1) (b) (iv),

(iii) une preuve écrite de la participation à un atelier sur l'ouverture d'un cabinet juridique, si le membre est tenu de répondre à cette exigence de requalification telle qu'établie à la sous-subdivision (A) du sous-paragraphe 8 (1) (b) (v) et choisit d'y participer, et

(iv) une preuve écrite que le membre a suivi un cours de formation juridique continue de 10 heures tel qu'exigé en vertu de la sous-subdivision (B) du sous-paragraphe 8 (1) (b) (v), si le membre est tenu de répondre à cette exigence de requalification telle qu'établie à la sous-subdivision (B) du sous-paragraphe 8 (1) (b) (v).

Exigences de requalification de l'alinéa 8 (1) (a)

(2) Sur réception par le ou la secrétaire d'une requête d'attestation soumise en vertu du paragraphe (1) que le membre répond aux exigences de requalification professionnelle telles qu'établies à l'alinéa 8 (1) (a), la ou le secrétaire atteste seul que le membre a été à l'emploi d'une corporation, d'un gouvernement ou d'un organisme gouvernemental à titre d'avocat ou d'avocate sur une période continue d'une année, tel qu'exigé en vertu de l'alinéa 8 (1) (a).

Exigences de requalification de l'alinéa 8 (1) (b)

(3) Sur réception par le ou la secrétaire d'une requête d'attestation soumise en vertu du paragraphe (1) que le membre répond aux exigences de requalification professionnelle telles qu'établies à l'alinéa 8 (1) (b), le ou la secrétaire étudie les copies des examens complétés par le membre aux termes du sous-paragraphe 8 (1) (b) (ii) et, le cas échéant, l'examen complété par le membre conformément à la sous-subdivision (A) du sous-paragraphe 8 (1) (b) (v) et peut attester seul que le membre a répondu aux exigences de formation juridique continue du sous-paragraphe 8 (1) (b) (iii) et le cas échéant, la réussite par le membre du cours de formation juridique continue visé à la sous-subdivision (B) du sous-paragraphe 8 (1) (b) (v).

Évaluation des exigences de requalification professionnelle

(4) Sur réception par le ou la secrétaire d'une requête d'attestation soumise en vertu du paragraphe (1) que le membre répond aux exigences de requalification professionnelle telles qu'établies à l'alinéa 8 (1) (a), après avoir satisfait aux exigences du paragraphe (2), le ou la secrétaire

(a) si elle ou il est d'avis que le membre a répondu aux exigences de requalification de l'alinéa 8 (1) (a) et qu'il s'est conformé aux délais relatifs aux exigences de requalification professionnelle du paragraphe 8 (3), atteste que le membre répond aux exigences de requalification; ou

(b) si elle ou il est d'avis que le membre n'a pas répondu aux exigences de requalification de l'alinéa 8 (1) (a) et qu'il ne s'est pas conformé aux délais relatifs aux exigences de requalification professionnelle du paragraphe 8 (3), refuse d'attester que le membre répond aux exigences de requalification.

Idem

(5) Sur réception par le ou la secrétaire d'une requête d'attestation soumise en vertu du paragraphe (1) que le membre répond aux exigences de requalification professionnelle de l'alinéa 8 (1) (b), après avoir satisfait aux exigences du paragraphe (3), le ou la secrétaire

(a) si elle ou il est d'avis que le membre a répondu aux exigences de requalification de l'alinéa 8 (1) (b) et qu'il s'est conformé aux délais relatifs aux exigences de requalification professionnelle du paragraphe 8 (3), atteste que le membre répond aux exigences de requalification; ou

(b) si elle ou il est avis que le membre n'a répondu aux exigences de requalification de l'alinéa 8 (1) (b) et qu'il ne s'est pas conformé aux délais relatifs aux exigences de requalification professionnelle du paragraphe 8 (3), refuse d'attester que le membre répond aux exigences de requalification.

Idem

(6) Nonobstant les paragraphes (4) (b) et (5) (b), le ou la secrétaire peut attester que le membre répond aux exigences de requalification professionnelle si il ou elle est d'avis que le membre répond aux exigences de requalification de l'alinéa 8 (1) (a) ou aux exigences de requalification de l'alinéa 8 (1) (b) sans que le membre ne se soit conformé aux délais prescrits au paragraphe 8 (3) relativement aux exigences de requalification.

Attestation par le Comité d'audition que le membre répond aux exigences

10. Lorsqu'une requête a été déposée auprès du Comité d'appel conformément au paragraphe 49.1 (4) de la Loi afin d'établir si le membre répond aux exigences de requalification professionnelle, le Comité, dans son processus décisionnel, examine les facteurs suivants :

1. Si le membre dépose une requête afin d'établir s'il répond aux exigences de requalification professionnelle de l'alinéa 8 (1) (a), l'ampleur et le type de travail effectué par le membre auprès d'une compagnie, d'un gouvernement ou d'un organisme gouvernemental et s'il répond à l'exigence de l'alinéa 8 (1) (a).

2. Si le membre dépose une requête afin d'établir s'il répond aux exigences de requalification professionnelle de l'alinéa 8 (1) (b),

   i. les connaissances du membre de chacun des domaines énumérés aux sous-subdivisions (A), (B) et (C) du sous-alinéa 8 (1) (b) (i), et

   ii. l'ampleur et le type de formation juridique continue que le membre a suivie et les exigences de requalification du sous-alinéa 8 (1) (b) (iii) et de la sous-subdivision (B) du sous-alinéa 8 (1) (b) (v), le cas échéant.

Dispositions

11. Les conditions suivantes peuvent être imposées par le ou la secrétaire conformément au paragraphe 49.1 (3) de la Loi ainsi que par le Comité d'audition en vertu de l'alinéa 49.1 (6) (a) de la Loi :

1. Une condition qui exige que le membre participe à des programmes précis de formation juridique ou professionnelle, dans une période précise, mais sans toutefois dépasser une période d'une année à compter de la date à laquelle la décision rendue aux termes du paragraphe 49.1 (1) cesse de s'appliquer.

2. Une condition qui exige que le membre restreigne ses activités à certains domaines de droit, sur une période précise, mais sans toutefois dépasser une période d'une année à compter de la date à laquelle la décision rendue aux termes du paragraphe 49.1 (1) cesse de s'appliquer.

3. Une condition qui exige, sur une période précise mais sans toutefois dépasser une période d'une année à compter de la date à laquelle la décision rendue aux termes du paragraphe 49.1 (1) cesse de s'appliquer, que le membre n'exerce sa profession qu'à titre

   i. d'employé ou d'employée d'un membre ou de toute autre personne approuvée par le ou la secrétaire,

   ii. de partenaire avec un membre approuvé par le ou la secrétaire, et sous sa supervision, ou

   iii. de professionnel sous la surveillance d'un membre approuvé par le ou la secrétaire.

ANNEXE I

TRAVAIL POUR LE COMPTE D'UNE CLINIQUE OFFRANT DES SERVICES À CARACTÈRE JURIDIQUE

[ALINÉA 3 DU PARAGRAPHE 5 (1)]

1. L'alinéa 3 du paragraphe 5 (1) comprend l'occupation de l'un des postes suivants :

   1. Directeur, directrice.

ANNEXE II

TRAVAIL POUR LE COMPTE D'UN GOUVERNEMENT OU D'UN ORGANISME GOUVERNEMENTAL

[ALINÉA 4 DU PARAGRAPHE 5 (1)]

1. L'alinéa 4 du paragraphe 5 (1) comprend l'occupation de l'un des postes suivants :

   1. Juge de paix.

   2. Membre d'un tribunal judiciaire ou quasi-judiciaire.

   3. Adjoint ou adjointe judiciaire d'un ou d'une juge.

   4. Analyste de politiques ou conseiller ou conseillère.

   5. Rédacteur ou rédactrice de textes législatifs.

   6. Juge d'une cour fédérale, provinciale ou d'une cour territoriale.

ANNEXE III

OCCUPATION D'UN POSTE D'ENSEIGNEMENT

[ALINÉA 6 DU PARAGRAPHE 5 (1)]

1. L'alinéa 6 du paragraphe 5 (1) comprend l'occupation de l'un des postes suivants :

1. Doyen ou doyenne d'une faculté de droit de l'Ontario reconnue par le Conseil.

2. Membre du corps professoral d'une faculté de droit de l'Ontario reconnue par le Conseil.

3. Chargé de cours enseignant

i. dans une faculté de droit en Ontario reconnue par le Conseil, ou

ii. au Barreau du Haut-Canada.

4. Rédactrice ou rédacteur juridique.

5. Réviseure ou réviseur juridique.

6. Bibliothécaire de droit.

7. Recherchiste juridique.

ANNEXE IV

OCCUPATION D'UN POSTE SPÉCIFIQUE POUR LE COMPTE D'UNE ENTITÉ

[ALINÉA 8 DU PARAGRAPHE 5 (1)]

1. L'occupation d'un poste autre qu'avocat ou avocate pour l'un des organismes suivants est visé par l'alinéa 8 du paragraphe 5 (1) :

1. Régime d'aide juridique de l'Ontario / Aide juridique Ontario

2. Assurance de la responsabilité civile professionnelle des avocats.

3. Le Barreau du Haut-Canada.

4. Société d'aide à l'enfance.

APPENDIX 5

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Proposed Publication Guidelines (Continuing Legal Education)

Purpose and Scope

The purpose of these guidelines is to identify the general approach the Law Society's department of education should take in developing works for publication as part of its post-call education program.

The guidelines are not exhaustive, but provide the broad framework that will be followed in considering projects, recognizing that each potential project may require additional considerations.

Applicability

These guidelines apply to the publication of works by the department of education's CLE unit ("LSUC-CLE"), other than papers produced in the traditional binder format as an accompaniment to a CLE program.

A "work" that would be subject to these guidelines may include:

i. a collection of CLE papers printed in a more permanent form than the traditional binder;

ii. a monograph or collection of papers, or a precedent or collection of precedents, developed as a "free-standing" publication independent of CLE programs;

iii. electronic versions of such works and video or audiotapes produced independently of CLE programs.

Publications Development

As part of its mandate, LSUC-CLE will continue to choose and develop works for publication, considering only those proposed works that, *prima facie*, are likely to be of practical assistance to lawyers in their efforts to maintain or enhance their knowledge, skills and overall competence. Every work the department of education proposes to publish will be described in a written project description, which will identify the work's:

i. title;
ii. author(s) (with a description of his/her/their qualifications for writing the work);
iii. contents;
iv. proposed length;
v. anticipated publication date;
vi. price;
vii. print run;
viii. likely market (nature and scope; along with any:
    i. electronic or other supplementation;
    ii. proposed co-venturer/co-sponsor/co-publisher;
    iii. "tie-in" proposed with CLE programming, Bar Admissions, etc.;
    iv. existing works that may reasonably be regarded as overlapping or competitive and the basis for distinguishing them in light of one or more of the following criteria: scope, subject and contents, thesis or emphasis, format, timeliness;
ix. any contribution the work may make to achieving LSUC's equity goals;
x. an itemized preliminary publication costing from our book manufacturer; and

xi. any funding in aid of publication obtained or applied for (e.g. from the Law Foundation).

Peer Review
LSUC-CLE will maintain a list of practitioners, academics and judges who might serve as volunteer readers of proposals and manuscripts. The head of CLE will normally solicit comments and suggestions from a reader or readers drawn from this list, but may dispense with this in appropriate circumstances.

Comments received from the reader(s) will be forwarded to the author(s). A refusal by the author(s) to make changes to the manuscript in accordance with the reader's/s' advice may constitute grounds for LSUC-CLE's refusing to publish the work.

In the case of collective works along the lines of the Special Lectures volumes, the program chair may function as the external reader of the contributors' papers.

Solicitation of Proposals
LSUC-CLE will periodically advertise its criteria for publication and invite proposals from potential authors.

Disclaimer
Every work will contain the following note on the copyright page or one of the other prefatory pages:

> *This work appears as part of the Law Society of Upper Canada's efforts in continuing legal education (CLE). It aims to provide information and opinion which will assist lawyers in maintaining and enhancing their competence. It does not, however, represent or embody any official position of, or statement by, the Society, except where this may be specifically indicated; nor does it attempt to set forth definitive practice standards or to provide legal advice. Precedents and other material contained herein are intended to be used thoughtfully, as nothing in the work relieves readers of their responsibility to consider it in the light of their own professional skill and judgment.*

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

Copy of a letter from Mr. Laurence A. Pattillo of Torys dated May 12, 2000 re: LINK.

(Appendix 6)

Re: By-Law 28 - French Translation

It was moved by Mr. DiGiuseppe, seconded by Mr. E. Ducharme that By-law 28 be amended by adding the French version as set out at Appendix 4 of the Report.

Carried

Re: Publications Protocol for Law Society CLE

It was moved by Mr. DiGiuseppe, seconded by Mr. Simpson that the proposed publications protocol for Law Society CLE as set out at Appendix 5 of the Report be approved.

Carried

Re: Funding for LINK

It was moved by Mr. DiGiuseppe, seconded by Mr. E. Ducharme that pending the completion of the strategic planning process and the 2001 budget planning process there be no increase in Law Society funding to LINK.

Carried

It was moved by Mr. Gottlieb but failed for want of a seconder that the request for additional funds be granted.

Re: Report of the Working Group for the Long-Term Delivery of County and District Library Services

The Report of the Libraries Working Group was deferred to June 23rd Convocation.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. MacKenzie presented the Report of the Professional Regulation Committee for Convocation's consideration.

Professional Regulation Committee
June 8, 2000[1]

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

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[1]Includes matter deferred from March 23, April 28, and May 26, 2000 Convocations (March 9, April 13 and May 9, 2000 Professional Regulation Committee meetings)

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on June 8, 2000. In attendance were:

Gavin MacKenzie	(Chair)
Niels Ortved	(Vice-Chair)
Andrew Coffey	
Todd Ducharme	
Ross Murray	
Julian Porter	

Staff: Trevor Brandon, Janet Brooks, Lesley Cameron, Margot Devlin, Scott Kerr, Elliot Spears, Richard Tinsley, Jim Varro and Jim Yakimovich.

On May 9, 2000, the following attended:

Gavin MacKenzie	(Chair)
Larry Banack	(Vice-Chairs)
Heather Ross	
Todd Ducharme	

Staff: Trevor Brandon, Janet Brooks, Lesley Cameron, Scott Kerr, Elliot Spears, Richard Tinsley, Jim Varro and Jim Yakimovich.

At the April 13, 2000 meeting, the following attended:

Gavin MacKenzie	(Chair)
Larry Banack	(Vice-Chairs)
Neil Finkelstein	
Niels Ortved	
Heather Ross	
Andrew Coffey	
Carole Curtis	
Ross Murray	

Staff: Carol Austin, Janet Brooks, Leslie Cameron, Margot Devlin, Scott Kerr, Zelia Pereira, Elliot Spears, Richard Tinsley, Jim Varro and Jim Yakimovich.

At the March 9, 2000 meeting, the following were in attendance:

Gavin MacKenzie	(Chair)
Larry Banack	(Vice-Chairs)
Neil Finkelstein	
Heather Ross	
Andrew Coffey	
Carole Curtis	
Gary Gottlieb	
Ross Murray	
Robert Topp	

Staff: Denise Ashby, Janet Brooks, Margot Devlin, Vivian Kanargelidis, Scott Kerr, Elliot Spears, Richard Tinsley and Jim Varro.

2. This report contains the Committee's policy reports on:

- a new by-law on audit cost recoveries (originally reported to March 23, 2000 Convocation);
- amendments to By-Law 17 (Filing Requirements) to add the French language version of Form 17A [Member's Annual Report] (originally reported to April 28, 2000 Convocation);
- amendments to the Protocol for Complainants and the Rules of Practice and Procedure.

I. POLICY

NEW BY-LAW ON AUDIT COST RECOVERIES

A. BACKGROUND

3. At the October 29, 1999 Convocation, during consideration of the report of James Yakimovich, Manager, Investigations on the spot and focussed audit programs, approval in principle was given to establishing a scheme for the recovery of the costs of audits, in certain circumstances.

4. Prior to the drafting of a by-law on cost recoveries, authority for which is provided in the *Law Society Act*[2], the Committee agreed to engage in a policy discussion about the scope of the by-law. The Committee has completed those discussions and is presenting with this report a draft by-law, found at page 8 of this report, for Convocation's review, together with explanatory information on the by-law's structure.

B. COMPONENTS OF THE BY-LAW

5. The Committee considered a number of issues in formulating the by-law, including:
   - the scope of the circumstances for recovery of costs;
   - whether the scheme for cost recoveries should be mandatory or discretionary;
   - whether a flat amount for costs should be charged;
   - whether a per hour amount should be specified in the by-law upon which costs would be calculated;
   - consideration of any disparity in costs that might exist between GTA lawyers and lawyers outside the GTA, given the use of staff in the GTA for the program, and accounting firms for lawyers outside the GTA.
   - whether the amount of the cost recovery should be unrestricted;
   - if a mandatory scheme, whether provision should be made to waive the costs, which may be based on special circumstances or compassionate grounds;
   - where the authority for a decision on costs recoveries should lie, and whether an appeal from that decision should be available.

6. Based on the above together with the outline of the basis for cost recoveries set out in Mr. Yakimovich's report, the Committee determined the following to be the key components of the by-law (references are to the section numbers in the draft by-law).

Order for Costs

7. The payment of all or a portion of the costs of an audit should be the subject of an order which may be made by a bencher on application by the Society *(section 1)*. The by-law accordingly has been designed to reflect a discretionary scheme for the recovery of costs.

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[2]Section 62(0.1) of the *Law Society Act* states:

Convocation may make by-laws,

...

16. providing for the payment to the Society by a member or student member of the cost of an audit, investigation, review, search or seizure under Part II;

Circumstances in Which an Order May Be Made

8. An order for payment of costs may be made in the following circumstances:
   a. Costs may be recovered because of the member's failure to file the Member's Annual Report *(paragraph 1(a))*. A spot audit is sought in those circumstances because of the concerns inherent with the non-filing of the financial report;
   b. In the course of conducting audits, an appointment to conduct the audit is set with the member. Recovery of audits costs should be available where the member does not keep the pre-arranged audit appointment *(paragraph 1(b))*;
   c. Prior to an audit, the member is also provided with a listing of the financial records that must be available for the audit. Recovery of audits costs should be available if, on attendance at the audit, it is found that the member's records are not available *(paragraph 1(c))*;
   d. Recovery of audits costs should be available where the member's records are not up-to-date, thereby causing a significant increase in audit time;
   e. Recovery of audits costs should be available where there are numerous financial records inadequacies and this results in excessive time spent on the audit *(paragraph 1(e))*.

9. This by-law would permit the Society, for example, to seek payment of the full costs of an audit the Society undertakes because of member's failure to file the Member's Annual Report under By-Law 17. It would also permit the Society to seek a portion of the costs of an audit where time was lost on, and additional time expended to perform, an audit, because a member failed to keep a pre-arranged appointment with the Society for the audit.

10. The by-law would cover the followings types of audits:
   a. a spot audit arising from random selection of the member for the audit or information filed with the Law Society that shows that financial record keeping practices may not be adequate;
   b. a focussed audit conducted either separately or as part of a consolidated audit approach;
   c. an audit instructed pursuant to a re-audit (because of the nature or extent of financial record keeping issues identified during a previous audit) where there has not been substantial compliance.

Bill of Costs According to a Tariff

11. The costs to be charged a member under the by-law should be in accordance with a tariff to be established by Convocation, reflected in a bill of costs delivered to the member with the Society's application *(section 3)*. The Committee considered the option of including a dollar amount in the by-law upon which the bill of costs would be calculated, but determined that the scheme would better suited to the application of a tariff that Convocation could set, review and amend as appropriate.

Procedure

12. The bencher determines the procedure for consideration of the application and may decide who makes submissions with respect to the application and in what manner *(section 4)*. Both the member and Society are entitled to make submissions *(subsection 4(2))* and inherent in this process is the ability to raise any issues the member or the Society believes are relevant to the application.

13. The Committee felt it appropriate to include the member's ability to pay as a matter that may be raised before the bencher on the hearing of the application. Accordingly, the by-law indicates that the bencher shall consider, among other relevant factors, the issue of the member's ability to pay *(subsection 4(3))*.

Bencher's Decision

14. After considering the application, the bencher shall dismiss it or order that costs be paid as requested by the Society or as determined by the bencher, the bencher's determination being as far as possible in accordance with the tariff *(subsections 4(4) and (5))*. Reasons for the decision are to be provided on request to the member or the Society *(subsection 4(6))*.

Appeal

15. While the Committee debated various options on whether the bencher's decision should be subject to an appeal and, if so, who should hear the appeal (including an application before a single bencher with no appeal and an application before a three-bencher panel with no appeal), it determined that in those circumstances where the member or the Society is dissatisfied with the bencher's decision, an appeal should lie to a three-bencher panel *(section 5)*, whose decision is final.

The Committee's View

16. In establishing the scheme for recovery of audit costs, the by-law appropriately focusses on those circumstances where the member is in breach of regulatory requirements with respect to filings or trust record keeping or has not complied with arrangements agreed upon between the Society and member for the conduct of an audit. The by-law would apply to such circumstances arising from a spot or focussed audit or a re-audit.

17. At the same time, the by-law gives wide discretion to the bencher hearing the application to consider issues relating to the costs being sought by the Society. In particular, an inquiry into the ability of the member to pay the costs is designed as a compulsory feature of the bencher's consideration of the application.

18. In the Committee's view, the draft by-law represents a responsible and sound approach to the recovery of audit costs in those circumstances in which recovery is appropriate.

C. DECISION FOR CONVOCATION

19. Convocation is asked to review the draft by-law on audit cost recoveries, as set out below, and if in agreement, adopt the draft by-law, or make amendments thereto as it considers appropriate prior to adoption. A motion for the making of the by-law appears below prior to the text of the by-law.

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTION 62 (0.1) OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2000

MOVED BY

SECONDED BY

THAT, pursuant to the authority contained in paragraph 16 of subsection 62 (0.1) of the *Law Society Act*, By-Law 30 [Payment of Costs] be made as follows:

BY-LAW 30

PAYMENT OF COSTS

AUDIT

Payment of costs

1. On application by the Society, a bencher appointed for the purpose by Convocation may make an order requiring a member who was the subject of an audit under section 49.2 of the Act to pay the cost or a portion of the cost of the audit if the bencher is satisfied that,

(a) the audit was required because the member had failed to submit to the Society the report required under section 2 of By-Law 17;

(b) at the time arranged between the Society and the member, the person conducting the audit could not gain entry to the business premises of the member;

(c) at any time during the audit, the member failed to produce to the person conducting the audit the financial records and other documents that the member prior to a specified time had been requested to make available to the person at that time;

(d) at any time during the audit, the member failed to produce to the person conducting the audit financial records that were up to date and the failure to produce financial records that were up to date increased significantly the amount of time required to complete the audit; or

(e) at any time during the audit, the member produced financial records that were not in compliance with the requirements of By-Law 18 and the production of financial records that were not in compliance with the requirements of By-Law 18 increased the amount of time required to complete the audit.

Notice of application

2. (1) An application for payment of the cost or a portion of the cost of an audit shall be commenced by the Society notifying the member in writing of the application.

Method of giving notice

(2) Notice under subsection (1) is sufficiently given if,

(a) it is delivered personally;

(b) it is sent by regular lettermail addressed to the member at the latest address for the member appearing on the records of the Society; or

(c) it is faxed to the member at the latest fax number for the member appearing on the records of the Society.

Receipt of notice

(3) Notice under subsection (1) shall be deemed to have been received by the member,

(a) if it was sent by regular lettermail, on the fifth day after it was mailed; and

(b) if it was faxed, on the first day after it was faxed.

Bill of costs

3. (1) Where the Society is applying for payment of the cost or a portion of the cost of an audit, the Society shall send to the member at least ten days before the date fixed for consideration of the application a bill of costs setting out the expenses, fees, disbursements and other charges incurred by the Society to conduct the audit.

Tariff

(2) The bill of costs prepared by the Society shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

Application of certain sections

(3) Subsections 2 (2) and (3) apply, with necessary modifications, to the delivery of the bill of costs under subsection (1).

Consideration of application: procedure

4. (1) Subject to sections 2 and 3 and subsections (2), (3), (5) and (6), the procedure applicable to the consideration of an application for the payment of the cost or a portion of the cost of an audit shall be determined by the bencher and, without limiting the generality of the foregoing, the bencher may decide who may make submissions to him or her, when and in what manner.

Submissions by member and Society

(2) The member and the Society are entitled to make submissions to the bencher when he or she is considering an application for the payment of the cost or a portion of the cost of an audit.

Ability to pay

(3) In considering an application for the payment of the cost or a portion of the cost of an audit, the bencher shall take into account, among other relevant factors, the member's ability to pay.

Authority of bencher

(4) After considering an application for payment of the cost or a portion of the cost of an audit, the bencher shall,

(a) dismiss the application and declare that the member is not required to pay the cost of any portion of the cost of the audit; or

(b) order that the member pay the cost or a portion of the cost of the audit, as requested by the Society in the application or as determined by the bencher, and set the due date for payment.

Tariff

(5) Where the bencher determines under clause (4) (b) that the member is to pay the cost or a portion of the cost of the audit other than as requested by the Society in the application, the bencher's determination as to the amount payable by the member shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

Reasons for decision

(6) If requested by the member or the Society, the bencher shall state in writing the reasons for his or her decision on the application.

Appeal

5. (1) The member or the Society if dissatisfied with the bencher's decision under subsection 4 (4) may appeal the decision to a panel of three benchers appointed for the purpose by Convocation.

Time for appeal

(2) An appeal under subsection (1) shall be commenced,

(a) if the member is appealing, by the member notifying the Secretary in writing of the appeal within thirty days after the day the bencher delivers his or her decision; or

(b) if the Society is appealing, by the Society notifying the member in writing of the appeal within thirty days after the day the bencher delivers his or her decision.

Procedure

(3) The rules of practice and procedure apply, with necessary modifications, to the consideration by the panel of three benchers of an appeal under subsection (1) as if the consideration of the appeal were the hearing of an appeal under subsection 49.32 (2) of the Act.

Same

(4) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the panel of three benchers of an appeal under subsection (1).

Payment of cost of audit

(5) Where a member or the Society appeals under subsection (1), payment of the cost or a portion of the cost of an audit, as ordered by the bencher under subsection 4 (4), is postponed until the appeal is disposed of by the panel of three benchers.

Decision on appeal

(6) After considering an appeal made under subsection (1), the panel of three benchers shall,

(a) confirm the bencher's decision; or

(b) strike out the bencher's decision and substitute its own decision.

Decision final

(7) The decision of the panel of three benchers on an appeal made under subsection (1) is final.

RÈGLEMENT ADMINISTRATIF NO 30

PAIEMENT DES FRAIS

VÉRIFICATION

Paiement des frais

1. Sur requête du Barreau, le conseiller ou la conseillère que le Conseil a nommé à cette fin peut rendre une ordonnance exigeant que le membre qui fait l'objet d'une vérification prévue à l'article 49.2 de la Loi paie tout ou partie des frais de la vérification si elle ou s'il est convaincu de ce qui suit :

a) la vérification a été exigée parce que le membre n'a pas présenté au Barreau le rapport exigé par l'article 2 du règlement administratif no 17;

b) la personne qui procède à la vérification n'a pas pu pénétrer dans les locaux commerciaux du membre au moment don't celui-ci et le Barreau avaient convenu;

c) le membre n'a pas, pendant la vérification, produit à la personne qui y procède les registres financiers et autres documents qu'on lui a demandés, à l'avance, de mettre à la disposition de cette personne à un moment précisé;

d) le membre n'a pas, pendant la vérification, produit à la personne qui y procède des registres financiers à jour et cette omission a prolongé considérablement le délai nécessaire pour mener à bien la vérification;

e) le membre a, pendant la vérification, produit des registres financiers non conformes aux exigences du règlement administratif no 18 et, ce faisant, a prolongé considérablement le délai nécessaire pour mener à bien la vérification.

Avis de la requête

2. (1) La requête en paiement de tout ou partie des frais d'une vérification est introduite lorsque le Barreau en avise le membre par écrit.

Mode de remise de l'avis

(2) Est valablement donné l'avis prévu au paragraphe (1) qui, selon le cas :

a) est remis à personne;

b) est envoyé au membre par poste-lettre ordinaire à sa dernière adresse qui figure dans les dossiers du Barreau;

c) est envoyé au membre par télécopieur à son dernier numéro de télécopieur qui figure dans les dossiers du Barreau.

Réception de l'avis

(3) Le membre est réputé avoir reçu l'avis prévu au paragraphe (1) :

a) le cinquième jour qui suit son envoi par la poste, s'il lui a été envoyé par poste-lettre ordinaire;

b) le jour qui suit son envoi par télécopieur, s'il lui a été envoyé par ce moyen.

Facture des frais

3. (1) S'il présente une requête en paiement de tout ou partie des frais d'une vérification, le Barreau envoie au membre, au moins dix jours avant la date fixée pour l'étude de la requête, une facture de frais où sont énoncés les dépenses, les honoraires, les débours et autres frais qu'il a engagés pour procéder à la vérification.

Tarif

(2) La facture de frais préparée par le Barreau est, dans la mesure du possible, conforme au tarif établi par le Conseil.

Application

(3) Les paragraphes 2 (2) et (3) s'appliquent, avec les adaptations nécessaires, à la remise de la facture de frais prévue au paragraphe (1).

Étude de la requête : procédure

4. (1) Sous réserve des articles 2 et 3 et des paragraphes (2), (3), (5) et (6), le conseiller ou la conseillère établit la procédure d'étude de la requête en paiement de tout ou partie des frais d'une vérification et, notamment, peut choisir les personnes qui lui présenteront des observations et préciser le moment et la manière de le faire.

Observations du membre et du Barreau

(2) Le membre et le Barreau ont le droit de présenter des observations au conseiller ou à la conseillère qui étudie une requête en paiement de tout ou partie des frais d'une vérification.

Capacité de payer

(3) Lors de l'étude d'une requête en paiement de tout ou partie des frais d'une vérification, le conseiller ou la conseillère tient compte, entre autres facteurs pertinents, de la capacité de payer du membre.

Pouvoir du conseiller

(4) Après avoir étudié une requête en paiement de tout ou partie des frais d'une vérification, le conseiller ou la conseillère :

a) soit rejette la requête et déclare que le membre n'est pas tenu de payer tout ou partie des frais de la vérification;

b) soit ordonne que le membre paie tout ou partie des frais de la vérification, de la manière don't le Barreau le demande dans la requête ou de la manière don't il ou elle en décide, et fixe la date d'exigibilité du paiement.

Tarif

(5) Si le conseiller ou la conseillère décide, en application de l'alinéa (4) b), que le membre doit payer tout ou partie des frais de la vérification autrement que de la manière don't le Barreau le demande dans la requête, la somme qu'il ou elle fixe comme étant celle que le membre doit payer est conforme, dans la mesure du possible, au tarif établi par le Conseil.

Motifs de la décision

(6) À la demande du membre ou du Barreau, le conseiller ou la conseillère motive par écrit la décision qu'il ou elle rend au sujet de la requête.

Appel

5. (1) S'il n'en est pas satisfait, le membre ou le Barreau peut interjeter appel de la décision que le conseiller ou la conseillère rend en application du paragraphe 4 (4) devant un comité de trois conseillers ou conseillères que le Conseil nomme à cette fin.

Délai d'appel

(2) L'appel prévu au paragraphe (1) est interjeté de la manière suivante :

a) s'il est le fait du membre, celui-ci en avise le ou la secrétaire par écrit dans les 30 jours qui suivent celui où le conseiller ou la conseillère a rendu sa décision;

b) s'il est le fait du Barreau, celui-ci en avise le membre par écrit dans les 30 jours qui suivent celui où le conseiller ou la conseillère a rendu sa décision.

Procédure

(3) Les règles de pratique et de procédure s'appliquent, avec les adaptations nécessaires, à l'étude d'un appel prévu au paragraphe (1) par le comité de trois conseillers ou conseillères comme s'il s'agissait de l'audition d'un appel visé au paragraphe 49.32 (2) de la Loi.

Idem

(4) En cas de silence des règles de pratique et de procédure sur une question de procédure, la Loi sur l'exercice des compétences légales s'applique à l'étude d'un appel prévu au paragraphe (1) par le comité de trois conseillers ou conseillères.

Paiement des frais de la vérification

(5) Le paiement de tout ou partie des frais d'une vérification que le conseiller ou la conseillère a ordonné en application du paragraphe 4 (4) est reporté jusqu'à ce que le comité de trois conseillers ou conseillères tranche l'appel que le membre ou le Barreau interjette en vertu du paragraphe (1).

Décision

(6) Après avoir étudié l'appel interjeté en vertu du paragraphe (1), le comité de trois conseillers ou conseillères :

a) soit confirme la décision du conseiller ou de la conseillère;

b) soit annule la décision du conseiller ou de la conseillère et lui substitue sa propre décision.

Décision définitive

(7) La décision que le comité de trois conseillers ou conseillères rend à propos d'un appel prévu au paragraphe (1) est définitive.

AMENDMENT TO BY-LAW 17 ON FILING REQUIREMENTS

20. On October 29, 1999, Convocation adopted a new member's annual reporting form, the Member's Annual Report (MAR), which is prescribed as Form 17A under the By-Law. At that time, only the English version of the form was before Convocation.

21. The French version of the form has now been prepared. Accordingly, as a "housekeeping" matter, the Committee is moving the amendment of By-Law 17 to add the French version of Form 17A.

DECISION FOR CONVOCATION

22. Convocation is requested to amend By-Law 17 to add the French version of Form 17A. The form in French, together with the appropriate motion to amend, appears at Appendix 1.

AMENDMENTS TO THE PROTOCOL FOR COMPLAINANTS IN THE LAW SOCIETY'S DISCIPLINE PROCESS AND THE RULES OF PRACTICE AND PROCEDURE

(Joint Meeting of the Professional Development and Competence and Professional Regulation Committees)

A. INTRODUCTION AND BACKGROUND

23. In November 1997, the Law Society adopted a Protocol for complainants in the discipline process, which sets out a scheme for informing and communicating with complainants. Much of the Protocol was a codification and refinement of processes already in place in the Society's investigatory and discipline departments.

24. As the Protocol pre-dated the amendments to the *Law Society Act* (the "*Act*") in force February 1, 1999 and the Project 200 operational reorganization, a working group of the two Committees noted above was struck to review the Protocol and propose appropriate changes.

25. The amendments to the *Act* established three types of proceedings which might result from a complaint, namely, conduct (formerly discipline), capacity (formerly section 35) and competence proceedings. The amendments also codified an obligation of confidentiality in respect of information relating to audits, investigations, reviews, searches, seizures or the proceedings as described. Because the amendments called into question the ability of the Society to observe the Protocol in respect of providing information to complainants and highlighted the fact that the Protocol, to be a useful and relevant document, required updating to encompass all three types of hearings and the changes to the Law Society's governing legislation, a review of the Protocol was undertaken.

26. The working group reported to the Committees in January 2000, which then reported to Convocation. That resulted in approval in principle to amendments to Protocol and in specific amendments to the Rules of Practice and Procedure, essentially to permit complainants to be advised of the fact of proceedings in respect of capacity and competence which otherwise are *in camera.*

27. In summary, Convocation agreed that:

(a) a form of protocol should continue to be used to reflect the scope of appropriate communications with complainants at all stages;

(b) subsections 49.12(2)(a) and (b) of the *Act* should be interpreted to permit the disclosure of the following information to complainants:

i) as needed during an investigation;

ii) a staff decision to close a file;

iii) a staff decision to refer the matter to the Proceedings Authorization Committee (the "PAC") for consideration and the recommendation by staff;

iv) a decision of the PAC to close the file; and

v) a decision of the PAC to authorize a proceeding and the type of proceeding which has been authorised, whether conduct, capacity or competence;

(c) Amendments should be made to rules 1.02(2), 3.04 and 3.04.1 of the Rules of Practice and Procedure to permit a complainant who referred a matter to the Society which is now at the hearing level to be notified of the *fact* of a capacity or competence application, without more;

(d) The language of the existing Protocol should be substantively revised to reflect the current state of affairs, including any proposals that are adopted by Convocation as a result of the Committees' report on these issues.

28. The amendments in (c) above have been implemented. The Committees are now requesting Convocation approve amendments to the language of the Protocol in respect of the implementation of (d) above and make further amendments to the Rules of Practice and Procedure to deal with the issue of what complainants should receive in connection with the results of a capacity or competence proceeding.

B. THE AMENDED PROTOCOL

29. The amended version of the Protocol appears below.[3] The amendments were made after consultation with relevant staff in the complaints resolution, investigations and discipline departments. The redrafted Protocol includes obligations which are reflected at a procedural level in the amendments to the Rules of Practice and Procedure in respect of capacity and competence proceedings, discussed in the next section of this report.

30. Two definitions have been added to the Protocol - "member" and "complainant".

31. In the Rules of Practice and Procedure, "complainant" is defined as

> a person who has made a complaint to the Society regarding a member or student member which is relevant to the application

32. The definition of "complainant" in the Protocol reads

> "complainant" means a person who has made a complaint to the Society regarding a member or student member, but where an application has been commenced, it means a person who has made a complaint to the Society regarding a member or student member that remains open and that is relevant to the application

33. This definition limits the information available to a complainant to the information relevant to his or her complaint against a member. This makes the definition in the Protocol consistent with the definition in the Rules of Practice and Procedure. The definition in the Protocol also makes it clear that the Society has no duty to inform complainants whose files have been closed of, for example, results of competence or capacity proceedings.

Law Society of Upper Canada
PROTOCOL FOR COMPLAINANTS
(adopted by Convocation November 28, 1997; amended May 29, 1998 and -----)

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[3]The original version of the Protocol appears at Appendix 2 to this report.

In this protocol,

"complainant" means a person who has made a complaint to the Society regarding a member or student member, but where an application has commenced, it means a person who has made complaint to the Society regarding a member or student member that remains open and that is relevant to the application.

"member" means a member of the Law Society and includes a law student registered in the Law Society's pre-call program

Generally

1. A Complainant should at all times be treated professionally and with courtesy, respect and candour by Law Society staff , outside investigators and counsel engaged by the Law Society.

2. A Complainant should be provided with information about the Law Society's regulatory processes.

3. The Law Society should communicate with a Complainant in "plain language".

4. The Law Society should communicate with a Complainant, if the Complainant so requests, in French, and use its best efforts to communicate with a Complainant in the language of his or her choice.

5. The location of meetings at the Law Society with a Complainant, as much as practicalities permit, should be comfortable and convenient for a Complainant.

Intake, Resolution and Investigation of Complaints

6. The Law Society should assist a complainant, where necessary, in recording a complaint about a lawyer. As a rule, complaints are requested to be made in writing, but the Law Society will accept complaints recorded on audiotapes or videotapes.

7. A Complainant has a right to be regularly informed of the status of the complaint with which he or she is involved. A status report should be provided at least every 90 days, unless otherwise agreed upon by the Complainant and the Law Society's staff handling the complaint.

8. The Complainant should be reasonably accommodated with his or her requests for meetings about the complaint to the Law Society as required for pursuit of the complaint, and in the scheduling of meetings with the Complainant as requested by the Law Society;

9. All written (including facsimile) or electronic communications from a Complainant that require a response should be acknowledged within 14 days of receipt by the Law Society. Telephone messages from a Complainant should be returned at the latest by the next business day.

10. Where a complaint matter is closed based on Law Society staff's or outside counsel's view of the matter, as the case may be, reasons for not taking further action on a complaint should be provided to a Complainant.

11. A Complainant shall be given the opportunity to have his or her complaint reviewed by a lay bencher of the Law Society, in accordance with the complaints review by-law and policies.

12. A Complainant should be advised of:
    i. the referral of a matter to the Proceedings Authorization Committee within 14 days after the fact of the referral is communicated to the member;
    ii. the decision of the Proceedings Authorization Committee, including the type of proceeding authorized, if any, within 14 days after the decision is communicated to the member.

Institution of Proceedings

13. Unless a Complainant advises that he or she does not wish to be kept informed, Law Society counsel should inform a complainant in writing that an application has been issued for a conduct, competence or capacity proceeding based on his or her complaint, as soon as is reasonably possible after the member has been served with the application, together with a brief explanation of the hearing process and advice on whether the Complainant has a right to be present at the hearing.

Hearing Stage

14. Law Society counsel should make themselves available to respond to a Complainants' reasonable inquiries or requests for information at any stage of the hearing process.

15. In conduct proceedings, Law Society counsel should:
    i. At an early stage in the prosecution of an application, seek the views of a Complainant on his or her expectations of the outcome of the proceedings against the member arising out of the Complainants' complaint;
    ii. Once a hearing date is set, advise the Complainant of this date and any subsequent changes in this date;
    iii. Where practicable, advise the Complainant of significant decisions regarding the withdrawal or amendment of particulars with which that Complainant is involved;
    iv. Where practicable, advise the Complainant of any joint submissions as to penalty;
    v. If the Complainant does not attend at the hearing, write to the Complainant advising of the final disposition of the application and provide a copy of written reasons of the hearing panel, if any;
    vi. In the event of an appeal, advise the Complainant of the appeal, the hearing date of the appeal and the outcome.

16. In competence or capacity proceedings, Law Society counsel should:
    i. Whether or not the hearing is in public, once a hearing date is set, advise the Complainant of this date and any changes in this date;
    ii. Whether or not the hearing is in public, write to the Complainant advising:
        a. whether a finding of incapacity or incompetence was made or whether the application was dismissed;
        b. of the resulting order of the hearing panel as may be permitted by the rules governing practice and procedure at Law Society proceedings.
    iii. Provide a copy of any written reasons of the hearing panel, as may be permitted by the rules governing practice and procedure at Law Society proceedings;
    iv Whether or not the hearing is in public, in the event of an appeal, advise the Complainant of the appeal, the hearing date of the appeal and the outcome.

17. The use of "victim impact statements" at conduct hearings will continue to be dealt with by the existing policy attached to this Protocol, amended to provide for videotaped statements from Complainants where the Complainant and the parties to the proceeding agree. The policy should be brought to the attention of Complainants so that they are aware of the opportunity to provide a victim impact statement to the Hearing Panel.

C. AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE

34. In amending the Protocol, an issue arose concerning what information should be provided to a complainant about the *results* of a capacity or competence proceeding. The Committees concluded that the complainant should be advised of whether or not a finding is made in such proceedings, and, if a finding is made, notwithstanding that the order may not be a matter of public record, should be advised of such parts of the order as the hearing panel determines appropriate. The same would apply at the appeal level. The relevant text is found at paragraph 16 of the amended Protocol above.

35. The Committees were of the view that it would be inconsistent with the scheme of the Protocol to tell a complainant about the fact of such applications but nothing further. Accordingly, this feature of the Protocol required the Committees to consider further amendments to the Rules of Practice and Procedure.

36. The proposed amendments the Rules appear in rules 3.04, 3.04.1 and 3.05 in order to implement the proposed amendments to the Protocol.

Amendment to Rules 3.04 and 3.04.1

37. The Committees recommend the following amendments to rules 3.04 and 3.04.1. The proposed amendments are in boldface type and underlined in the text below.

Capacity Proceedings

3.04 (1) A proceeding shall, subject to subrules (2), (5) and (6), be held in the absence of the public if it is a proceeding in respect of a determination of incapacity.

(2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.

(3) Unless the proceeding before the tribunal is open to the public as provided by subrule (2), an application for a determination of incapacity shall not be made public by the Society except as required in connection with a proceeding, except as provided for in the Act and except as provided for in subrule (3.1).

(3.1) After the member or student member is served with the application, the Society ~~may advise~~ shall, where practicable, inform a complainant of the fact of the application.

(4) Where the hearing of an application for a determination of incapacity has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.

(5) Subject to subrule (6), where the hearing of an application for a determination of incapacity has been closed to the public, and where the tribunal has made an order suspending or limiting the member or student member's rights and privileges, the order is a matter of public record but the tribunal's reasons shall not be made public.

(6) Where the hearing of an application for a determination of incapacity has been closed to the public, the Society shall, where practicable, inform a complainant of the tribunal's decision as to whether the application was established and the tribunal shall determine which aspects of the order shall be made available to a complainant.

Professional Competence Proceedings

3.04.1 (1) A proceeding shall, subject to subrules (2), (5), (6) and (7), be held in the absence of the public if it is a proceeding in respect of a determination of whether a member is failing or has failed to meet standards of professional competence.

(2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.

(3) Unless the proceeding before the tribunal is open to the public as provided by subrule (2), an application for a determination of professional competence shall not be made public by the Society except as required in connection with a proceeding except as provided for in the Act, and except as provided for in subrule (3.1).

(3.1) After the member is served with the application, the Society ~~may advise~~ shall, where practicable, inform a complainant of the fact of the application.

(4) Where the hearing of an application for a determination of professional competence has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.

(5) Where the hearing of an application for a determination of professional competence has been closed to the public, and where the tribunal has made an order suspending the member's rights and privileges, the order and the decision of the tribunal are a matter of public record.

(6) Subject to subrule (7), where the hearing of an application for a determination of professional competence has been closed to the public, and where the tribunal has made an order limiting the member's rights and privileges, the tribunal shall determine what aspects of the order shall be made public in order to protect the public interest.

(7) Where the hearing of an application for a determination of professional competence has been closed to the public, the Society shall, where practicable, inform a complainant of the tribunal's decision as to whether the application was established and the tribunal shall determine which aspects of the order shall be made available to a complainant.

38. The Committees recognized that a policy decision was made when the rules on competence and capacity proceedings were drafted to differentiate these proceedings in terms of what aspects of an order would be made public, and in this respect, the Committees noted the difference between subrules 3.04.1(5) and (6) on competence and 3.04(5) on capacity - the competence subrules differentiate between orders which limit members' rights and those that suspend them. The capacity subrule does not.

39. The Committees determined that complainants should receive that part of the order permitted by rules 3.04(5) and 3.04.1(6) above, together with any other aspect of the order that is not a matter of public record that the tribunal determines is appropriate.

40. The Committees were of the view that to give complainants in every case more than that which the tribunal was prepared to give the public would undermine in particular the purpose of the competence stream (essentially, a remedial as opposed to disciplinary focus intended to assist rather than sanction a member). The preference was that whatever the tribunal ordered to be made public through 3.04.1(6) would be informed by the fact of a complainants' interest in the outcome of the proceeding, and that that approach would also permit the tribunal, if it so chose, to go beyond (6) to make other aspects of the order, not otherwise a matter of public record, available to the complainant.

41. Accordingly, these amendments would allow the Society,

a. in capacity proceedings, to provide a complainant with the Panel's decision and a copy of those aspects of the order that the Panel determines to be appropriate where such aspects could not otherwise be disclosed because they did not relate to an order to limit or suspend the member's rights and privileges; and

b. in competence proceedings, to provide a complainant with the Panel's decision and a copy of those aspects of the order that the Panel determines to be appropriate where such aspects could not otherwise be disclosed because they did not relate to an order to suspend the member's rights and privileges and in the case of an order to limit the member's rights and privileges, those aspects of the order were not made public.

42. The Committees discussed whether the word "may" or "shall" should precede the words "be informed of the tribunal's decision" in the above rules. There was a sense that "may" imparted a permissive as opposed to mandatory obligation, which was undesirable. Alternatively, "shall" would impose an obligation to advise a complainant, for example, where the complainant expressly indicated that he or she does not wish to be informed, or where the complainant could not be located. In these cases, it would be unnecessary or impractical to advise the complainant. Accordingly, the words "shall where practicable" were chosen. This change was also made to rules 3.04(3.1) and 3.04.1(3.1).

Amendments to Rule 3.05

43. The Committees recommend that the following amendments be made to rule 3.05. The proposed amendments are in boldface type and underlined in the text below.

Application to Appeals

3.05 (1) Where an appeal arises from a decision or order ~~or reasons~~ of a tribunal in respect of a conduct, admission, or readmission proceeding, the provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications~~, to the decision, order and reasons of the Appeal Panel~~.

(2) Where an appeal arises from a decision **or** order ~~or reasons~~ of a tribunal in respect of a capacity proceeding or a professional competence proceeding, the provisions of rules 3.04 and 3.04.1 apply, with necessary modifications~~, to the decision, order and reasons of the Appeal Panel~~.

44. In the first phrase of each subrule above, the deletion of "reasons" is a 'housekeeping' amendment. Because appeals are taken from a decision or order only pursuant to section 49.32 the *Law Society Act*, the word"reasons" should be deleted.

45. In the last phrase of each subrule, the deletion of "to the decision, order and reasons of the Appeal Panel" is made to ensure that *all* of the rules relating to hearings before the tribunal apply to the proceedings before the Appeal Panel and not only those relating to the decision, order and reasons of the Appeal Panel. This amendment would permit the Society, for example, to inform complainants of the fact of an appeal.

Members' Protocol

46. The Committees agreed that work should begin on the drafting of a "protocol" for members in the Society's investigations and discipline process, an idea which had been raised earlier by benchers in Convocation.[4] A working group of the Committees will be struck to consider the scope and content of such a protocol, mindful of the processes which have already been codified in particular at the hearing stage through the Rules of Practice and Procedure.

47. The working group will report to the Committees in the new committee year.

D. DECISION FOR CONVOCATION

48. Convocation is requested to:
    a. Approve the amended Protocol; and
    b. Make the amendments to the Rules of Practice and Procedure as discussed above. A motion for amendment to the Rules appears on the next page.

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2000

RULE 3 - ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

MOVED BY

SECONDED BY

That rule 3 be amended by:

1. Replacing in rule 3.04(1) the words "subrule (2)," with the words "subrules (2), (5) and (6),".

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[4]When the complainants' Protocol was adopted by Convocation in November 1997, the suggestion for a members' protocol was referred to the Professional Regulation Committee. At May 29, 1998 Convocation, when amendments to the complainants' Protocol were made, the Committee discussed in its report its consideration of a members' protocol. Convocation at that time agreed with the Committee to defer the matter pending assessment at an operational level of certain process and procedural issues largely focussing on the hearing stage.

2. Replacing in rule 3.04(3.1) the words "may advise" with the words "shall, where practicable, inform".

3. Adding to the beginning of rule 3.04(5) the words "Subject to subrule (6),".

4. Adding the following immediately after subrule 3.04(5):

(6) Where the hearing of an application for a determination of incapacity has been closed to the public, the Society shall, where practicable, inform a complainant of the tribunal's decision as to whether the application was established and the tribunal shall determine which aspects of the order shall be made available to a complainant.

5. Replacing in rule 3.04.1(1) the words "subrule (2)," with the words "subrules (2), (5), (6) and (7),".

6. Replacing in rule 3.04.1(3.1) the words "may advise" with the words "shall, where practicable, inform".

7. Adding to the beginning of rule 3.04.1(6) the words "Subject to subrule (7),".

8. Adding the following immediately after subrule 3.04.1(6):

(7) Where the hearing of an application for a determination of professional competence has been closed to the public, the Society shall, where practicable, inform a complainant of the tribunal's decision as to whether the application was established and the tribunal shall determine which aspects of the order shall be made available to a complainant.

9. Deleting subrules 3.05(1) and (2) and replacing them with the following:

3.05 (1) Where an appeal arises from a decision or order of a tribunal in respect of a conduct, admission, or readmission proceeding, the provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications.

(2) Where an appeal arises from a decision or order of a tribunal in respect of a capacity proceeding or a professional competence proceeding, the provisions of rules 3.04 and 3.04.1 apply, with necessary modifications.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 17
[FILING REQUIREMENTS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 23, 2000

MOVED BY

SECONDED BY

THAT By-Law 17 [Filing Requirements] made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, May 28, 1999, October 29, 1999 and January 27, 2000 be further amended by adding the following French version of Form 17A [Member's Annual Report]:

APPENDIX 2

ORIGINAL VERSION OF COMPLAINANTS' PROTOCOL

Law Society of Upper Canada

PROTOCOL FOR COMPLAINANTS IN THE
LAW SOCIETY'S DISCIPLINE PROCESS
(adopted by Convocation November 28, 1997; amended May 29, 1998)

Generally:

1. A Complainant should at all times be treated professionally and with courtesy, respect and candour by Law Society staff , outside investigators and counsel engaged by the Society with respect to the Complainant's matter.

2. A Complainant should have unimpeded access to information about the Law Society's regulatory processes.

3. The Society should dedicate itself to communicate with a Complainant in "plain language".

4. The Society should communicate with a Complainant, if the Complainant so requests, in French, and use its best efforts to communicate with a Complainant in the language of his or her choice.

5. The location of meetings at the Society with a Complainant, as much as practicalities permit, should be comfortable and convenient for a Complainant.

In the investigatory stage:

6. The Society should assist a complainant, where necessary, in recording a complaint about a lawyer for the purpose of an investigation by the Society. As a rule, complaints are requested to be made in writing, but the Society will accept complaints recorded on audiotapes or videotapes.
7. A Complainant has a right to be informed of the status of the complaint with which he or she is involved. Accordingly, a Complainant should be regularly informed of and have the ability to access information on his or her complaint. For those matters investigated through the post-screening investigatory units of the Complaints Department and ongoing investigations in the Audit and Investigations Department (as a result of a matter directly referred to that department by a Complainant), a status report on the progress of the investigation should be provided at least every 90 days, unless otherwise agreed upon by the Complainant and the Society's investigator.
8. The Complainant should be appropriately and reasonably accommodated with his or her requests for meetings on the complaint matter with the Society as required for pursuit of the investigation, and in the scheduling of meetings with the Complainant as requested by the Society;
9. All written (including facsimile) or electronic communications from a Complainant should be acknowledged within 14 days of receipt by the Law Society. Telephone messages from a Complainant should be returned at the latest the next business day.

10. At the conclusion of an investigation, written reasons for not taking further action on a complaint (based on Law Society staff's or outside counsel's view of the matter, as the case may be) should be provided to a Complainant with an opportunity for review, in accordance with the complaints review procedures and the policies related thereto.
11. A Complainant should be advised of the disposition of a complaint by the Chair and Vice-Chairs of Discipline, other than an authorization for disciplinary action, within 14 days after notification to the member of the disposition.
12. A Complainant should be advised of the fact of an authorization for disciplinary action authorized by the Chair and Vice-Chairs of Discipline based on his or her complaint within 14 days of such a decision.

In the discipline hearing stage:

13. Discipline counsel should make themselves available to respond to a Complainant's inquiries or requests for interviews at any stage of the discipline process.
14. At an early stage in the prosecution of a member, discipline counsel should seek the views of a Complainant on his or her expectations of the outcome of the discipline proceedings against the member being disciplined as a result of the Complainant's complaint.
15. Unless a Complainant advises that he or she does not wish to be kept informed, discipline counsel should:
    iii. Following service of a sworn complaint on the solicitor within the meaning of section 33(13) of the *Law Society Act*, write to all Complainants advising that a sworn complaint has been issued, setting out a brief explanation of the discipline hearing process and advising of a Complainant's right to be present at the hearing;
    iv. Once a hearing date is set, advise the Complainant of this date and any subsequent changes in this date;
    v. Where practicable, advise the Complainant of significant decisions regarding the withdrawal or amendment of particulars with which that Complainant is involved;
    vi. Where practicable, advise the Complainant of any joint submissions as to penalty;
    vii. Where a Complainant is a witness for the Society at a discipline hearing, adequately prepare the Complainant for the hearing;
    viii. If the Complainant does not attend at the hearing, write to the Complainant advising of the final disposition of the sworn complaint and provide a copy of any written reasons of the hearing panel and/or Convocation;
    ix. In the event of an appeal, advise the Complainant of the appeal, the hearing date of the appeal and the outcome.
16. The use of "victim impact statements" and the participation in and representation of a Complainant at discipline hearings will continue to be dealt with by the existing policy dated May 29, 1992, amended to provide for videotaped statements from Complainants where the Complainant and the parties to the proceeding agree. The policy should be brought to the attention of Complainants so that they are aware of the opportunity to provide a victim impact statement to the Discipline Committee.

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

A copy of the French version of Form 17A [Member's Annual Report]. (Appendix 1)

Re: Amendment to By-Law 17 on Filing Requirements

It was moved by Mr. MacKenzie, seconded by Ms. Ross that By-Law 17 be amended by adding the French version of Form 17A as set out at Appendix 1 of the Report.

Carried

Re: Amendments to the Protocol for Complainants in the Law Society's Discipline Process and the Rules of Practice and Procedure

It was moved by Mr. MacKenzie, seconded by Mr. Simpson that the amended Protocol and the amendments to the Rules of Practice and Procedure as set out on pages 27 and 28 of the Report be approved.

Carried

Re: New By-Law on Audit Cost Recoveries

The item on the new By-law was deferred to June 23rd Convocation.

CONVOCATION ROSE AT 5:10 P.M.

Confirmed in Convocation this 21st day of September, 2000

Treasurer