

## MINUTES OF CONVOCATION

Thursday, 23rd September, 2004  
9:00 a.m.

## PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Aaron, Alexander, Backhouse, Banack, Bobesich, Bourque, Boyd, Campion, Carpenter-Gunn, Caskey, Cass, Chahbar (by telephone), Cherniak, Coffey, Copeland, Curtis, Dickson, Doyle, Dray, Eber, Feinstein, Fillion, Finlayson, Furlong, Gold, Gotlib, Gottlieb, Harris, Heintzman, Hunter, Krishna, Lawrence, Legge, MacKenzie, Manes, Murphy, Murray, Pattillo, Pawlitza, Porter, Potter, Robins, Ruby, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes, Topp, Warkentin, Wright and Yachetti.

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Secretary: Katherine Corrick

The reporter was sworn.

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## IN PUBLIC

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TREASURER'S REMARKS

Congratulations were extended to Professor Vern Krishna on his appointment as a member to the Order of Canada. Congratulations were also extended to Beth Symes who received the Women's Law Association President's award for her outstanding contribution to women and the legal profession and to Earl Cherniak for the Ontario Bar Association award for excellence in civil litigation.

The Treasurer noted the passing of former benchers, The Honourable W. David Griffiths, Q.C. on June 21<sup>st</sup>. Justice Griffiths was the recipient of an honorary doctorate of law degree, a founding member of the Advocates' Society, a justice of the High Court of Justice and a justice of the Court of Appeal. Mr. Justice Griffiths wrote the Griffiths Report which was a great contribution to the modernization of the Law Society's hearings process.

The Treasurer also noted the passing of former benchers Bernard Shaffer on August 8th. Mr. Shaffer was a recipient of the Law Society Medal and took a very active interest in the profession and had a strong sense of the importance of making a contribution to the public as part of their professional obligations.

Convocation extended condolences to the families of both former benchers.

MOTIONS – COMMITTEE AND TASK FORCE APPOINTMENTS

It was moved by Kim Carpenter-Gunn, seconded by Laurie Pawlitza that Mark Sandler be appointed to the following Committees: Equity & Aboriginal Issues, Government Relations & Public Affairs and Professional Regulation.

Carried

It was moved by James Caskey, seconded by William Simpson:

Government Relations & Public Affairs Committee

THAT Judith Potter be appointed as a member to the Government Relations & Public Affairs Committee.

CanLII Board of Directors

THAT Peter Bourque be appointed as the Law Society's representative to the CanLII Board of Directors for a period of three years.

Law Society Foundation

THAT the following trustees be re-appointed to the Law Society Foundation for a period of one year:

Bob Aaron  
Marion Boyd  
Malcolm Heins  
Norm Rogers  
Bradley Wright

Governance Task Force

THAT the Governance Task Force be established and be composed of the following members:

Clayton Ruby (Chair)  
Sy Eber  
Abraham Feinstein  
George Hunter  
Vern Krishna  
Laura Legge  
Harvey Strosberg

Audit Sub-Committee

That the Audit Sub-Committee be composed of the following members:

Ross Murray (Chair)  
Andrea Alexander  
Abdul Chahbar  
Paul Dray  
Neil Finkelstein  
Beth Symes

Task Force for Employment Opportunities for Articling Students

THAT the Task Force for Employment Opportunities for Articling Students be established and be composed of the following members:

Earl Cherniak (Chair)  
Andrea Alexander  
Paul Copeland  
George Hunter

Tribunal Task Force

THAT the Tribunal Task Force be established and be composed of the following members:

Anne Marie Doyle (Chair)  
Sydney Robins (Vice-Chair)  
Larry Banack  
Carole Curtis  
George Hunter  
Gavin MacKenzie  
Gerald Swaye

Lawyers Fund for Client Compensation Committee

That the Lawyers Fund for Client Compensation Committee be composed of the following members:

Robert Topp (Chair)  
Bradley Wright (Vice-Chair)  
Gordon Bobesich  
Andrew Coffey  
Abraham Feinstein  
Richard Fillion  
Laura Legge

Law Foundation of Ontario Board of Trustees

THAT the following benchers be appointed as the Law Society's representatives on the Law Foundation of Ontario Board of Trustees:

Larry Banack  
Susan Elliott  
Laurence Pattillo

Ontario Lawyers Gazette Advisory Board

THAT Ronald Cass be appointed as a member to the Ontario Lawyers Gazette Advisory Board Committee.

Carried

It was moved by James Caskey, seconded by William Simpson that Bradley Wright be appointed to the Ontario Bar Association Council, replacing Ross Murray, for the remainder of the term expiring September 2005.

Carried

## DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of June 24, 2004 and the Special Calls of July 14, 19, 22 and 23, 2004 were confirmed.

## LAWPRO REPORT

Ms. Carpenter-Gunn presented the LAWPRO Report.

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## LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO) REPORT TO CONVOCATION – SEPTEMBER, 2004

### INTRODUCTION

1. Each September since 1995, LAWPRO's Board of Directors has reported to Convocation its recommendations for the Law Society's professional liability insurance program for the following calendar year. The timing of this report is necessitated by the logistics of renewing 19,800 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.

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

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

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

For 2005, the 10-year anniversary of the adoption of the Task Force's recommendations, we have revalidated the approach and rating structures.

4. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed program for 2005 continues to operate on these principles. This report deals solely with the mandatory professional liability program. Optional programs such as TitlePLUS, and the Excess professional liability program are operated on an expected breakeven or better basis.

### SUMMARY OF RECOMMENDATIONS

5. The following are the recommendations made by LAWPRO's Board of Directors for the 2005 professional liability insurance program.

#### *Premium pricing for 2005*

(i) That the base premium be increased by \$125 to \$2,625 per lawyer for 2005, from the \$2,500 per lawyer charged in 2004 (paragraph 40).

(ii) That 100 per cent of the premiums and losses for the Ontario professional liability program be retained by the company again in 2005, subject to reinsurance protecting the program from aggregated losses (paragraph 44).

(iii) That revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) be budgeted at \$21.2 million for the purposes of establishing the base premium for 2005 and other budgetary purposes (paragraph 40).

(iv) That \$8.7 million be drawn from the Premium Stabilization Fund built up in previous years (a \$15.6 million balance is forecast as at January 2005) and applied to the 2005 insurance premium (paragraph 40).

(v) To the extent that levies (noted in (iii) above) collected in 2005 are different than the budgeted amount, the surplus or shortfall shall flow to/from the Premium Stabilization Fund (paragraph 40).

*Proposed changes to the insurance program for 2005*

*Claims by Title Insurers:*

(vi) That Exclusion (v) of the Real Estate Transaction Levy Surcharge Endorsement to the program policy be amended so as to apply only where the title insurer has entered into a release and indemnity agreement on behalf of lawyers and law firms in a form satisfactory to the Law Society (paragraph 21).

*CLE Premium Credit:*

(vii) That the Continuing Legal Education Premium Credit be continued in future years, with a \$50 premium credit per course, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational courses taken and successfully completed by the member between September 16, 2004, and September 15, 2005, for which the lawyer has successfully completed the online CLE Declaration Form (paragraph 64).

(viii) That, subject to the recommendations made earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2004 remain unchanged for the 2005 insurance program (paragraph 50).

*E & O Fund*

(ix) That the investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund be made available to the Law Society during 2005 (paragraph 8).

**PART 1 – THE ERRORS & OMISSIONS FUND**

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

7. As of June 30, 2004, the Fund had outstanding claims liabilities of \$11.9 million. The number of open files for 1994 and prior years stood at 63. Since there are sufficient assets in the Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income of the Fund is surplus to the needs of the Fund and can be used by the Law Society for its general purposes. It is expected that \$2.5 million of investment income would be transferred during the 2005 year.

8. LAWPRO's Board recommends to Convocation that the investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund be made available to the Law Society during 2005.

**PART 2 –PROPOSED CHANGES TO THE INSURANCE PROGRAM FOR 2005**

9. The current program structure, as well as policy limits, coverage and available options, appear to be generally well suited to meet the practice realities and needs of the profession for 2005. As well, the wording of the policy appears to be appropriate in form and substance, having been reviewed and substantially updated in 2004.

10. Accordingly, few changes in the structure of the program, and in the form and substance of the policy, are contemplated for 2005.

#### Claims by Title Insurers

11. The one area of particular concern and proposed change, deals with the possibility of claims being brought by title insurers against lawyers acting in the placement of title insurance policies.

12. With the use of title insurance now the norm in real estate conveyancing in Ontario, and the growing volume of title-insured claims, the possibility of claims by title insurers being brought against lawyers deserves further consideration.<sup>1</sup>

13. These claims against lawyers may take many forms, and might include, for example: instances where facts relevant to the underwriting of an account may have been known to the lawyer and not conveyed to the underwriter; instances where further diligence on the part of the lawyer may have revealed facts relevant to the underwriting of the account; or instances where the lawyer somehow failed to fully comply or exercise sound judgement in following the instructions of the title insurer.

14. The expectation of many lawyers has been that title insurers would waive any rights they may have to maintain such claims against acting lawyers and law firms, and would agree to indemnify and save harmless the lawyer and law firm from any claims that may arise in respect of any title insurance policies.

15. In keeping with this, where title insurers have provided this type of protection to the acting lawyer and law firm, no real estate levy surcharge has been charged in respect of the transaction and applied towards the Law Society's insurance program. This reflects the reduced exposure of the program to claims in respect of the transaction, as a result of the release and indemnity agreement in place between the lawyer and title insurer.

16. Specifically, the program policy provides that:

"No levy surcharge is payable by a member under this endorsement in respect of a real estate transaction if:

...

(v) the real estate transaction closes on or after January 1, 1998, and a title insurance policy(ies) is(are) issued in favour of all of the transferees and chargees obtaining an interest in or charge against the land which is the subject of the real estate transaction, provided that:

- (a) the member does not act for the transferor in respect of the transaction;
- (b) the title insurer(s) issuing the title insurance policy(ies) has(have) in all cases (except for the member's gross negligence or willful misconduct)
  - (i) agreed to indemnify and save harmless from and against any claims arising under the title insurance policy(ies); and
  - (ii) waived its right to maintain a negligence claim against; the member(s) acting as solicitor(s) for the transferee(s), chargee(s) and/or the title insurer(s); and
- (c) the member(s) is(are) not obliged to pay any deductible amount to the title insurer(s) in respect of one or more claims made under the title insurance policy(ies) where the deductible amount is or may be the subject of recovery under the POLICY."

17. While some title insurers, including LAWPRO's TitlePLUS program, have provided acting lawyers and law firms with this type of release and indemnity protection, it seems that other title insurers may be reluctant or

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<sup>1</sup> LAWPRO estimates that approximately 80 per cent of residential real estate transactions now handled are being title insured, based on the correlation between real estate sales data and transaction levy filings.

unwilling to enter into this type of agreement with some or all of their participating lawyers and law firms. Of equal concern, is that many participating lawyers and law firms appear to be unaware of this lack of protection being afforded or that their documentation to prove the existence of the protection for a given file or real estate portfolio is missing or unclear.

18. To address this concern, the LAWPRO Board proposes that a release and indemnity agreement be negotiated between the Law Society, on behalf of its member lawyers and law firms, with each of the title insurers. This agreement would protect the profession, by having title insurers waive any right to maintain claims (other than for gross negligence or willful misconduct) against lawyers and law firms acting for any transferee(s), chargee(s) and/or title insurer(s) in respect of title insured transactions, and having title insurers agree to indemnify and save harmless these lawyers and law firms against any claims that may arise in the professional liability program concerning the risks covered under the title insurance policy in respect of the transaction.

19. Corresponding changes would be made to the real estate transaction levy surcharge endorsement, so that a transaction levy would apply where no release and indemnity agreement is entered into in a form satisfactory to the Law Society. It would then be appropriate for the Law Society to advise the profession of those title insurers which have entered into the agreement in a form satisfactory to the Law Society.

20. This approach would give practical affect to the current need of a release and indemnity from the title insurer for no transaction levy to apply, by helping lawyers better ensure that these protections are in place in respect of each title insured transaction, and by ensuring uniformity and certainty in terms of the scope of these protections from title insurers.

21. Accordingly, the LAWPRO Board recommends that exclusion (v) of the Real Estate Transaction Levy Surcharge Endorsement to the program policy (quoted above) be amended so as to apply only where the title insurer has entered into a release and indemnity agreement on behalf of lawyers and law firms in a form satisfactory to the Law Society.

### PART 3 — THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

22. The program appears to be on track for 2004, with LAWPRO currently performing at or better than budget. An important measure of the current program's success is the consistent A (Excellent) rating LAWPRO has received from A.M. Best Co. for each of the last four years.

23. While the claim costs and other program expenses have been fairly consistent in recent years, the revenues which supplement the base levies have been declining. This decline in supplemental revenues stems from the continued reduction in transaction levies seen in recent years primarily due to the increasing use of title insurance in Ontario, and the general reduction in funds available through the Premium Stabilization Fund.

24. So, to ensure that the program continues to operate on a self-sustaining basis, and to preserve the company's sound financial position, the LAWPRO Board advises that the base insurance premium for the program needs to be increased by \$125 to \$2,625 per lawyer for 2005. This is the first proposed increase in the base rate in the last ten years, a period during which the base rate decreased from the \$5,600 per lawyer charged in 1995 to the \$2,500 per lawyer charged today. The LAWPRO Board proposes that the program structure and pricing (other than for the amount of the base premium) continue in its current form for 2005.

#### Premiums – Costs, revenues and pricing

25. LAWPRO's revenue requirements for the 2005 insurance program are based on the anticipated cost of claims for the year, as well as the cost of applicable taxes and program administration. With some measure of conservatism, we estimate total funds required in 2005 to be \$78.5 million, which is consistent with forecasted and actual premiums for the mandatory program for each of the last five years. As the graph on the following page illustrates, claims numbers and costs for the coming year are expected to be roughly consistent with those of previous years, with approximately 1,900 new claims and \$68 million in loss costs anticipated.

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



(see graph in Convocation file)

26. As in past years, premium revenues to meet our fiscal requirements for 2005 will come from three principal sources: the base premiums, levy surcharges, and Premium Stabilization Fund. The projected insurance revenues from these three sources are as follows.

*Premium Revenues, by Source*

(see graph in Convocation file)

*a) Levy surcharges:*

27. It is expected that levy surcharge revenues will continue to decline in 2005, the result of the continued reduction in real estate transaction levies now that title insurance is routinely used in real estate conveyancing in Ontario combined with a slowing in real estate activity.

28. The levy surcharges include a \$50 transaction levy paid by lawyers for each prescribed real estate and civil litigation transaction in which they are involved, as well as a claims history levy surcharge. The latter ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice, to \$25,000 for a lawyer with five claims paid in the last five years in practice (an additional \$10,000 is levied for each additional claim paid in excess of five). Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

29. For 2005, LAWPRO estimates transaction and claims history levy surcharge revenues at \$21.2 million. This is down \$2.5 million from the \$23.7 million expected in 2004, and compares to \$26.6 million transferred in 2003 and \$27.3 million in 2002. Specifically, real estate transaction levies have declined 20 per cent since 1999, while residential real estate activity has increased 24 per cent during the same period. Civil litigation and claims history levy surcharge revenues have been quite stable over time.

*Number of Levies v. Real Estate Transactions (Units)*

(see graph in Convocation file)

30. The increased use of title insurance is considered to be largely responsible for the reduction in real estate transaction levies during this period. As discussed at paragraph 15, lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer. It is estimated that about 80 per cent of residential real estate transactions now handled in Ontario are title insured.<sup>2</sup>

31. Beyond anticipating the ongoing use of title insurance, vagaries in the economy make it particularly difficult to predict both real estate as well as civil litigation transaction levy revenues with certainty. Some conservatism is incorporated into the levy surcharge revenue forecast, appreciating these uncertainties and the prospect of a shortfall.

32. Importantly, the use of transaction levies ensures an element of risk rating in the insurance program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. Their use also avoids the substantial dislocation which would likely occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession, as the most equitable way to achieve risk rating when introduced in 2000. (Risk rating is discussed in more detail in paragraphs 51 to 80 of this Report.)

*b) Premium Stabilization Fund:*

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<sup>2</sup> Ibid.

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

34. As well, through the use of a refund of premium provision in the policy, any surplus in funds resulting from claims costs being lower than budgeted are similarly transferred to the premium stabilization fund for future insurance purposes. This return of premium provision, which has been in place since the 2000 policy period and considers premiums and claims costs under the program since the 1995 policy year, has generated \$21.7 million in return premiums in total to date.

35. For 2004, an anticipated \$5.8 million (as opposed to the \$9.7 million originally planned) will be drawn from the revolving fund, leaving an estimated balance of \$15.6 million at the start of 2005. LAWPRO proposes that \$8.7 million (about \$439 per insured lawyer), be drawn from that surplus and applied towards the 2005 program. Diminished draws from this fund are anticipated for future years and a base premium increase can be anticipated. The LAWPRO Board is satisfied that this would still allow for sufficient surplus in this Premium Stabilization Fund to deal with adverse future claims experience that might arise in the coming year.

*c) Base premiums*

*Base Premium, by Fund Year*

(see graph in Convocation file)

36. For 2005, the LAWPRO Board proposes that the base premium be increased by \$125 to \$2,625 per member. This is the first increase in base rate proposed in the last ten-year period. During this ten-year period, the base rate declined steadily from the \$5,600 per lawyer charged in 1995 to the \$2,500 per lawyer charged today (see chart on previous page). The proposed base premium is based on the following assumptions:

- 19,800 practising insured lawyers (full-time equivalents);
- \$68 million in anticipated total loss costs;
- \$21.2 million in budgeted transaction and claims history levy revenues;
- \$8.7 million drawn from the Premium Stabilization Fund; and
- 4.0 per cent investment income.

37. Although the number of lawyers in practice year over year has grown steadily by 1 to 2 per cent, there has not been a corresponding increase in claims costs. For example, between 1995 and 2002, claims costs stood at about \$65 million annually, even though an additional 1,900 lawyers came into practice over this time. In fact, the number of claims has decreased from 129 per thousand in 1995 to 93 per thousand in 2003. This factor has contributed to stable claims costs, and enabled LAWPRO to gradually reduce premiums over the 1995-2003 period. Unfortunately, claims experience has deteriorated somewhat in 2004. There is an increased number of larger claims.

38. One of the most notable causes of these large losses in 2004 is value or imposter fraud. In June 2004, the LAWPRO magazine was devoted to highlighting these important risk issues to the profession so that future claims might be avoided. Another important claims trend revolves around the standards of respect and loyalty that are increasingly expected by both clients and the Courts. Conflict, shortcomings in client loyalty and inappropriate behaviour are not excused and have increasingly found their way into the claims portfolio in 2004.

39. In setting a base rate for 2005, LAWPRO looked at a three-year planning horizon. Various scenarios were modelled for the three-year period to provide comfort that the rate proposed for 2005 was appropriate. As the graph at the bottom of page 9 clearly shows however, there is an expected decrease in the subsidy from the level that is

currently enjoyed, from the Premium Stabilization Fund. As such, under the expected set of assumptions<sup>3</sup> premiums are expected to increase annually over the three-year period, from \$2,625 in 2005 to \$2,825 in 2006, and to stabilize at \$3,200 in 2007 when the Premium Stabilization Fund subsidy has been exhausted. It is possible that these increases will be moderated by improved investment returns in future years, or if the claims in the current portfolio are settled at less than their reserved values, or if surpluses in the Errors and Omissions Fund are substituted for the Premium Stabilization Fund in future years. It is also possible that claims experience could deteriorate during the period, and as such, the projection should be considered appropriate at this time.

40. The LAWPRO Board of Directors recommends that:

- a) The base premium be increased by \$125 to \$2,625 per lawyer for 2005, from the \$2,500 per lawyer charged in 2004.
- b) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) be budgeted at \$21.2 million for the purposes of establishing the base premium for 2005 and other budgetary purposes.
- c) \$8.7 million be drawn from the Premium Stabilization Fund built up in previous years (a \$15.6 million balance is forecast January 2005) and applied to the 2005 insurance premium.
- d) To the extent that levies (noted in [b] above) collected in 2005 are different than the budgeted amount, the surplus or shortfall shall flow to/from the Premium Stabilization Fund.

#### Reinsurance

41. LAWPRO annually assesses its need for reinsurance based on its capital position, its claims results and volatility. Claims results have been relatively stable. LAWPRO's capital position has continued to improve beyond that seen two years ago, when it was first decided to assume 100 per cent of the risk of the program. Beyond LAWPRO's own resources, additional reserves are being carried in the Errors & Omissions Fund.

42. Accordingly, it is again proposed that LAWPRO not pursue the expensive course of purchasing reinsurance on a program-wide basis. Instead, as in the past two years, it is proposed that the retroactive premium endorsement effectively be used to backstop the capital held in LAWPRO with the Premium Stabilization Fund/E&O Surplus, to a maximum of \$15 million in the event that claims experience is outside of the expected range of outcomes.

43. However, LAWPRO will consider purchasing reinsurance protection against the possibility of multiple losses arising out of a common event or nexus. This protection against aggregated losses would extend across both the professional liability and TitlePLUS programs. It might, for example, provide some measure of protection in the case of a series of fraud related claims relating to a single lawyer, or perhaps to a defect in title concerning a single condominium project.

44. Accordingly, the LAWPRO Board of Directors recommends that 100 per cent of the premiums and losses for the Ontario professional liability program be retained by the company again in 2005, subject to reinsurance protecting the program from aggregated losses.

#### The 2005 program

45. With the exception of the proposed policy changes detailed earlier, all aspects of the insurance program for 2005 would remain unchanged from that now in place.

46. As detailed in Appendix A, the current insurance program encompasses the following:

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#### <sup>3</sup> Assumptions:

- Investment yields during the period have been held constant at 4%.
- The number of practicing lawyers is expected to grow at 1.5% per annum.
- Claims costs are expected to remain constant.

- exemption criteria;
- standard practice coverage, including Mandatory Innocent Party Coverage;
- policy options, including Innocent Party Buy-Up, Part-Time Practice, and Restricted Area of Practice; and
- Run-Off Coverage for lawyers eligible for exemption from paying the insurance premium.

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

- new practitioner discount;
- Part-Time Practice discount; Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a “no application form” surcharge.

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

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

49. With regard to the renewal process for 2005, improvements continue to be made to make better use of the technology available. For example, most sole practitioners who electronically file their program application this year will be able to instantly review their invoice and policy documentation online. As was the case last year, invoicing and policy documentation will be available online for all practising lawyers through a secure section of the LAWPRO Web site, with the lawyer again having the choice of receiving either electronic or hardcopy delivery of these materials. Other improvements, less visible to lawyers and law firms, will also minimize the administration associated with the renewal process.

50. The LAWPRO Board recommends that, subject to the recommendations made earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2004 remain unchanged for the 2005 insurance program.

## Risk Rating

### *a) Background*

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

52. Specifically the Report indicated that “... as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk.”<sup>4</sup>

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

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

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<sup>4</sup> 1994 Task Force Report, at page 17.

55. Risk rating, however, is not static. The relationship between the cost of claims and different areas of practice may change, and it is important that LAWPRO continue to monitor the program to ensure that risk rating continues to be achieved. So the results of these earlier risk analyses are re-evaluated each year, and the factors used to assess risk and determine premium under the program re-evaluated for degree of relevance. The factors currently used to match risk to premium include: area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

56. This year, a comprehensive review was conducted and the customary risk analysis expanded to also consider the degree of specialization, size of firm, and geographic location of practice, as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a multivariate basis to determine any correlation or dependencies.

57. This review reaffirmed the validity and magnitude of the rating structure currently in place, and no changes to the type or amount of surcharges or discounts, as a percentage of the base rate, are proposed for 2005. The results of the customary re-evaluation of the earlier risk analyses are addressed in this report at paragraphs 65 to 80.

#### b) Practice trends

58. LAWPRO's present risk analysis reaffirms the results of its last report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with civil litigation equalling or leading the practice of real estate as the area of practice with the greatest relative exposure for losses. In particular, the analysis indicates that:

- Overall, the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with these two areas of practice representing 62 per cent of the claims reported and 60 per cent of the claims costs under the program in 2003;

However:

- a) In 2003, the relative exposure relating to the practice of real estate law has again been substantially less than that traditionally seen, with this practice area accounting for 26 per cent of the claims reported and 28 per cent of the claims costs under the program (well below the levels of 48 per cent and 58 per cent seen in the 1989-94 period); and
- b) In 2003, the relative exposure relating to the practice of civil litigation has again been substantially more than that traditionally seen, with civil litigation accounting for 36 per cent of the claims reported and 32 per cent of the claims costs under the program (well above the traditional levels of 27 per cent and 18 per cent seen in the 1989-94 period);
- c) In 2003, the nature of claims against civil litigators was also reaffirmed, with claims involving the general conduct or handling of the matter at 70 per cent compared to purely missed limitation period claims at 30 per cent; and
- d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers; lawyers with claims in the prior nine years were three times as likely as those with no claims in the prior nine years to report a claim during the past year.

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

#### c) Risk management initiatives

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

- TitlePLUS: Now in its seventh year, LAWPRO's successful title insurance program has had a significant impact on both real estate practice and real estate claims. Real estate claims today cost the program about \$9.5 million less than they did seven years ago – a decline that can be attributed to changes in the lawyers' practice environment and the insurance program, and to widespread acceptance of title insurance. It is, however, not possible to isolate the impact of this latter factor from others affecting real estate claims under the program. As well, given the time it takes for claims to arise after the transaction and legal services are provided, the full impact of title insurance on the program may not be known for some time.
- practicePRO: Now in its sixth year, LawPRO's successful risk management and claims prevention initiative continues to grow and mature. It is a recognized source of high quality risk management tools and resources, both inside and outside of Ontario. practicePRO has been active in helping lawyers avoid malpractice claims during the course of this year through articles in LawPRO Magazine and other publications, and live presentations at CLE programs and other law-related events. practicePRO is continuing to build a significant presence in the legal community by expanding relationships and actively working with its various constituents, including the Law Society of Upper Canada, the Ontario and Canadian Bar Associations, The County and District Law Presidents' Association, and others.
- Fraud: In 2001, LAWPRO issued a Special Report on Fraud alerting the profession to new sophisticated fraud schemes being witnessed, and helping lawyers avoid being victims of fraudsters. With the use of technology and methods of doing business fundamentally changing, the instances of fraud are now more prevalent, complex and often more sophisticated than even a few years ago. LAWPRO is taking active steps to combat fraud through measures within its own operations, its relationship with the profession, and by working with law enforcement, registry, banking, insurance and other organizations and industries also affected by fraud. The June 2004 issue of LAWPRO magazine updates the 2001 Special Report, focuses on the many faces of fraud, and brings home to the profession warning signs of the types of identity, corporate and value fraud schemes being witnessed.
- Client communication: The importance of effective communication and dealing with difficult clients has also been a key focus this year, with the Spring, 2004 issue of the LAWPRO magazine dedicated to this subject area. In this issue, lawyers with claims consistently identify the importance of clear and documented communication with all clients as fundamental in avoiding claims, and practical advice is offered in how to deal with difficult clients. With poor communication as a leading cause of claims, this subject area has also formed the basis of many presentations and discussions with the profession in recent years.
- Practice finances: Sound financial practice and management remained an important focus for communication with Ontario lawyers this year, appreciating that poor financial management can and does lead to: an inability to focus on the job at hand, negligence, and even misconduct. This subject was the focus of both the March 2003 issue of the LAWPRO Magazine, and of a new practicePRO 'managing' booklet dedicated to helping lawyers manage the financial challenges associated with starting up a law practice, dealing with an established law practice, and planning for retirement and winding down the law practice.
- Firm structure: As well, with lawyers now able to practise through professional corporations, limited liability partnerships, and multi-discipline partnerships, lawyers and law firms are provided with new risk management as well as tax saving opportunities. Helping lawyers recognize these opportunities is an important area of discussion with lawyers and was the focus of last summer's issue of the LAWPRO Magazine.

61. The Continuing Legal Education ("CLE") Premium Credit offered under the program has also been another significant LAWPRO risk-management initiative. In 2001, a premium credit of \$50 was first offered to lawyers

using the practicePRO Online Coaching Center, an internet-based, self-coaching tool that helps lawyers enhance their business and people skills.

62. The premium credit was broadened in the following year to provide a \$50 credit (to a maximum of \$100 per lawyer in a year) for designated law-related courses and programs completed by the lawyer. These courses are offered by the Law Society, Ontario Bar Association, The Advocates Society and other organizations, and must include a substantial risk management component. Much of the risk management content deals with the “soft” skills of lawyering — communication, documentation, and time management rather than substantive law, in keeping with the most frequent causes of loss.

63. For a credit on premiums for 2005, lawyers must have participated in LAWPRO approved CLE programs between September 16, 2003, and September 15, 2004. In addition to the Online Coaching Centre, 87 programs qualified for the credit during this period, with an estimated 12,500 lawyers eligible for a premium credit. Traditionally CLE programs focused solely on substantive law. Due to the credit the content of a significant number of CLE programs has been broadened to include risk management and claims prevention content.

64. Accordingly, the LAWPRO Board of Directors recommends that the Continuing Legal Education Premium Credit be continued in future years, with a \$50 premium credit per course, subject to a \$100 per lawyer maximum amount, to be applied for preapproved legal and other educational courses taken and successfully completed by the member between September 16, 2004, and September 15, 2005, for which the lawyer has successfully completed the online CLE Declaration Form.

*d) Revalidating risk rating*

65. It is important to periodically re-evaluate the program by area of practice to ensure that it continues to be effective in its risk rating. The chart below shows the distribution of claims costs and expenses by detailed area of practice since 1982.

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

(see graph in Convocation file)

66. Apparent from this chart are the significant but declining claims costs associated with real estate claims; the significant and growing claims costs associated with civil litigation; and the variability associated with most other areas of practice. This variability associated with most other areas of practice, to large measure, is a reflection of the unpredictability associated with smaller group sizes.

67. The fact that few lawyers practise exclusively in one area provides a compelling reason to group together common or related areas of practice.

68. However, to ensure that risk rating is being achieved, the program’s anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program in 2003 and the first six months of 2004), the following chart compares the anticipated losses distributed by area of law, to the proposed base levy premiums by the lawyer’s primary area of practice. The premiums in this chart include only the proposed base levy premiums (together with discounts), and no amounts applied as transaction levies and claims history surcharges.

*Comparison of Projected 2005 Premium by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law*

(see graph in Convocation file)

69. The shortfall between the anticipated claims costs and expenses to base levy premiums, both for both real estate and the litigation grouping, is clearly significant. As already noted, it is proposed that \$21.2 million be

provided through the transaction levies and claims history levy surcharges. Although clearly benefiting those whose primary area of practice is real estate or who are in the litigation grouping, these additional revenues also benefit those whose secondary and other areas of practice include payment of these levies.

70. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, base premium levies of about \$7,900 and \$4,600 would be required of members whose primary area of practice is real estate or civil litigation, respectively.

71. Past reports have discussed the importance of using the transaction and claims history surcharge levies as premium, avoiding any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.<sup>5</sup>

72. By including the transaction and claims history surcharge levies as proposed, the shortfall between anticipated claims costs and expenses to total insurance levies is almost entirely overcome in these higher risk and other areas of practice.

73. To compare the actual claims experience of lawyers to revenues received from those lawyers, the chart on the following page compares the anticipated premiums (with the transaction and claims history levies) sorted by the lawyer's primary area of practice, and compares this to the anticipated claims costs and expenses of these lawyers.

*Comparison of Projected 2005 Premium + Levies by Lawyer's Primary  
Area of Practice to Claims and Expenses by Claim's Area of Law*

(see graph in Convocation file)

74. This comparison indicates that with the benefit of the transaction and claims history surcharge levies, there is a close correlation between revenues and claims.

75. However, the chart does indicate some subsidy by area of practice. Those lawyers whose primary area of practice is classified as "All Other" are expected to have their premiums somewhat exceed losses. This affects less than 15 per cent of the practising bar.

76. Appreciating the foregoing variables and possibilities of comparison, by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year. Although a small amount of subsidy may exist for some areas of practice, taking into account the commercial realities and the relatively small amount of the subsidy, the cost of insurance under the program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "... no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."<sup>6</sup>

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

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

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

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<sup>5</sup> 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-37; and 1996 LAWPRO Report to Convocation, pp. 32-36.

<sup>6</sup> 1994 Task Force Report, at page 17.



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

## CONCLUSION

81. The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LAWPRO Board invites Convocation's consideration of this Report and recommendations for approval by Convocation in September, so that the 2005 insurance program can be implemented by January 1, 2005.

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

September, 2004

Kim A. Carpenter-Gunn  
Chairman, LAWPRO's Board of Directors

## APPENDIX A

### • Standard Program Summary & Options

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### Appendix "A"

#### The Standard Insurance Program Coverage for 2005

##### *Eligibility*

- Required for all sole practitioners, lawyers practising in association or partnership, and lawyers practising in a Law Corporation, who are providing services in private practice.
- Available to other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who opt to purchase the insurance coverage.

##### *Coverage limit*

- \$1 million per CLAIM/\$2 million aggregate (i.e. for all claims reported in 2005), application to CLAIM expenses, indemnity payments and/or cost of repairs together

##### *Standard DEDUCTIBLE*

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

##### *Standard base premium*

- \$2,625 per insured lawyer

##### *Transaction Premium Levy*

- \$50 per real estate or civil litigation transaction
- No real estate transaction levy generally payable by transferee's lawyer if title insured

##### *Premium reductions for new lawyers*

- Premium for lawyers with less than 4 full years of practice (private and public):
  - . less than 1 full year in practice: premium discount equal to 40% of base premium;
  - . less than 2 full years in practice: premium discount equal to 30% of base premium;
  - . less than 3 full years in practice: premium discount equal to 20% of base premium;
  - . less than 4 full years in practice: premium discount equal to 10% of base premium.

#### Mandatory Innocent Party Coverage

##### *Eligibility*

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

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

##### *Premium*

\$250 per insured lawyer

##### 2005 Program Options

##### 1. Deductible option

###### *\$Nil deductible*

- Increase in premium equal to 15% of base premium (\$393.75 increase).

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

- Increase in premium equal to 7.5% of base premium (\$196.88 increase).

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

- Increase in premium equal to 12.5% of base premium (\$328.13 increase).

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

- Base premium of \$2,625 per insured lawyer.

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

- Increase in premium equal to 10% of base premium (\$262.50 increase).

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

- Decrease in premium equal to 7.5% of base premium (\$196.88 decrease).

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

- Increase in premium equal to 7.5% of base premium (\$196.88 increase).

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

- Decrease in premium equal to 12.5% of base premium (\$328.13 decrease).

## 2. Innocent Party Sublimit Coverage Options

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

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

Increase coverage sublimit to:

Additional annual premium:

\$500,000 per CLAIM/aggregate  
\$1 million per CLAIM/aggregate

\$150 per insured lawyer  
\$249 per insured lawyer

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

*Coverage limits*

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

## 3. Practice Options

*Restricted Area of Practice Option*

*Eligibility*

Available only to lawyers who agree to restrict their practice to criminal<sup>7</sup> and/or immigration law<sup>8</sup> throughout 2004.

*Premium*

Eligible for discount equal to 40% of base premium, to a maximum of \$1,050.<sup>9</sup>

*Part-Time Practice Option*

*Eligibility*

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

*Premium*

Eligible for discount equal to 40% of base premium, to a maximum of \$1,050.

## 4. Premium Payment Options

<sup>7</sup> Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

<sup>8</sup> Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining thereto, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

<sup>9</sup> The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Practitioners' discount combined cannot exceed 40% of the base premium.

*Instalment Options:*

- Lump sum payment by cheque or pre-authorized payment: eligible for \$150 discount.
  - Lump sum payment by credit card
  - Quarterly instalments
  - Monthly instalments
5. E-filing Discount
- \$50 per insured lawyer (if filed by November 1, 2004)
6. Continuing Legal Education (Risk Management) Premium Credit
- 50 per course, subject to a \$100 per insured lawyer maximum discount.
  - or pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2004, and September 15, 2005, where the lawyer completes and files the required LAWPRO CLE electronic declaration by September 15, 2005.
  - LAWPRO'S Online Coaching Centre is included as a pre-approved course, where the insured lawyer completes at least three modules between September 16, 2004, and September 15, 2005.

## APPENDIX B

• Distribution of Claims by Geographic Region (graph)	35
• Distribution of Claims by Firm Size (graph)	36
• Distribution of Claims by Years Since Date of Call (graph)	37
• The 80-20 Rule (graph)	38

*Distribution of Claims by Geographic Region (1989-2004)*

(see graph in Convocation file)

*Distribution of Claims by Firm Size (1989-2004)*

(see graph in Convocation file)

*Distribution of Claims by Years since Date of Call (1989-2004)*

(see graph in Convocation file)

*The 80-20 Rule*

(see graph in Convocation file)

## APPENDIX C

## Premium Rating Example

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## Appendix "C"

## Premium Rating Examples (In Dollars)

	19955	200155	200255	2003/455	200555
Base premium	\$5,600	\$2,800	\$2,700	\$2,500	\$2,625
Examples:					
1. Sole Practitioner - \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-mail filing of application	\$5,600*	\$2,390	\$2,298	\$2,113	\$2,228
2. Firm Practitioner - \$25,000 defence & indemnity deductible - \$250,000 Mandatory innocent party cover - early e-mail filing of application	\$6,000*	\$2,650	\$2,563	\$2,513	\$2,497
3. New Lawyer Practicing in Association - first year in practice discount - \$250,000 mandatory innocent party cover- - \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-mail filing of application	\$3,900**	\$1,520	\$1,468	\$1,363	\$1,428
4. Criminal Lawyer (sole practitioner) - Restricted Areas of Practice discount - \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-mail filing of application	\$5,600*	\$1,270	\$1,217	\$1,113	\$1,178
5. Part-time Lawyer (in association) - Part-time Practitioner discount - \$1,000,000 optional innocent party cover - \$10,000 defence & indemnity deductible	\$6,000* **	\$1,969	\$1,917	\$1,812	\$1,877
6. Firm Practitioner with 1 Claim - claim history levy surcharge - \$5,000 defence & indemnity deductible - \$250,000 mandatory innocent party cover	\$8,500*	\$5,550	\$5,450	\$5,250	\$5,375
7. Sole Practitioner with 2 Claims - claims history levy surcharge - \$5,000 defence & indemnity deductible	\$10,600*	\$7,800	\$7,700	\$7,500	\$7,625

\*Subject to a \$6,000 defence and indemnity deductible (adjusted to \$7,500 in the case of an insured with one previous claim, or \$8,500 in the case of two previous claims).

\*\*Subject to \$250,000 innocent party cover only, additional limits not available.

5Members are also required to pay a \$25 levy for each civil litigation or real estate transaction not otherwise excluded.

55Members are also required to pay a \$50 levy for each civil litigation or real estate transaction not otherwise excluded.

.....

It was moved by Ms. Carpenter-Gunn, seconded by Mr. Swaye that Convocation approve the LAWPRO Report.

Carried

## REPORT OF THE TASK FORCE ON PARALEGAL REGULATION

Mr. Simpson presented the Report of the Task Force on Paralegal Regulation.

Task Force on Paralegal Regulation  
September 23, 2004

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Report to Convocation

Purpose of Report: Decision

Prepared by the Policy Secretariat  
Julia Bass (416 947 5228)

### OVERVIEW OF ISSUE PARALEGAL REGULATION: PROPOSED APPROACH

Request to Convocation

1. That Convocation approve the regulatory approach and recommendations set out in this Report for submission to the Attorney General.

Summary of the Issue

2. On January 22, 2004, Convocation authorized the Treasurer to establish a task force to develop a detailed proposal for the regulation of paralegals in collaboration with the Ministry of the Attorney General.
3. On April 22, 2004, the Task Force submitted a proposed approach to paralegal regulation to Convocation. Convocation authorized the Task Force to consult with stakeholders on this approach and to return with a more detailed proposal prepared in light of the consultations.
4. The Task Force consulted with stakeholders from April to August 2004 and held an information session on September 14 to receive feedback from benchers on the proposal.
5. The Task Force now submits this report to Convocation for its approval.

### THE REPORT

Terms of Reference/Task Force Process

6. The Treasurer established the Task Force on February 10, 2004. The members are: William Simpson (Chair), Marion Boyd, James Caskey, Paul Dray, Allan Gotlib, Julian Porter, Alan G. Silverstein and Bonnie Warkentin.
7. In addition to the consultations discussed below, the Task Force met on July 27 and September 2, 2004.
8. The Task Force is reporting on the following matter:

## For Decision

## Proposed Approach to the Regulation of Paralegals in Ontario

## PARALEGAL REGULATION: PROPOSED APPROACH

9. On January 22, 2004, the Attorney General attended Convocation and requested that the Law Society assume responsibility for regulating paralegals. In response, Convocation authorized the Treasurer to establish a task force to develop a detailed proposal for the regulation of paralegals in collaboration with the Ministry of the Attorney General.
10. The Treasurer established the Task Force on February 10, 2004. On April 22, 2004, the Task Force submitted a proposed approach to paralegal regulation to Convocation. Convocation authorized the Task Force to consult with stakeholders on this approach and to return with a more detailed proposal prepared in light of the consultations.
11. The Task Force consulted with stakeholders from April to August 2004 and has developed an approach to paralegal regulation that is set out in the report.
12. While the Law Society has not always accepted paralegals as part of the legal services landscape, the broader acceptance that paralegals have achieved in recent years has made it possible for the Law Society to develop a proposal in response to the Attorney General's request.
13. In May, the Task Force widely circulated a Consultation Paper entitled *Regulating Paralegals: a Proposed Approach* ('the Consultation Paper') setting out the preliminary approach developed by the Task Force. (Appendix 1) This approach drew upon, but did not in all cases follow, the document prepared in 2002 in conjunction with legal and paralegal organizations, known as 'the Framework Document.' (The Framework Document was prepared as a result of a previous Attorney General's attempts to address this issue).
14. The current Attorney General is seeking a proposal that, to the extent possible, commands support from the Law Society, the profession and other stakeholders.
15. The most optimistic timing for the initiative would see a bill introduced late this year. To meet this deadline, consultations took place throughout the summer. The Law Society consulted with more than 50 organizations and groups, including the profession, legal and paralegal organizations, the courts, government, community and private colleges, adjudicative tribunals and other interested parties. A list of the organizations and groups consulted is attached at Appendix 2.
16. The detailed consultations have enabled the Task Force to develop the approach further to take into account a number of issues raised during the consultations.
17. While final control over the content of the legislation and overall regulatory model remains with the ministry, given the Law Society's regulatory expertise it is anticipated that the Law Society's recommendations will be carefully considered, provided they meet the purpose of the government's initiative, which is regulation of paralegals in the public interest to ensure consumer protection and access to justice.

## OVERVIEW OF TASK FORCE'S APPROACH

18. The Task Force undertook this task at the request of the Attorney General and in the public interest. Recommendations in this report are based on the public interest.
19. In the view of the Task Force, previous attempts to regulate paralegals have failed principally because of the inability to achieve a consensus of interested parties on the issues of,
  - a. the regulatory model, and
  - b. the scope of paralegal activities.

#### Regulatory Model

20. The Attorney General asked the Law Society to accept responsibility for regulating paralegals. Until very recently, this would not have been practical. As set out later in this report, the legal profession, for the most part, now accepts that regulated paralegals may provide services in certain areas.
21. The Law Society is a regulatory body with over 200 years of experience governing barristers and solicitors in the public interest. The additional duties of regulating paralegals in the public interest can be accomplished more efficiently and economically by the Law Society than by creating any new regulatory body.
22. As there is now considerable support for the Law Society as regulator of paralegals, it is the belief of the Task Force that the choice of the Law Society resolves the first of the major two issues, i.e. the regulatory model.

#### Scope of Paralegal Activities

23. The Task Force heard representations from various groups requesting changes in the law to restrict or expand the current legitimate activities of paralegals.
24. Lawyers and legal organizations are seeking restrictions of paralegal activities in a number of areas, including the Financial Services Commission of Ontario, Workplace Safety and Insurance Board, and agents in Summary Conviction Court under the Criminal Code.
25. Some paralegals, on the other hand, are seeking an expansion of paralegal activities including the ability to do appeals in the Superior Court of Ontario and Divisional Court of Ontario, and to do many of the activities now restricted to solicitors.
26. The Task Force takes the position that the request from the Attorney General to regulate paralegals is best accomplished if it accepts the current law respecting paralegal activities and does not make the regulation of paralegals dependent on a number of substantive law changes. If a number of changes were to be proposed, there is little doubt that the regulation of legitimate paralegals would be postponed indefinitely.
27. While those who oppose regulation may feel this is desirable, it is contrary to the request of the Attorney General, the vast majority of lawyers and legitimate paralegals who want paralegal regulation at this time. Most importantly, further delay is not in the public interest.

#### WRITTEN SUBMISSIONS

28. The Task Force received 68 written submissions from legal and paralegal groups, colleges, legal clinics, individuals and other parties. These are reproduced in a bound volume distributed under separate cover (except for those for which a written consent to publish was not obtained).

#### CONSULTATIONS WITH THE LEGAL PROFESSION

29. Consultations with the legal profession took place in Toronto, and in the following other locations, organized by the County and District Law Presidents' Association (CDLPA):
  - a. Thunder Bay
  - b. London
  - c. Windsor
  - d. Ottawa
  - e. Hamilton
  - f. Orangeville
  - g. Kitchener
  - h. Kingston
  - i. North Bay



30. In addition, members of the Task Force attended the Ontario Bar Association Governing Council meeting on June 18, 2004, at which a resolution endorsing the Consultation Paper was passed unanimously, subject to provisos concerning the definition of the practice of law, the obtaining of funding, the development of an appropriate practical work experience programme and the limitation of Small Claims Court practice to existing areas.
31. The Task Force noted a significant change in the views of the profession since the last consultations in 2002. While some lawyers do not accept that paralegals should be recognized and regulated, this now appears to be a minority view.
32. The profession's response to the Consultation Paper was on the whole favourable, throughout the province. Among the themes consistently raised were the following:
  - a. The need for paralegal regulation;
  - b. The Law Society is the appropriate regulator;
  - c. The need for a definition of the practice of law, similar to those in other provinces; the Ontario Bar Association emphasized this point;
  - d. Agreement with the proposal to limit paralegal practice to areas that are currently lawful;
  - e. The need for effective enforcement against unauthorized practice;
  - f. The need for the same "good character" requirements that apply to lawyers.

#### CONSULTATIONS WITH PARALEGALS

33. The Task Force expressed a willingness to meet with any paralegal group wishing to make submissions.
34. On April 3, 2004, members of the Task Force, accompanied by benchers from the Ottawa area, attended the Annual General Meeting of the Paralegal Society of Ontario in Ottawa. (This was after the Attorney General's speech to Convocation but prior to the publication of the Consultation Paper). After a presentation from the Law Society representatives, there was a general discussion from the floor, during which several paralegal members expressed support for Law Society regulation of paralegals. No unfavourable comments were made about Law Society regulation.
35. On July 12, 2004, members of the Task Force attended a public forum organized by the Canadian Association of Paralegals (CAP) in conjunction with the executive of the Professional Paralegal Association of Ontario (PPAO). (CAP was until recently known as the Canadian Association of Legal Assistants and most but not all of CAP's members are supervised by lawyers). There were both supervised and independent paralegals in attendance.
36. The forum heard the following points:
  - a. Supervised paralegals should have the right to apply for grandparented status and to be licensed;
  - b. The Law Society of British Columbia has considered and rejected a proposal for the certification of paralegals;
  - c. In Alberta, paralegals are moving towards registration under the Professional and Occupational Associations Registration Act, R.S.A. 2000;
  - d. There are few independent paralegals outside Ontario, and most work in areas of federal jurisdiction.
37. Letters were read out from organizations in other provinces:
  - a. John Kim of the British Columbia Association of Legal Assistants wrote that his association recognizes the need for paralegal regulation and regards the Law Society as the appropriate regulator.
  - b. Roger A. O'Donnell of the Alberta Association of Professional Paralegals wrote that his organization enthusiastically endorses the Task Force's proposed approach.
38. On behalf of CAP, Patricia Tunstall made the following submissions:
  - a. The model should include educational requirements and a licensing examination;
  - b. A six month period of apprenticeship with a lawyer should be required;

- c. There should permanently be at least one paralegal benchers;
  - d. Paralegals should be subject to regular audits;
  - e. Annual reporting should be required, including listing of continuing education;
  - f. Standards for supervised paralegals should also be developed, including a disciplinary process.
39. These points are amplified in CAP's written submission.
40. Other points from the floor included,
- a. Paralegals should be permitted in Family Court as there are too many unrepresented parties;
  - b. There should be a target date for adding further areas in which paralegals can practise;
  - c. A required six-month apprenticeship is not too long;
  - d. Five years is too long to require as a qualification to apply for grandparented status;
  - e. Many students have paid large sums for private courses that will not be recognized;
  - f. The Law Society should have insisted that the government pay for paralegal regulation;
  - g. Solicitors' work should be included; if this would take five years to achieve, the proposal should wait for this;
  - h. The government should have been present at the consultations;
  - i. Too many paralegals now doing solicitors' work would be put out of work by this approach;
  - j. Paralegals should be self-regulating, like the health professions.
41. On July 22, the Task Force met with the PPAO and representatives of the association's constituent organizations. The PPAO indicated that they had commissioned Professor Frederick H. Zemans of Osgoode Hall Law School to prepare a paper updating the Cory Report and commenting on the other outstanding issues, to be completed by mid-August.
42. The Task Force received Professor Zemans' report on August 30.
43. The following are among the key points of Professor Zemans' report:
- a. The appropriate body to regulate paralegals is an independent agency modelled on Legal Aid Ontario, to be called Paralegals Ontario;
  - b. Within three years the majority of members of the governing body should be paralegals;
  - c. All paralegals should be required to obtain both a general licence and a specialized licence in one of nine areas of practice;
  - d. A new statutory offence of 'providing services outside the scope of one's licence' should be created in preference to the introduction of a wide-ranging definition of the practice of law;
  - e. Permitted areas of advocacy work for paralegals should include some areas of family law and the first level of appeals;
  - f. Paralegals should be permitted to practise in areas of solicitors' work such as real estate, wills and incorporations.

#### COMPARISON WITH THE TASK FORCE'S APPROACH

44. There are a number of areas of commonality or general agreement between Professor Zemans' and the Task Force's approach, including,
- a. the general nature of the educational requirements;
  - b. the unsuitability of most criminal law as an area of paralegal practice;
  - c. a requirement that applicants seeking grandparented status have worked three of the last five years as a paralegal;
  - d. provisions regarding good character and a Code of Conduct;
  - e. errors and omissions insurance and a compensation fund; and
  - f. composition of disciplinary panels.
45. However, there are important areas of difference, including,
- a. rejection of the Law Society as the appropriate body to regulate paralegals;

- b. the recommendation that paralegals be permitted to undertake many areas of solicitors' work, and in fact that there should be no areas of work restricted to lawyers unless a specific need for such a restriction can be demonstrated on a case by case basis, and
- c. commendation of the approach the federal government has taken to the regulation of immigration consultants.

#### COMMENTS OF THE TASK FORCE

- 46. The primary recommendation of Professor Zemans' report is that the Law Society is not the appropriate body to regulate paralegals. This is contrary to the Attorney General's request, which was the origin of this initiative.
- 47. The regulatory body proposed by Professor Zemans, modelled on Legal Aid Ontario, would be prohibitively expensive, as would the proposed licensing model.

#### CONSULTATIONS WITH THE EDUCATIONAL SECTOR

- 48. The Task Force consulted with the Ministry of Training, Colleges and Universities, the community college sector and some of the private career colleges.
- 49. The Consultation Paper was favourably received by community colleges currently offering courses in paralegal advocacy – these courses are typically called 'Court and Tribunal Agent.' Some of these courses would probably need little modification to meet the Law Society's requirements.
- 50. The community colleges raised a number of points including the following:
  - a. The colleges would be willing to work with the Law Society to bring their courses up to the required standard;
  - b. The length of the course should be specified in terms of content and hours of instruction rather than years of study, as some accelerated courses are offered;
  - c. The colleges were not enthusiastic about the idea of limiting paralegal licences to specific areas of practice, as their courses would be difficult to design for each limited area;
  - d. The requirement of a paid 'mentoring' or apprenticeship period would not be fair to students as it is too difficult to find paid placements. The current system of unpaid 'field placements' is preferable and should continue to be part of the required courses (field placements provide four to six weeks of work experience in legal offices arranged and supervised by the colleges, and are integrated into the college programme), and
  - e. The colleges would be pleased to work with the Law Society to develop the necessary competencies for the licensing examinations, and to administer and invigilate the examinations.
- 51. The private career colleges consulted had other concerns about the proposal. The courses at these private colleges vary widely.
- 52. The Ministry of Training, Colleges and Universities (MTCU) does not approve the curricula of college courses. This makes it important that the regulator approve the standards of the college courses.
- 53. MTCU also opposed any requirement of a period of paid mentoring or co-op placement. Field placements are supervised by the school, while paid placements are not. This can create liability issues. In addition, when students are paid it can complicate their eligibility for student assistance.

#### CONSULTATIONS WITH TRIBUNALS

- 54. The tribunals were generally in favour of the proposal, although their experience with paralegals varies widely. Some have had no problems with agents; these are generally either tribunals dealing with highly technical subject matter, or those where little money is at stake. For other tribunals, such as the Financial Services Commission and the Workplace Safety and Insurance Appeals Tribunal, paralegals are a major issue.

55. To assist the Law Society in its assessment of applicants for grandparented status, the tribunals would be prepared to disclose to the Law Society whether a person had appeared before them over a specified period, but would be reluctant to otherwise comment on the suitability of the applicant, in order to avoid any appearance of bias.

#### CONSULTATIONS WITH THE JUDICIARY

56. The Task Force met with judges from all levels of court in Ontario. The judges welcomed the initiative of the Law Society and the Attorney General in moving to regulate paralegals. Concerns were expressed about the suitability of paralegals defending summary conviction cases, given the seriousness of a criminal conviction and the complexity of the proceedings.

#### THE NEED FOR PARALEGAL REGULATION

57. The Task Force reviewed the history of attempts at paralegal regulation in Ontario, dating back at least 15 years, and includes major reports by Professor Ronald Ianni (1990) and Justice Peter Cory (2000). Despite two government reports and a number of judicial decisions, paralegal regulation has not been achieved.

58. In August 1999 the Ontario Court of Appeal commented as follows in the case of *R. v. Romanowicz*:

A person who decides to sell t-shirts on the sidewalk needs a license and is subject to government regulation. That same person can, however, without any form of government regulation, represent a person in a complicated criminal case where that person may be sentenced to up to 18 months imprisonment. Unregulated representation by agents who are not required to have any particular training or ability in complex and difficult criminal proceedings where a person's liberty and livelihood are at stake invites miscarriages of justice. Nor are de facto attempts to regulate the appearance of agents on a case-by-case basis likely to prevent miscarriages of justice.

59. This unsatisfactory situation has led to a number of partial solutions. In 2003, the Financial Services Commission of Ontario (FSCO) created a web site listing of persons authorized to represent claimants at FSCO, referred to as 'Statutory Accident Benefits Representatives.' FSCO has been clear that this does not constitute 'regulation.' The main requirements for being placed on the FSCO list are having insurance and not having been convicted of certain criminal offences. There are also procedures for removing a person from the list.
60. In addition, the federal government introduced requirements for immigration consultants, although this is also not a full regulatory scheme. This is discussed in more detail later in this report.
61. The Task Force heard of many problems with the current situation. For example, the Task Force was told about a woman with limited English language skills who was injured in a car accident in which she lost her hand. A paralegal settled the case for \$47,000 of which he took half. Fortunately, a lawyer was later able to reopen the case.
62. At present, when problems such as these arise, members of the public have no recourse to a regulatory body to resolve their complaints. When problems arise in the provision of services by lawyers, the public can look to the Law Society to address their concerns.
63. Some participants also told the Task Force of paralegals providing a useful service to the public in, for example, defending highway traffic offences. These persons are unfairly linked in the public's mind with the unscrupulous or incompetent paralegals.
64. The consultation meetings confirmed that a regulatory solution to these problems is long overdue.

## TASK FORCE RECOMMENDATIONS

### GENERAL APPROACH

65. The Task Force is of the view that the appropriate starting point for paralegal regulation is the regulation of persons providing services in currently permitted areas of law as defined in legislation and case law.
66. The Task Force's approach to regulation is based on the following principles:
- The Framework Document is an appropriate starting point;
  - The approach should reflect the current definition of the "unauthorized practice of law" as set out in the jurisprudence;
  - The approach must be in the public interest, providing consumer protection and enhancing access to justice;
  - The approach must ensure paralegal competence;
  - The approach should be as uncomplicated as possible to achieve the desired result;
  - If appropriate, the regulatory approach can be phased in over time;
  - The regulation of paralegals should mirror the regulation of lawyers wherever possible, to avoid confusion and duplication.
67. The objective is to permit the Law Society to regulate the delivery of all legal services. This will require a broad definition of the practice of law. Exemptions can then be created for those whom it is not necessary or appropriate for the Law Society to regulate.
68. Many of the details that remain to be settled need not be embodied in the legislation, and can be developed for inclusion in the regulations and by-laws, simultaneously with the progress of the legislative framework.

### OVERVIEW OF REGULATORY MODEL

69. The approach set out in this report would require independent paralegals to be licensed by the Law Society, under the supervision of a Standing Committee of Convocation with lay benchers and an equal number of elected benchers and paralegal members.
70. Persons wishing to acquire a licence must take an approved college course, be of good character, and pass a Law Society licensing examination.
71. Licensed paralegals would be required to follow a Code of Conduct, carry insurance, and pay into a compensation fund, in the same manner as lawyers.
72. They would be subject to discipline, including the possible loss of their licence after a hearing. These concepts are elaborated below.

### SCOPE OF PRACTICE

73. The Task Force is of the view that existing areas of practice as defined in legislation and case law represent the appropriate scope of practice for paralegals and that only persons providing services in areas currently authorized by law should be regulated.
74. This would involve focusing on advocacy work, which has a number of advantages:
- There is a better consensus on what constitutes advocacy work;
  - The impetus behind public concern about paralegals has primarily been in the advocacy field, including at the Financial Services Commission of Ontario;
  - The Framework Document's view of solicitor's work required a concept called an "Affiliation Agreement." This concept would be difficult to implement and impossible to enforce;
  - From an 'access to justice' perspective, there are advocacy areas where it is difficult to obtain the services of lawyer, but there is a lack of evidence that solicitors are difficult to obtain for wills and

- real estate transactions. Further, there is little evidence that paralegals provide these services at a more reasonable rate than lawyers;
- e. Advocacy work is usually conducted in a more public arena in the presence of a neutral third party, which provides a better possibility of monitoring and evaluating the programme;
  - f. Non-lawyers currently providing solicitor-type services are engaging in the unauthorized practice of law in violation of the Law Society Act.
75. The Task Force heard compelling accounts of bad results in the provision of solicitors' work by paralegals, particularly in family and estates work. A number of lawyers described a lucrative practice area in attempting to remedy problems created by unqualified service providers. Unfortunately, the problems created cannot always be remedied, as for example in the case of a divorcing spouse who had signed away all rights to a future pension.
  76. The Task Force is of the view that the case for expanding the scope of paralegal practice to include solicitors' work has not been made out, that to do so would not enhance access to justice, and would be contrary to the public interest.
  77. The profession was generally supportive of the approach put forward by the Task Force, although some lawyers still have difficulty accepting licensed paralegals as a permanent feature of the landscape.
  78. Some submissions, including the County of Carleton Law Association's, proposed limiting the scope of paralegal work under the Provincial Offences Act to exclude complex environmental and health and safety cases.
  79. The Family Lawyers' Association and the Advocates' Society made strong representations that family law should be excluded from the scope of paralegal activities. It was noted that judges generally exclude non-lawyers from Family Court under Rule 4 of the Family Law Rules, which provides that a non-lawyer may only appear by prior permission of the court.
  80. In some areas, duty counsel is now available in family court. In other cases, parties in family court choose to be unrepresented. Nevertheless, the number of unrepresented parties in family law cases is a concern. While representation by agents is not an appropriate solution to this problem, the Task Force believes the Law Society should engage the Attorney General, Legal Aid Ontario and other stakeholders to consider other strategies to address the access to justice aspects of this problem.
  81. Strong views were submitted on both sides of the issue of practice before FSCO. The Ontario Trial Lawyers' Association submitted detailed proposals for the restriction of paralegal work before FSCO.
  82. The paper prepared by Professor Zemans recommended a wide expansion of the areas of law open to non-lawyers.
  83. A number of submissions suggested that a precise definition of 'mediation' should be developed, if mediation work is to be exempted from regulation. For example, the practice of family law mediation should not include the drafting of legally enforceable separation agreements.
  84. While many submissions advocated changes in the law on the permissible scope of practice in both directions, the Task Force does not recommend any changes at this time. In the view of the Task Force such changes complicate the model and would significantly delay, and perhaps prevent, the implementation of any regulatory model.

#### Recommendation One

85. It is recommended that the scope of practice for paralegals be the currently permitted areas of practice, as set out in legislation and case law. This would include the following:
  - a. Small Claims Court: all matters in Small Claims Court, including being recognized by the Court for the purposes of costs.

- b. The Ontario Court of Justice: all matters under the Provincial Offences Act.
- c. Tribunals: all matters before provincial boards, agencies and tribunals that allow for appearances by agents.
- d. Ontario Court of Justice: appeals under the Provincial Offences Act. Currently, section 109 of the Provincial Offences Act authorizes agents to appear on appeals.

#### DEFINITION OF THE PRACTICE OF LAW

- 86. To enable the Law Society to assume a broader jurisdiction, it is necessary to have a definition of the practice of law, something that already exists in several other Canadian provinces, as well as in the U.S.
- 87. At the consultations, several examples of existing definitions in use in other jurisdictions were distributed. These were generally favourably received. The County and District Law Presidents' Association submitted a draft of their own, which was broadly similar to one of the examples distributed.
- 88. The Task Force examined a number of versions of the definition. The Task Force came to the conclusion that the best approach to achieving the desired result would be to define "the provision of legal services." The proposed wording is attached at Appendix 3.
- 89. The wording in this draft reflects an approach that assumes that the Law Society will regulate the provision of all legal services in Ontario. It defines the provision of legal services broadly and assumes that every person who engages in any activity contained in the definition is providing legal services. The approach distinguishes between lawyers and paralegals by granting to each a different class of licence and by assuming that only lawyers practise law and can be said to practise law. Under this approach, a lawyer would be licensed as a barrister and solicitor and would be entitled to practise law in Ontario. A paralegal would be licensed to provide legal services, that is, to engage in one or more of the activities that are contained in the definition of the provision of legal services. Only lawyers would be members of the Law Society.
- 90. The Government of Ontario's legislative counsel makes the final decisions on the wording in legislation.

#### Recommendation Two

- 91. The definition of the provision of legal services attached at Appendix 3 be incorporated in the legislation.

#### ENFORCEMENT

- 92. To prohibit the provision of unauthorized paralegal services as well as the unauthorized practice of law, it will be important to provide for effective enforcement measures. It is recommended that the Law Society Act give the Law Society the power to obtain injunctive relief in addition to the power to prosecute. This would permit the Law Society to obtain an injunction in a civil court with a civil burden of proof against a person engaged in unauthorized activities, without first having to prosecute the person and obtain a conviction (The Law Society Act already provides for injunctive relief in the case of disbarred lawyers).
- 93. It is also recommended that the legislation provide for a 'presumption of irreparable harm.' This would reduce the evidence necessary to obtain an injunction. This would greatly facilitate the prevention of the unauthorized provision of both legal and paralegal services.

#### Recommendation Three

- 94. It is recommended that the Law Society Act be amended to provide for injunctive relief with the presumption of irreparable harm.

#### LICENSING REQUIREMENTS

- 95. All applicants for a licence must,
  - a. be of good character;
  - b. successfully complete an educational programme approved by the Law Society; and

- c. pass a licensing examination set by the Law Society.

96. These requirements are expanded upon below.

#### GOOD CHARACTER REQUIREMENT

97. Consultations confirmed the Task Force's view that the good character requirement for paralegals should be the same as that for lawyers. This will be applicable to both new entrants and to applicants for grandparented status.

#### Recommendation Four

98. The good character requirement should be the same for paralegals as it is for lawyers.

#### EDUCATIONAL REQUIREMENTS

99. The Consultation Paper proposed a requirement of a "two year community college diploma." Throughout the consultation process, the Task Force learned that this requirement is too restrictive. Some colleges offer an accelerated one-year intensive programme of study. Furthermore, the use of the term "community college" excludes private career colleges, and it is the view of the Task Force that these colleges should be given the opportunity to offer programmes that meet the required standards.

#### Recommendation Five

100. Applicants will be required to have successfully completed a college programme approved by the Law Society.

#### EQUIVALENCIES

101. It will be appropriate to evaluate some other equivalencies, e.g. LL.B. without completion of call, LL.B. from another province, LL.B. from another country, two years of law school, etc. It may not be appropriate to require persons with these qualifications to complete the same college courses as a recent high school graduate.

102. Acceptable 'equivalency' could possibly include certain forms of work experience, as well as educational experience, or some combination of the two. It was, for example, submitted that a police officer with ten years of experience in traffic court should be granted advanced standing in the advocacy component of the educational programme. Some retired justices of the peace would also be interested in being granted advanced standing. (This would not constitute 'grandparenting' as it would be a permanent feature of the licensing model, not limited to the start-up phase.)

103. The Task Force is of the view that the establishment of these equivalencies or credit for previous experience should be the responsibility of the colleges offering the approved programmes, subject to approval by the Law Society. The colleges currently assess applicants on their existing credits from other educational institutions and often grant advanced standing.

#### Recommendation Six

104. It is recommended that the colleges offering the approved programmes conduct the assessment of equivalencies, subject to approval by the Law Society.

#### FIELD PLACEMENTS

105. The Task Force is of the view that a period of practical experience in a workplace setting is an essential part of the necessary educational process. However, consultations with both the community colleges and private colleges identified difficulties with a six-month 'mentoring' requirement (as proposed in the Framework Document). If such a mentoring period were unpaid, it would represent a hardship for students. If the mentoring period were paid employment, there would be a concern about the shortage of available



paying positions. Requiring students to obtain a paid position could be seen as creating a barrier to entry if these are in fact impossible to obtain.

106. The private colleges would prefer not to have any compulsory work experience requirement as part of the approved course. The African Canadian Legal Clinic expressed concerns about any compulsory period of paid mentoring, as there might be particular difficulties for equity-seeking groups in obtaining placements.
107. The current practice of the community colleges of integrating a shorter phase of unpaid 'field placement' into the college programme is regarded as a better approach to providing practical exposure to work situations.

#### Recommendation Seven

108. Law Society approved college programmes must include an approved period of 'field placement' to provide students with workplace experience.

#### LICENSING EXAMINATIONS

109. The Law Society will prepare licensing examinations after an appropriate evaluation of the necessary competencies for the role of licensed paralegal. It may be more convenient for students if the colleges offering the approved courses administer and invigilate the examinations. The colleges have expressed their willingness to assist in this regard.
110. Proficiency in English or French will be a requirement. The Task Force is of the view that this can best be addressed by including language proficiency in the design of the licensing examinations, rather than by setting separate language examinations.

#### Recommendation Eight

111. The Law Society should set licensing examinations that all applicants for a licence will be required to pass.

#### GRANDPARENTING

112. 'Grandparenting' is the process whereby persons without the required college diploma can apply for a licence on the basis of their previous work experience. Paralegals applying for grandparented status must still be of good character and successfully complete the licensing examination, but may be licensed without a college diploma. The Task Force is of the view that 'grandparenting' is appropriate when phasing in a licensing process.
113. For the first few years, there will be a heavy workload involved in the assessment of existing paralegals applying to be 'grandparented.' This will have budget implications.
114. The Consultation Paper proposed that eligibility for grandparented status be granted to persons who have worked five of the last seven years as a paralegal. However, a number of submissions suggested that five years is too onerous a requirement for grandparented status.
115. TriOs College submitted that the required number of years of experience should include experience as an employed paralegal, not only independent experience.
116. The Task Force agrees with this submission and is of the view that employed paralegals working in areas covered by the proposed scope of practice should be encouraged to apply for a licence. This would mean, for example, that a by-law prosecution officer for a municipality would be eligible for grandparented status.

#### Recommendation Nine

117. Applicants should be eligible for grandparented status if they have worked as paralegals in areas covered by the proposed scope of practice described above, either independently or in employed positions, for three of the last five years, except where the person requires accommodation under one of the grounds in the Ontario Human Rights Code, in which case the requirement should be three years within the last seven.

118. The Consultation Paper proposed that applicants seeking grandparented status be given two years within which to apply. A number of submissions suggested that this would leave the public unprotected for too long. The Hamilton Law Association suggested six months would be reasonable. The Task Force is of the view that this would be acceptable, as all persons working in this field in Ontario would be likely to have heard about the introduction of regulation by that time. Further, it is anticipated that a public awareness programme will be undertaken. The assessment of the applications for grandparented status will take longer than the six-month application period.

#### Recommendation Ten

119. Applicants seeking grandparented status should be given six months to apply, from the coming into force of the relevant sections of the legislation.
120. As suggested in the submission from the Ontario Human Rights Commission, the years of experience a paralegal applying for grandparented status relies upon should be subject to quality control, in the form of at least two references from tribunals or other relevant reputable referees that the person is a suitable candidate to take the licensing examination. Other forms of evidence of successful practice may also be appropriate.

#### Recommendation Eleven

121. Applicants for grandparented status should be required to submit at least two references, and conform to other criteria to be developed.

#### GENERAL OR LIMITED LICENCE

122. The Task Force consulted on two possible models for paralegal licences, general and limited licences. A general licence would permit the licensee to practise in any of the areas approved for paralegal activity, while a limited licence would set out a specific area of practice, such as Small Claims Court or Provincial Offences Court, and limit the person's work to that area. Strongly held opinions were heard on both sides of the issue of general versus limited licences.

#### Arguments for General Licence

123. General licensing is consistent with the position the Law Society has taken on the reform of the Bar Admission Course arising from the Task Force on the Continuum of Legal Education. That Task Force recommended that the Bar Admission Course focus on lawyering skills and a commitment to lifetime continuing education. Lawyers called to the bar have a professional responsibility to take on only work they are competent to undertake.
124. The colleges generally took the position that they should teach generic advocacy skills, as students do not know the area of law in which they will be working (the vast majority of college graduates seek full time employment under lawyer supervision when leaving, as only a very few intend to open an independent practice). It could also create difficulties setting a reasonable class size for each specialty.
125. Only a few tribunals offer enough work to support a full-time practice. Tribunals often change their mandates, and some in fact are created or abolished over time as government policies change.
126. Some tribunals consulted were hesitant about limited licences as they are concerned about the extra workload potentially involved in designing licensing requirements.
127. There would be extra work and considerable extra cost involved in creating a number of specialized examinations. Examination preparation will be one of the largest expenditures involved in introducing paralegal regulation, and the total cost would be multiplied by the number of different licences created. The approach suggested by Professor Zemans would require ten different examinations to be created, probably several times a year. This would be prohibitively expensive.

128. A system of limited licences could be difficult to enforce. Clients would have to verify that their agent is licensed for the specific area of work involved. This would require a more extensive public awareness campaign.
129. Limited licences might give the appearance of restricting access to paralegal work.

#### Arguments for Limited Licence

130. Many independent paralegals in fact confine their practices to a limited number of areas, for example, Highway Traffic Act offences or Small Claims Court.
131. If there is only one category of licence, the requirements may have to be set at too high a level for some areas of practice, which could restrict access.
132. A general licence may encourage licence holders to go beyond their area of expertise. The submission from the Equity Advisory Group suggests that vulnerable clients would be at risk of being misled by licensees offering to provide services outside their area of expertise.
133. A number of the provincial tribunals take the position that their jurisdiction is uniquely complex. In fact the Financial Services Commission of Ontario (FSCO) and the Workplace Safety and Insurance Board are provincial tribunals where paralegals are extensively involved in cases worth tens of thousands of dollars or more. However, all areas of advocacy can present difficult and complex cases. For example, the Provincial Offences Act covers environmental and occupational safety cases in which persons' health and safety are often at stake.
134. On balance, the Task Force is of the view that it would be reasonable to start by creating one general licence, and to consider the establishment of further categories if it is appropriate, as the regulatory model develops.

#### Recommendation Twelve

135. One general licence should be established initially, but the legislation should be designed to permit the creation of further categories in future, should it be determined that this is appropriate in the public interest.

#### PERSONS TO BE REGULATED

136. The objective of the regulatory model is to provide both consumer protection and access to justice, especially for vulnerable clients. At the same time, the model should not be broader than is necessary to achieve these objectives.
137. Throughout the consultations, there were representations about who should be included in or excluded from the regulatory model. There is no disagreement that independent paralegals representing clients for a fee before courts and tribunals should be regulated, while law clerks and other persons providing services to lawyers should be exempted, as should family members or friends representing a person free of charge. There are also good reasons for excluding union stewards and corporate human resources representatives appearing at labour arbitrations, who represent sophisticated clients in a specialized area. However, the Task Force heard extensive representations about other groups.
138. Particularly detailed submissions were received from the Office of the Worker Adviser (OWA) and the Office of the Employer Adviser (OEA), requesting that they be exempted. These agencies of the Ministry of Labour provide free representation in Workers' Compensation claims to injured workers and small employers respectively. They have a large complement of paralegal advocates (in the case of the OWA, 46 paralegals). They make the following points:
  - a. Their staff members are already accountable, falling under the Public Service Act (including the oath of secrecy), conflict of interest policies, the Freedom of Information and Protection of Privacy Act, an internal complaints process, Ministry of Labour policies, and the Ombudsman complaint process;

- b. As an agency of the Ontario government, there are assets available to satisfy any judgment against them;
  - c. All services are provided free of charge to the client, so that there are no issues of overcharging;
  - d. There is a staff-training programme at both offices;
  - e. These offices, already subject to budget constraints with no reduction in workload, would have to absorb the cost of the licensing fees for their staff.
- 139. Taken together, these reasons constitute a strong case for exemption of the OWA and OEA from the regulatory model. Several of the same reasons apply to a broad range of employed paralegals, such as municipal prosecutors, community legal workers at clinics, insurance company staff, etc.
- 140. The rationale for paralegal regulation is based on the need for consumer protection, particularly in the case of vulnerable clients. The problem areas do not generally involve salaried, in-house paralegals.
- 141. Reducing the potential numbers of licensees by exempting employed paralegals reduces the funding base for the model.
- 142. The representatives of SOAR (the Society of Ontario Adjudicators and Regulators) generally favoured an approach whereby tribunals could apply to be exempted. It was submitted that there are many boards and tribunals in Ontario where problems with agents are rare, often where there is little money at stake in their decisions.
- 143. Employed paralegals and some supervised law clerks might choose to acquire a licence voluntarily, if they have the necessary qualifications. This would permit them to take advantage of the grandparenting provisions. (The representatives of the Office of the Worker and Employer Advisers mentioned that some of their staff might be interested in voluntary licensing).
- 144. If an employed paralegal were considering setting up a private business in the future, it may be advantageous for the employed paralegal to acquire a licence during the time permitted for applications for grandparented status.
- 145. Among specific exemptions requested in the submissions were,
  - a. All those providing services for no fee
  - b. Aboriginal Court Workers
  - c. Workers at Legal Aid funded clinics, including those where no lawyer is on staff
  - d. Trade union employees (not only in arbitrations)
  - e. Volunteer Special Education Advocates
  - f. Adult Protective Service Workers
  - g. Victim Service Workers
  - h. Employees of the Office of Child & Family Service Advocacy
  - i. Employees of the John Howard and Elizabeth Fry Societies
- 146. The Institute of Law Clerks of Ontario (ILCO) submitted that ILCO should be recognized as the formal regulator of law clerks. (Law Clerks are skilled office workers who work under the supervision of lawyer, often completing extensive work on files such as corporate and real estate transactions). If there is to be regulation of paralegals, ILCO favours formal recognition for law clerks. However, owing to the scope of practice proposed for licensed paralegals, it may be difficult to include some law clerks even on a voluntary basis, if they focus exclusively on solicitors' work.
- 147. In the view of the Task Force, law clerks are already regulated because lawyers supervise them. They are covered by the lawyer's insurance and the supervising lawyer is responsible for their conduct and competence. Lawyers who fail to adequately supervise their law clerks are in breach of the Rules of Professional Conduct. For these reasons, the Task Force did not consider further regulation of law clerks at this time. Those law clerks providing advocacy services would be eligible to apply for a licence.
- 148. The need for other exemptions may become apparent, and it will be important to provide a mechanism to add other exemptions by-law.

149. The Task Force was aware of the challenge involved in bringing a large number of persons into a system of regulation in a short period of time. For that reason, it makes sense to start with the areas where most of the problems have occurred.
150. The Task Force is proposing a model with initially, three categories of persons:
- a. Licensees, who will be authorized to provide prescribed advocacy services for a fee, so long as they hold a valid licence;
  - b. Those providing the same services as those in paragraph (a), but without charging a fee to the public, such as
    - i. Family members or friends acting free of charge;
    - ii. In-house, salaried non-lawyer advocates, such as municipal prosecutors, community legal workers, insurance company representatives, etc., regardless of whether they are supervised by a lawyer. They will not be required to hold a licence, but will be encouraged to obtain a licence so that they would be entitled to move to private practice at a later date. (Their scope of practice would be limited in the same way as those in category (a), except for files that are supervised by a lawyer).
  - c. Persons providing services under the supervision of a lawyer, such as law clerks, legal assistants, etc., and those working for independent service providers whose only clients are law firms. (This model does not change their situation, although some persons in this category may be interested in acquiring a licence voluntarily).
151. It may in time be appropriate to exempt other persons. A mechanism is therefore required for considering the suitability of other applications for exemption, based on consumer protection and access to justice.

#### Recommendation Thirteen

152. As a first step in regulation, mandatory licensing should be applied only to those paralegals providing legal services to members of the public who pay for those services, either directly or indirectly.

#### FEDERAL PROVINCIAL ISSUES

153. The regulation of paralegals raises some complex constitutional issues. A number of the areas where paralegals are particularly active, such as the defence of summary conviction offences under the Criminal Code, and Immigration and Refugee matters, fall under federal jurisdiction. Since the Criminal Code provides that an accused person may be represented by an agent (meaning a non-lawyer) in certain cases, a provision of the Law Society Act could not per se contradict this. However, this does not mean that a licensing requirement would necessarily be ultra vires.
154. The federal government recently enacted new regulations under the Immigration and Refugee Protection Act to regulate paralegals working as immigration consultants. There are a number of aspects of this scheme that concern the Law Society, including whether the scheme will ultimately be effective. The African Canadian Legal Clinic and the Iranian Canadian Lawyers Association both submitted that the proposed regulatory model for paralegals should apply to immigration consultants. Otherwise immigrants, who are often particularly vulnerable clients, would lack proper protection. The Task Force finds this persuasive.
155. The leading constitutional case in this area is *Law Society of British Columbia v. Mangat*, decided by the Supreme Court of Canada in 2001. This case dealt with an immigration consultant. The Supreme Court held as follows:
- a. There is no obligation on the federal government to regulate agents, although it may be desirable;
  - b. To the extent that the federal government does not address the matter, provinces can regulate “in accordance with their own powers”;
  - c. There will be an “operational conflict” if provincial legislation displaces the purpose of Parliament; and
  - d. The test is “whether operation of the provincial Act is compatible with the federal legislative purpose.”

156. A number of judges and lawyers submitted that the issue of agents appearing on Criminal Code matters should be revisited. The Criminal Lawyers' Association, the Defence Counsel Association of Ottawa, and many judges would prefer to see agents excluded from the criminal courts altogether, because of the serious implications of a criminal conviction and the complexity of criminal trials.
157. The Ontario Crown Attorneys' Association made strong representations in support of this point. Members of the Association are often put in a difficult position when dealing with agents, and explained that defendants are better off unrepresented. These comments carry particular weight, as on this point the Crown Attorneys are impartial.
158. The paper submitted by Professor Zemans on behalf of the PPAO recommended limiting the offences on which an agent can appear to a very short list of the less serious summary conviction offences.
159. Changing these provisions would require an amendment to the Criminal Code. In the absence of a change of this nature, it could be argued that regulating paralegals in criminal court might lend their presence legitimacy. However, if other areas of paralegal activity are regulated and the criminal courts are not, unscrupulous operators who have been excluded from, for example, provincial tribunals, might gravitate towards the criminal courts.
160. The Task Force is of the view that the licensing requirements logically apply to the federal sphere, as there would be no frustration of the purpose of the federal legislation.

#### Recommendation Fourteen

161. To provide consumer protection, the licensing requirement should apply to persons working in areas of federal jurisdiction.

#### LEGISLATIVE DESIGN

162. The principle behind the legislative design should be to provide flexibility by placing the minimum of detail in the Law Society Act itself, with most detail in regulations or in Law Society by-laws. Law Society by-laws would give the greatest flexibility, as Convocation could amend them as required. This may be particularly relevant given the likelihood of unforeseen issues arising in an entirely new regulatory regime and the possibility, mentioned above, that some parts of the model may be phased in over time.
163. Among the new provisions required in the Act itself will be,
  - a. A definition of the provision of legal services;
  - b. Stronger provisions for the prosecution of the unauthorized practice of law, including the authority to obtain an injunction prior to a conviction;
  - c. Provisions for disciplining paralegals (to parallel those for lawyers), including investigation, confidentiality and third party information, and provisions for misconduct and 'conduct unbecoming';
  - d. Provisions for hearings into competence and capacity; and
  - e. By-law-making authority to,
    - i. issue licences to persons who are to be permitted to provide services in the prescribed areas; and
    - ii. provide for exemptions.
164. The legislative design and system of governance should provide a framework for the review of the necessary competencies for paralegal practice and any adjustment to the permitted scope of practice that may be appropriate in the future.

#### Recommendation Fifteen

165. It is recommended that the legislation be designed to achieve flexibility by placing the minimum of detail in the Law Society Act itself, with most detail in regulations or in Law Society by-laws.

## NOMENCLATURE

166. The preferred terminology is ‘licensed’ rather than ‘accredited.’ Accreditation suggests a voluntary system, such as Specialist Certification or the Law Clerk certification granted by the Institute of Law Clerks of Ontario, while a licence is a compulsory requirement, as in a driver’s licence. The obtaining of a licence will be compulsory for the prescribed persons in the prescribed areas of work.
167. The Task Force heard a number of comments about the use of the term “paralegal,” which could be regarded as confusing and carrying negative connotations. It was also felt that it does not best describe the actual functions that the licensees will perform. In most cases, legislation permitting non-lawyers to appear uses the word “agent.”
168. The Task Force considered other names for paralegals, such as “agent,” and “court and tribunal agent” but rejected them for a number of reasons. Firstly, the public has come to recognize the name “paralegal,” and to change it may lead to further confusion in the legal services marketplace. Secondly, paralegals have chosen to call themselves by the name “paralegal,” and the right to self-name should not be interfered with absent a compelling reason to do so in the public interest.
169. In the view of the Task Force, the legislative drafting should use generic language, such as ‘persons licensed to provide services’ or ‘licensees,’ while more specific language should be used in the by-laws and regulations.

### Recommendation Sixteen

170. Licensed paralegals should be described as, “Licensed pursuant to the laws of Ontario.”

## GOVERNANCE

171. The Consultation Paper set out a model for paralegal governance, involving a Standing Committee of Convocation that would develop policies on paralegal regulation and submit them to Convocation for approval in the same way as other Law Society committees. Unlike other committees, however, it is proposed that Convocation could not at the first instance substitute its own decision for that of the committee, but could send the matter back to the Standing Committee for further consideration. Only on the second consideration could Convocation substitute its own decision.
172. The composition of the Standing Committee would be,
  - a. five paralegals, to be elected from all licensed paralegals (until the first election, the five licensed paralegals would be appointed by the Attorney General);
  - b. five elected benchers appointed by Convocation on the recommendation of the Treasurer, and
  - c. three lay benchers, appointed by Convocation on the recommendation of the Treasurer, for a total of thirteen members.
173. All members of the Standing Committee would be under an obligation to act in the public interest.
174. The Chair of the Committee would always be a paralegal. The Task Force proposes that all thirteen members of the committee choose the chair. The vice-chair would be an elected lawyer bencher or a lay bencher.
175. The Task Force further proposes that two of the paralegal members of the committee sit as full members of Convocation; these two persons would be chosen by eight members of the committee, the five paralegals and the three benchers. The committee chair would also be a member of Convocation, but would not have a vote (unless he or she is one of the two persons chosen as described).
176. The mandate of the Standing Committee would include,
  - a. Licensing and educational requirements
  - b. Code of Conduct
  - c. Licensing Fees

- d. Rules of Incorporation
  - e. Rules for Advertising
  - f. Trust Account Rules
  - g. Complaints, Investigation, Hearing and Appeal Processes
  - h. Insurance
  - i. Compensation fund
  - j. Continuing Education
  - k. Reporting Requirements
177. Consultation with the legal profession indicated general acceptance of the proposed governance model. This represents a change in the view of the profession since the discussions on this topic of 2002, when there was more opposition to the acceptance of a legitimate role for paralegals and to the proposal that the Law Society should be the regulator.
178. The report by Professor Zemans on behalf of the PPAO takes the position that the Law Society has a conflict of interest in regulating paralegals. Justice Cory suggested that the appropriate body to regulate paralegals would be independent of both the provincial government and the Law Society, but that self-government would not be feasible in the short to medium term. He wrote, "Eventually, perhaps, after ten years, the paralegals will become self-governing. This should not occur until the institution is well established and has the confidence of the public and the provincial government."
179. However, the Cory model, requiring a new, separate body to regulate paralegals would inevitably be more expensive than the modest increase in the scope of the Law Society's activities required to include paralegal regulation, given the existing expertise and experience the Law Society has in regulatory functions. A new body would also take much longer to become effective, given the work involved in a start-up operation.
180. The Law Society already has a mandate to govern in the public interest, not in the interest of lawyers. The public interest must be the primary consideration in paralegal regulation as well.

#### Recommendation Seventeen

181. It is recommended that the governance model set out above be adopted.

#### PROFESSIONAL REGULATION

182. The regulatory model for paralegals should follow as closely as possible the current regulatory model for lawyers. This will require development of,
- a. Rules of Professional Conduct
  - b. Structures for proceedings authorization and review of complaints
  - c. Rules of Practice and Procedure
  - d. A unique identifying licence number like the membership number lawyers have.
183. Paralegals should be subject to the same confidentiality rule as lawyers. This would require paralegals to hold in strict confidence all information concerning the business and affairs of clients acquired in the course of the professional relationship, subject to some very limited exceptions. This would mean that such information could not be disclosed except on the order of a judge.
184. The ethical rule on confidentiality, however, must be distinguished from the evidentiary rule of solicitor-client privilege concerning oral or documentary communications passing between the client and the lawyer. As it is a matter of law, the question of whether privilege attaches to communications between a paralegal and his or her client is not a matter for rules of professional conduct for paralegals.
185. Some submissions proposed specific rules of professional conduct for paralegals. For example, the Task Force heard many complaints about misleading or unsuitable advertising by paralegals. The Lincoln County Law Association proposed that there should be special advertising rules for paralegals. While the Task Force recognizes that there have been problems with paralegal advertising, the existing Rules of



Professional Conduct address the issue of advertising in a comprehensive, non-specific manner and the Task Force is of the view that this would be sufficient to address the problem.

186. The appropriate three-person hearing panel for conduct, capacity and competence hearings would be one paralegal appointed by the Standing Committee, one lawyer benchner and one lay benchner.
187. The appeal panel for paralegal cases would be two paralegals appointed by the Standing Committee, two lawyer benchners and one lay benchner.

#### Recommendation Eighteen

188. It is recommended that the model for the professional regulation of paralegals should follow that currently in place for lawyers.

#### FEES CHARGED BY PARALEGALS

189. Participants at the consultation meetings frequently identified problems with the fees paralegals charge, especially unconscionable contingency fees in the context of FSCO and the Workplace Safety and Insurance Board. Members of the public should have recourse to a mechanism to review unreasonable fees. The Task Force is of the view that the same process for disputing lawyers' fees should be applied to paralegal fees also.
190. While some submissions suggested that paralegals should not be permitted to charge contingency fees, this would be inconsistent with the government's recently adopted regulations for lawyers.
191. Licensed paralegals should be required to maintain trust accounts for retainers and any other funds received in trust. Some paralegals submitted that the use of a trust account is cumbersome in a practice involving many small cases and would not be necessary if a paralegal undertakes to submit all invoices in arrears. However, the Task Force does not regard exceptions to the requirement of a trust account to be in the public interest.

#### Recommendation Nineteen

192. It is recommended that,
  - a. the same process used for reviewing legal fees be applied to paralegal fees;
  - b. contingency fees not be prohibited outright but that the rules governing contingency fees for lawyers should apply to paralegals also; and
  - c. licensed paralegals be required to maintain trust accounts for retainers and any other funds received in trust, and comply with requirements for record keeping and handling of money similar to those of lawyers.

#### INSURANCE AND COMPENSATION FUND

193. Obtaining professional errors and omissions insurance for paralegals is not expected to present difficulties. At present, ENCON Group Inc. insures the SABS representatives who appear at FSCO and manages an insurance programme under arrangements with the PPAO and the Paralegal Society of Ontario (PSO), voluntary organizations of paralegals. However, since membership in these organizations and the obtaining of insurance (except for the SABS representatives) are currently voluntary, it may be that those currently insured are lower-risk than some of those who would only apply when insurance becomes mandatory.
194. The number of paralegals currently insured by ENCON is about 350.
195. ENCON has confirmed that they would be able to insure a larger number of paralegals when insurance becomes mandatory. When the Quebec Order of Engineers made insurance mandatory for Quebec engineers, ENCON was able to insure 1,800 additional engineers in a short period of time, without difficulty. ENCON would be prepared to provide the Law Society with notice of cancellation of insurance for all policyholders.

196. LAWPRO has also indicated an ability to offer coverage to paralegals on a separate actuarial basis from lawyers. The Task Force considered whether there should be a choice of insurance provider, or whether LAWPRO should be made the required sole provider. On balance, the Task Force recommends that paralegal insurance remain in the existing private market, since the existing arrangements seem to be satisfactory, and there is not a compelling reason to require this to change.
197. Some paralegals submitted that they have a cost advantage over lawyers as a result of not carrying insurance. However, for the public to be left unprotected by a lack of insurance is not in the public interest.

#### Recommendation Twenty

198. Licensed paralegals should be required to maintain \$1million errors and omissions insurance coverage.
199. Since insurance will not protect clients from the fraudulent actions of their representatives, paralegals should also be required to pay into a compensation fund in the same manner as lawyers.

#### Recommendation Twenty-One

200. A paralegal compensation fund shall be established, to which paralegals will be required to contribute.

#### SELF-FUNDING MODEL

201. While ideally paralegal regulation will be self-funding on the same model as lawyers, this may take time:
- The Law Society's infrastructure is supported by fees from over 30,000 lawyers. The number of paralegals to be licensed is not known, but is believed to be in the hundreds or low thousands. Initially, there may be only a few hundred applicants for licensing.
  - Bar admission examinations are prepared for a predictable cohort of about 1,300 law school graduates every year, who currently pay \$4,400 for the course and examinations. The number of potential applicants for paralegal examinations is not known but may be only a few hundred at first.
  - There will be additional enforcement costs in dealing with those who are ineligible for a licence, to prevent the unauthorized provision of paralegal services as well as the unauthorized practice of law.
  - Implementation will require a public education and awareness campaign.
  - Fees for paralegals must be set at a reasonable level.
202. Taken together this makes it critical that there be up-front funding assistance from the government until self-funding is achieved.
203. The approximate costs of establishing the regulatory model have been calculated, under reasonable assumptions (including an estimated amount for the prosecution of paralegals who fail to obtain a licence), as follows:

Start-up costs:	\$3.3 million
Annual operating costs:	\$1.2 million per year

#### Recommendation Twenty-Two

204. It is recommended that,
- the model be designed to be self-funding; and
  - until the model is self-funding, the province should provide the funding to create and maintain the regulatory model, including funding for the prosecution of those who fail to obtain a licence.

#### NEXT STEPS

205. If Convocation approves this approach and the included recommendations, they will be submitted to the Attorney General for his consideration as the basis of a legislative scheme.

## SUMMARY OF RECOMMENDATIONS

### Recommendation One (paragraph 85)

It is recommended that the scope of practice for paralegals be the currently permitted areas of practice, as set out in legislation and case law. This would include the following:

- a. Small Claims Court: all matters in Small Claims Court, including being recognized by the Court for the purposes of costs.
- b. The Ontario Court of Justice: all matters under the Provincial Offences Act.
- c. Tribunals: all matters before provincial boards, agencies and tribunals that allow for appearances by agents.
- d. Ontario Court of Justice: appeals under the Provincial Offences Act. Currently, section 109 of the Provincial Offences Act authorizes agents to appear on appeals.

### Recommendation Two (paragraph 91)

The definition of the provision of legal services attached at Appendix 3 be incorporated in the legislation.

### Recommendation Three (paragraph 94)

It is recommended that the Law Society Act be amended to provide for injunctive relief with the presumption of irreparable harm.

### Recommendation Four (paragraph 98)

The good character requirement should be the same for paralegals as it is for lawyers.

### Recommendation Five (paragraph 100)

Applicants will be required to have successfully completed a college programme approved by the Law Society.

### Recommendation Six (paragraph 104)

It is recommended that the colleges offering the approved programmes conduct the assessment of equivalencies, subject to approval by the Law Society.

### Recommendation Seven (paragraph 108)

Law Society approved college programmes must include an approved period of 'field placement' to provide students with workplace experience.

### Recommendation Eight (paragraph 111)

The Law Society should set licensing examinations that all applicants for a licence will be required to pass.

### Recommendation Nine (paragraph 117)

Applicants should be eligible for grandparented status if they have worked as paralegals in areas covered by the proposed scope of practice described above, either independently or in employed positions, for three of the last five years, except where the person requires accommodation under one of the grounds in the Ontario Human Rights Code, in which case the requirement should be three years within the last seven.

### Recommendation Ten (paragraph 119)

Applicants seeking grandparented status should be given six months to apply, from the coming into force of the relevant sections of the legislation.

Recommendation Eleven (paragraph 121)

Applicants for grandparented status should be required to submit at least two references, and conform to other criteria to be developed.

Recommendation Twelve (paragraph 135)

One general licence should be established initially, but the legislation should be designed to permit the creation of further categories in future, should it be determined that this is appropriate in the public interest.

Recommendation Thirteen (paragraph 152)

As a first step in regulation, mandatory licensing should be applied only to those paralegals providing legal services to members of the public who pay for those services, either directly or indirectly.

Recommendation Fourteen (paragraph 161)

To provide consumer protection, the licensing requirement should apply to persons working in areas of federal jurisdiction.

Recommendation Fifteen (paragraph 165)

It is recommended that the legislation be designed to achieve flexibility by placing the minimum of detail in the Law Society Act itself, with most detail in regulations or in Law Society by-laws.

Recommendation Sixteen (paragraph 170)

Licensed paralegals should be described as, "Licensed pursuant to the laws of Ontario."

Recommendation Seventeen (paragraph 181)

It is recommended that the governance model set out above be adopted.

Recommendation Eighteen (paragraph 188)

It is recommended that the model for the professional regulation of paralegals should follow that currently in place for lawyers.

Recommendation Nineteen (paragraph 192)

It is recommended that,

- a. the same process used for reviewing legal fees be applied to paralegal fees;
- b. contingency fees not be prohibited outright but that the rules governing contingency fees for lawyers should apply to paralegals also; and
- c. licensed paralegals be required to maintain trust accounts for retainers and any other funds received in trust, and comply with requirements for record keeping and handling of money similar to those of lawyers.

Recommendation Twenty (paragraph 198)

Licensed paralegals should be required to maintain \$1million errors and omissions insurance coverage.

Recommendation Twenty-One (paragraph 200)

A paralegal compensation fund shall be established, to which paralegals will be required to contribute.

Recommendation Twenty-Two (paragraph 204)

It is recommended that,

- a. the model be designed to be self-funding; and
- b. until the model is self-funding, the province should provide the funding to create and maintain the regulatory model, including funding for the prosecution of those who fail to obtain a licence.

APPENDIX 2

List of Groups Consulted

Aboriginal Legal Services Toronto  
 Advocates' Society  
 AJEFO  
 Association of Community Legal Clinics  
 Canadian Association of Paralegals  
 The Honourable R. Roy McMurtry, Chief Justice of Ontario  
 The Honourable Brian W. Lennox, Chief Justice, Ontario Court of Justice  
 The Honourable J. David Wake, Associate Chief Justice, Ontario Court of Justice  
 The Honourable Brian Weagant, Ontario Court of Justice  
 Circle of Chairs – SOAR  
 County and District Law Presidents' Association  
 County of Carleton Law Association  
 Criminal Lawyers' Association  
 Dufferin Law Association  
 Durham College  
 Elgin Law Association  
 ENCON  
 Equity Advisory Group  
 Essex Law Association  
 Family Lawyers' Association  
 Financial Services Commission of Ontario  
 Frontenac Law Association  
 Halton Law Association  
 Hamilton Law Association  
 Humber College  
 Huron Law Association  
 Institute of Agents in Court  
 Institute of Law Clerks of Ontario  
 Kent Law Association  
 Lanark Law Association  
 LAWPRO  
 Leeds/Grenville Law Association  
 Loyalist College  
 Middlesex Law Association  
 Ministry of Colleges and Universities - Ontario  
 Ministry of Labour – Ontario - Office of the Worker Adviser & Employer Adviser  
 Nipissing Law Association  
 Ontario Association of Career Colleges  
 Ontario Association of Crown Attorneys  
 Ontario Association of Professional Searchers of Records  
 Ontario Bar Association  
 Ontario Rental Housing Tribunal  
 Ontario Trial Lawyers' Association

Ontario Workplace Safety Insurance Board  
 Oxford Law Association  
 Paralegal Society of Canada  
 Paralegal Society of Ontario  
 Perth Law Association  
 Prescott/Russell Law Association  
 Professional Paralegal Association of Ontario  
 Sir Sandford Fleming College  
 Seneca College  
 Sheridan College  
 Stormont/Dundas/Glengarry Law Association  
 Thunder Bay Law Association  
 Toronto Lawyers' Association  
 TriOS College  
 Waterloo Law Association  
 Welland Law Association  
 Wellington Law Association

### APPENDIX 3

#### PROPOSED DEFINITION OF THE PROVISION OF LEGAL SERVICES

1. (1) In this Act,

...

“licencee” means a member or a person licensed under this Act to provide legal services;

“member” means a person licensed under this Act to practise law in Ontario as a barrister and solicitor;

... .

1.1 (1) In this section and in section 1.2, “adjudicative body” means any body that, after the presentation of evidence or legal argument by one or more persons, makes a decision that affects a person’s interests, legal rights or legal responsibilities, including,

- (a) a federal or provincial court;
- (b) a tribunal established under an Act of Parliament or under an Act of the Legislature in Ontario;
- (c) a commission or board appointed under an Act of Parliament or under an Act of the Legislature in Ontario to conduct an inquiry or inquest;
- (d) a legislative body; and
- (e) an arbitrator.

(2) A person provides legal services in Ontario if the person engages in conduct that involves the application of legal principles and judgment with regard to the circumstances or objectives of a person.

(3) Without limiting the generality of subsection (2), a person provides legal services in Ontario if the person engages in any of the following conduct:

1. Gives to a person advice or counsel with respect to the person's legal interests, rights or responsibilities or the legal interests, rights or responsibilities of another person.
  2. Selects, drafts, completes or revises,
    - i. a document that affects a person's interests in or rights to or in real or personal property, including family property;
    - ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person;
    - iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other business entity, including a document that relates to the formation, organization, reorganization, registration, dissolution or winding up of a sole proprietorship, corporation, partnership or other business entity;
    - iv. a document that relates to a matter under the Bankruptcy and Insolvency Act (Canada);
    - v. a document that relates to the custody or access of children;
    - vi. a document that affects the legal interests, rights or responsibilities of a person, other than the interests, rights and responsibilities referred to in sub-paragraphs i to iv; and
    - vii. a document for use in a proceeding before an adjudicative body.
  3. Represents a person in a proceeding before an adjudicative body, including determining what documents to serve and file on or with whom, when, where and how, conducting examinations for discovery and engaging in any other conduct necessary to the conduct of the proceeding.
  4. Negotiates the legal interests, rights or responsibilities of a person.
- 1.2 (1) No person, other than a licensee whose licence under this Act is not suspended, shall practise law in Ontario or provide legal services in Ontario.
- (2) No person, other than a licensee whose licence under this Act is not suspended, shall hold himself out as or represent himself to be a person who may practise law in Ontario or provide legal services in Ontario.
- (3) Despite subsection (1), a licensee shall not practise law in Ontario or provide legal services in Ontario except to the extent permitted by the licensee's licence under this Act.
- (4) Despite subsection (2), a licensee shall not hold himself out as or represent himself to be a person who may practise law in Ontario or provide legal services in Ontario except to the extent permitted by the licensee's licence under this Act.
- (5) Subsections (1) and (3) do not prohibit a person from providing legal services in Ontario as specified by the by-laws.
- 1.3 (1) Every person who contravenes section 1.2 is guilty of an offence and on conviction is liable to a fine of,
- (a) not more than \$25,000 for a first offence; and
  - (a) not more than \$50,000 for a second or subsequent offence.

(2) Every person who gives legal advice or counsel respecting the law of a jurisdiction outside Canada in contravention of the by-laws is guilty of an offence and on conviction is liable to a fine of,

- (a) not more than \$25,000 for a first offence; and
- (b) not more than \$50,000 for a second or subsequent offence.

(3) The court that convicts a person of an offence under this section may prescribe as a condition of a probation order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence.

(4) The court that convicts a person of an offence under this section may prescribe as a condition of a probation order that the person is prohibited from contravening section 1.2 or from giving legal advice or counsel respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

(5) Despite the provisions of any other Act, the court that convicts a person of an offence under this section may order costs towards fees and expenses reasonably incurred by the prosecutor in the proceeding to be paid by the person to the prosecutor.

(6) A certified copy of an order for costs made under subsection (5) may be filed in the Superior Court of Justice by the prosecutor and on filing shall be deemed to be an order of that court for the purposes of enforcement.

(7) All fines payable pursuant to this section as a result of a prosecution by or on behalf of the Society belong to the Society.

(8) A proceeding shall not be commenced in respect of an offence under this section after two years after the date on which the offence was, or is alleged to have been, committed.

1.4 (1) The Society may apply to the Superior Court of Justice for an order prohibiting a person from contravening section 1.2 or from giving legal advice or counsel respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

(2) The court may make an order under subsection (1) if it is satisfied that the person is contravening or has contravened section 1.2 or is giving or has given legal advice or counsel respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

(3) An order may be made under subsection (1) whether or not the person has been prosecuted for or convicted of an offence under section 1.2.

(4) Any person may apply to the Superior Court of Justice for an order varying or discharging an order made under subsection (1).

Attached to the original Report in Convocation file, copy of A Consultation Paper Re: Regulating Paralegals: *A Proposed Approach*.

(Appendix 1, pages 49 - 60)

It was moved by Mr. Topp, seconded by Mr. Aaron that the Report be tabled.

Lost



ROLL-CALL VOTE

Aaron	For	Legge	Against
Alexander	Against	MacKenzie	Against
Backhouse	Against	Manes	Against
Banack	Against	Murray	Against
Bobesich	For	Pattillo	Against
Bourque	Against	Pawlitza	Against
Campion	Against	Porter	Against
Carpenter-Gunn	Against	Potter	Against
Caskey	Against	Robins	Against
Chahbar	Against	Ruby	Against
Cherniak	Against	St. Lewis	Against
Coffey	Against	Sandler	Against
Copeland	Against	Silverstein	Against
Curtis	Against	Simpson	Against
Dickson	Against	Swaye	Against
Doyle	Against	Symes	Against
Dray	Against	Topp	For
Eber	Against	Warkentin	Against
Feinstein	Against	Wright	Against
Filion	Against		
Gold	Against		
Gotlib	Against		
Gottlieb	For		
Harris	Against		
Heintzman	Against		
Hunter	Against		
Krishna	Against		

Vote: 42 Against, 4 For

It was moved by Mr. Campion, seconded by Ms. Potter that the Report be amended to remove the general license requirement and substitute a requirement of a limited license.

LostROLL-CALL VOTE

Aaron	For	Legge	Against
Alexander	Against	MacKenzie	Against
Backhouse	Against	Manes	Against
Banack	Against	Murray	Against
Bobesich	For	Pattillo	Against
Bourque	Against	Pawlitza	Against
Campion	For	Porter	Against
Carpenter-Gunn	Against	Potter	For
Caskey	Against	Robins	Against
Chahbar	Against	Ruby	Against
Cherniak	Against	St. Lewis	Against
Coffey	Against	Sandler	Against
Copeland	Against	Silverstein	Against
Curtis	Against	Simpson	Against

Dickson	Against	Swaye	Against
Doyle	Against	Symes	Against
Dray	Against	Topp	For
Eber	Against	Warkentin	Against
Feinstein	Against	Wright	Against
Filion	Against		
Finlayson	Against		
Gold	Against		
Gotlib	Against		
Gottlieb	For		
Harris	Against		
Heintzman	Against		
Hunter	Against		
Krishna	Against		

Vote: 41 Against, 6 For

It was moved by Mr. Simpson, seconded by Ms. Warkentin that Convocation approve the regulatory approach and recommendations set out in the Report for submission to the Attorney General.

Carried

#### ROLL-CALL VOTE

Aaron	For	Legge	For
Alexander	For	MacKenzie	For
Backhouse	For	Manes	For
Banack	For	Murray	For
Bobesich	For	Pattillo	For
Bourque	Against	Pawlitza	For
Campion	For	Porter	For
Carpenter-Gunn	For	Potter	Against
Caskey	For	Robins	For
Chahbar	For	Ruby	For
Cherniak	For	St. Lewis	For
Coffey	For	Sandler	For
Copeland	For	Silverstein	For
Curtis	For	Simpson	For
Dickson	For	Swaye	For
Doyle	For	Symes	For
Dray	For	Topp	Against
Eber	For	Warkentin	For
Feinstein	For	Wright	For
Filion	For		
Finlayson	For		
Gold	For		
Gotlib	For		
Gottlieb	Against		
Harris	For		
Heintzman	For		
Hunter	For		
Krishna	For		

Vote: 43 For, 4 Against

On behalf of Convocation the Treasurer expressed thanks to the members of the Task Force, staff and to Mr. Simpson personally for the outstanding work and effort put into this matter.

Convocation took its morning recess and returned in public.

#### CEO'S REPORT

Mr. Heins presented an oral report on an investigation conducted by the Law Society that was reported in a Toronto newspaper on July 16, 2004.

Mr. Heins answered questions from the Bench.

#### REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

Mr. Hunter presented the item in the Report on the new licensing program – blueprints, for information.

#### REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

#### TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

#### IN CONVOCATION ASSEMBLED

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

B.

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#### ADMINISTRATION

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

##### B.1.1. (a) Special Call – Sec. 1 Barristers Act

B.1.2. The following candidate, who is the Minister of Justice and Attorney General of Canada, now applies to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, September 23rd, 2004 in accordance with Section 1 of the Barristers Act:

Irwin Cotler

##### B.1.3. (b) Bar Admission Course AND Transfer from another Province - Sections 4 & 4.1

Attached is a list of candidates who have successfully completed the Bar Admission Course, candidates who have met the requirements in accordance with Section 4, and candidates who have successfully completed the transfer examinations in accordance with Section 4.1. All have filed the necessary documents, paid the required fee, and fulfilled all other admission requirements. They now apply to be Called to the Bar and to be granted a Certificate of Fitness on Thursday, September 23rd, 2004.

ALL OF WHICH is respectfully submitted

DATED this the 23rd day of September, 2004

September 23, 2004 Call to the Bar

As At September 22, 2004 – 3:00 p.m.

Garick Joseph Kéral Chouinard Apollon  
Christopher Michael Arnone  
Tania Astorino  
Sarah Jane Atkinson  
Alfred Avanessy-Monachakanian  
Jacques James Bahimanga  
Shelly Ann Baker  
Sanjoy Cyril Bandyopadhyay  
Elise Cara Bell  
Burhana Iyabo Bello-Ayorinde  
Sheldon Benjamin  
Michel Laurent Bisson  
Julie Lynn Blackhawk  
Victoria Blond  
Catherine Elizabeth Bloodworth  
Catherine Ann Brohman  
Alfred Glen Burchell  
Patrizia Campanella  
Sarah Gray Campbell  
Mario Cariati  
Ryan James Carrier  
Hans Cedro  
Alisa Beth Chaplick  
Ralph Ashram Chatoor  
Shailendra Kumar Chaudhary  
Elena Constantin  
Lisa Dawn Cook  
Irwin Cotler  
Cheryl Lilia Cruz  
Clarissa Olive Da Costa  
Julie Daoust  
Maria De Angelis-Pater  
Etienne Peter de Villiers  
Darren Morgan Delaney  
Robert John Dobrucki  
Lori Ruth Dubin  
Jason Patrick Dutrizac  
Joanna Dagmara Dybel  
Chad Percy Eggerman  
Wendy Elizabeth Ekins  
Ezioma Onyekachi Emejuaiwe  
Catherine Fagnan  
Monique Fayçal  
Daphne Virginia Fedoruk

Raphael Jacob Feldstein  
Robbie Fergus William Flint  
Mark Alan Freeman  
Joshua Daniel Frost  
Marie-Claude France Geoffrion  
Eran Gevantschniter  
Gareth Gordon Gibbins  
Christopher Matthew Giggey  
Ryan Graeme Gillissie  
Marie Rose Melanie Giroux  
Ung Shen Goh  
Aline Goormans  
Scott Andrew Graham  
Dominic Joseph Léandre Grégoire  
Noelle Denise Hamersley  
Sharla Marie Haney  
Alison Yvonne Alma Harding  
Stewart Frederick Hayne  
Pascal Armand Pierre Hippert  
Christopher Mark Hogan  
Marie Thérèse Aline Chantal Homier-Nehmé  
Terrence John Hole  
Alisse Dawn Houweling  
Ryan Blair Hunter  
Mark Lorne Hurley  
Larry Dee Innes  
Shawn Tyler Irving  
Pawel Jakubiak  
Valerie Leigh Jepson  
Jean Auberto Juste  
Haidar Mike Kadri  
Karima Kanani  
Kyong Seon Kang  
Rahul Kumar Kesarwani  
Muhammad Aslam Khan  
Ummni M Khan  
Maria Khazanov  
Jennifer Khurana  
Joanne Sylvie Kohen  
Paola Sylvia Joan Konge  
Michael Kozub  
Julia Katherine Ellen Krestow  
Barbara Kristanic  
Joanna Teresa Kucz  
Chaim Joshua Lang  
Andrew Michael Lannon  
Constance Yvonne Lanteigne  
Jean Katherine Lash  
Robert Ryan Lay  
Steven Lee  
Jasmine Belinda Lew  
Shona Jane Livingstone  
Jennifer Marie Long  
James Edward Ross Lord  
William Reed MacKay  
Audrey Marie Macklin

Sandra Maria MacLeod  
Janet Lynn Frances MacNeil  
Chris Maggiras  
Paul Howard Manning  
Warren Carlos Quan-Leung Mar  
Aaron Michael Mastervick  
Neil James Mc Cartney  
Nigel Joey Mc Cready  
Kirsti Margaret Mc Henry  
Mark Andrew Mendl  
Cornelia Miculschi  
Mohamed Feisal Minhas  
Monica Sally Montanaro  
Angie Louise Morris  
Catherine Anne Murray  
Jill Margaret Nelson  
Patricia Rose Maria Eufemia Nelson  
Ernest Tze-Tsun Ng  
Jim Nikolakakos  
Kehinde Oladayo Olalere  
Taiwo Oladapo Olalere  
Allen Kelsey Orth  
Mark John Page  
Young Shin Pak  
Andreas Papadopoulos  
Anoma Niranjali Charmini Perera  
Karen Lisa Pfuetzner  
Carole Diane Piché  
Paula Jeannette Price  
Yigal Eli David Rifkind  
Arlene Rachel Rimer  
Lorne Michael Rose  
Brandon Cory Rudnikoff  
Lydia Saad  
Sukanta Saha  
Leigh Shira Salsberg  
Katherine Suzanne Sam  
Baljinder Singh Sandhu  
Annelise Marie Saunders  
François Sauvageau  
Steven Andrew Saville  
Ines Danica Scepanovic  
Gosha G S Sekhon  
Ira Shatzmiller  
Joanna Maria Shaw  
Margarita Shulman  
Tara Leigh Shulman  
Mark Siboni  
Marie-Josée Sicard  
Sorelle Ayn Simmons  
Paul Jit Singh  
Christopher Andrew Smart  
Peter Theodore Smilsky  
Holly Anne Smith  
Ronald John Smith  
Marc Howard Spector

Joshua Wylie Spicer  
 Michael Charles Stevenson  
 Constantinos Stratos  
 Paryse Ann Suddith  
 Thushari Namal Suduwelikanda  
 Cristie Madellon Sutherland  
 Melanie Deborah Szwera  
 Christopher John Tanzola  
 Errol Howard Tenenbaum  
 Sophie Anne Thériault  
 Cherline Titus  
 Milan Tomasevic  
 Diana Josephine Tomazin  
 Jennifer Anne Yael Trehearne  
 Ivana Vaccaro  
 Kim Anna Van Nieuwkoop  
 Abhirami Vimalachandran  
 Varunan Vipulanathan  
 Jodie Lynn Waddilove  
 Craig Wallace Walker  
 Paul-Philippe West  
 Timothy Barrie Wilbur  
 Denisha Simone Williams  
 Matthew Randall Wilson  
 Jeremy David Wilton  
 Carole Anne Woit  
 Fadwa Kamal Yehia  
 Jennifer Yoo  
 Eun Chung Yuh  
 Milosz Andrzej Zemanek

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

Carried

#### REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

##### Re: Amendments to By-Law 34 (Professional Corporations)

Ms. Curtis presented the Report of the Professional Regulation Committee.

Professional Regulation Committee  
September 23, 2004

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Report to Convocation

Purposes of Report: Decision and Information

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

#### OVERVIEW OF POLICY ISSUE

## AMENDMENTS TO BY-LAW 34 ON PROFESSIONAL CORPORATIONS<sup>1</sup>

### Request to Convocation

1. Convocation is requested to make housekeeping amendments to By-Law 34 on Professional Corporations resulting from the amendments made to rule 3.02 of the *Rules of Professional Conduct* on law firm names. The motion to amend By-Law 34 appears on page 6.

### Summary of the Issue

2. On May 28, 2004, Convocation approved amendments to rule 3.02 of the *Rules of Professional Conduct* on law firm names. Section 1 of By-Law 34 on Professional Corporations, part of which is based on rule 3.02, describes the permitted forms of the corporate name of a professional corporation. As rule 3.02 has now been amended, the By-Law must be amended to reflect the changes made to rule 3.02.

## THE REPORT

### Terms of Reference/Committee Process

3. The Committee met on September 14, 2004. Committee members in attendance were Carole Curtis (Chair), Mary Louise Dickson and Laurie Pattillo (Vice-Chairs), Anne Marie Doyle, Sy Eber, George Finlayson, Patrick Furlong, Allan Gotlib, Ross Murray and Mark Sandler. Staff attending were Naomi Bussin, Zeynep Onen and Jim Varro.
4. The Committee is reporting on the following matters:

### For Decision

- Amendments to By-Law 34 on Professional Corporations resulting from amendments to rule 3.02 of the *Rules of Professional Conduct* (from the report to June 24, 2004 Convocation)

### For Information

- Professional Regulation Division Quarterly Report (April – June 2004)

## AMENDMENTS TO BY-LAW 34 ON PROFESSIONAL CORPORATIONS

### A. INTRODUCTION

5. On May 28, 2004, Convocation approved amendments to rule 3.02 of the *Rules of Professional Conduct* on law firm names. The amended rule permits Ontario law firms to use descriptive or trade names and the names of lawyers qualified in non-Canadian jurisdictions.
6. Section 1 of By-Law 34 on Professional Corporations describes the permitted form of a professional corporation's corporate name (see Appendix 1 for a copy of By-Law 34). Currently, section 1, which is based in part on rule 3.02 on law firm names, reflects the provisions of rule 3.02 as it was prior to May 28, 2004 (see Appendix 2 for amended rule 3.02).
7. As the By-Law and Rules should be consistent with respect to the relevant firm name provisions, the By-Law requires amendment.

### B. NATURE OF THE AMENDMENTS

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<sup>1</sup> Deferred from June 24, 2004 Convocation



8. The specific amendments to section 1 of By-Law 34 are included in the motion to amend the By-Law on page 6. In addition to a reorganization of the section, the key amendments relating to the amendments to rule 3.02 are as follows:
  - a. The requirement that the name of a professional corporation must include the name of at least one shareholder who will be practising law through the corporation is deleted. Subsection 1(3) now refers to “shareholders or persons” practising law in the professional corporation whose names *may* be included.
  - b. The prohibition on a trade name, commercial name or figure of speech is deleted, and replaced by subsection 1(8) that describes the trade and descriptive names now permitted under rule 3.02.
9. As no new policy issues arise from these proposed amendments, they are effectively “housekeeping” amendments, which Convocation is requested to approve.

# THE LAW SOCIETY OF UPPER CANADA

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

### BY-LAW 34 [PROFESSIONAL CORPORATIONS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 23, 2004

MOVED BY

SECONDED BY

THAT By-Law 34 [Professional Corporations], made by Convocation on May 24, 2001 and amended by Convocation on September 28, 2001, be further amended as follows:

1. Subsection 1 of By-Law 34 [Professional Corporations] is deleted and the following substituted:

Prohibition: general

1. (1) The name of a professional corporation shall not include any language that is not expressly permitted or required under this By-Law or under the provisions of the *Business Corporations Act*, or any regulations made thereunder, that apply to professional corporations.

Prohibition: identical or similar name

- (2) A professional corporation shall not use a name,
  - (a) that is used by another professional corporation; or
  - (b) that so nearly resembles the name used by another professional corporation that is likely to confuse or mislead the public.

Names of shareholders or persons

- (3) Subject to subsection (4), the name of a professional corporation may include the name of any person who practises law through the corporation or any shareholder.

Prohibition: shareholder or person holding office as member of tribunal

- (4) The name of a professional corporation shall not include the name of any of the following persons who hold office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law:

1. Any person who, prior to taking office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law, practised law through the corporation.

2. Any shareholder.

Deceased shareholder or person

(5) A professional corporation may retain in its name the name of a deceased person who practised law through the corporation or a deceased shareholder.

Use of honorific "Q.C."

(6) If a professional corporation has one shareholder, the one shareholder practises law through the corporation and the name of the corporation is the name of the one shareholder, the corporation may include in its name the honorific "Q.C." properly attributable to the one shareholder of the corporation.

Use of certain phrases

(7) Provided that three or more persons practise law through the professional corporation, a corporation may include in its name phrases such as "and associates" and "and company".

Use of trade name, etc.

(8) The name of a professional corporation may include a descriptive or trade name that is in keeping with the dignity, integrity, independence and role of the legal profession in a free and democratic society and in the administration of justice.

Use of past firm name

(9) Despite any other provision in this section, a professional corporation that is established by two or more members who, before the day the corporation is established, practised law as a partnership may use as its name the name of the partnership.

Interpretation: name of shareholder or person

(10) For the purposes of this section, the name of a person who practises law through the corporation or a shareholder means the person's or shareholder's surname and, at the person's or shareholder's option, his or her given names or initials.

Interdiction : dispositions générales

1. (1) La dénomination sociale d'une société professionnelle ne doit pas comprendre un libellé qui n'est pas expressément autorisé ou exigé par le présent règlement administratif ou par les dispositions de la Loi sur les sociétés commerciales ou par les règlements pris en application de celle-ci qui s'appliquent aux sociétés professionnelles.

Interdiction : dénomination sociale identique ou semblable

(2) Une société professionnelle ne doit pas utiliser une dénomination sociale qui, selon le cas :

a) est utilisée par une autre société professionnelle;

b) ressemble tellement à la dénomination sociale utilisée par une autre société professionnelle qu'elle risque de dérouter ou de tromper le public.

Nom des actionnaires ou de personnes

(3) Sous réserve du paragraphe (4), la dénomination sociale d'une société professionnelle peut comprendre le nom de toute personne qui exerce le droit par l'intermédiaire de la société professionnelle ou le nom de n'importe lequel ou laquelle des actionnaires.

Interdiction : actionnaire ou personne qui occupe la charge de membre d'un tribunal administratif

(4) La dénomination sociale d'une société professionnelle ne doit pas comprendre le nom de n'importe laquelle des personnes suivantes qui occupent la charge de membre d'un tribunal administratif ou toute

autre charge incompatible avec l'exercice du droit

1. toute personne qui, avant d'occuper la charge de membre d'un tribunal administratif ou toute autre charge incompatible avec l'exercice du droit, a exercé le droit par l'intermédiaire de la société professionnelle.
2. tout actionnaire.

Actionnaire défunt ou personne décédée

- (5) La société professionnelle peut conserver dans sa dénomination sociale le nom d'une personne décédée qui exerçait le droit par l'intermédiaire de la société professionnelle ou le nom d'un ou d'une actionnaire défunt.

Utilisation du titre honorifique « c.r. »

- (6) Si une société professionnelle a un seul ou une seule actionnaire, si celui-ci ou celle-ci exerce le droit par l'intermédiaire de la société professionnelle et si son nom est le même que celui de la société, la société peut inclure, dans sa dénomination sociale, le titre honorifique « c.r. » dont est dûment titulaire cette personne.

Utilisation de certaines expressions

- (7) Pourvu qu'au moins trois personnes exercent le droit par l'intermédiaire de la société professionnelle, la dénomination sociale de celle-ci peut comprendre des expressions telles que « et associés » ou « et compagnie ».

Utilisation d'un nom commercial, etc.

- (8) La dénomination sociale d'une société professionnelle peut comprendre un nom descriptif ou commercial qui respecte la dignité, l'intégrité, l'indépendance et le rôle de la profession juridique dans une société libre et démocratique et l'administration de la justice.

Utilisation de l'ancienne raison sociale

- (9) Malgré toute autre disposition du présent article, la société professionnelle qui est établie par au moins deux membres qui, avant la date de constitution de la société, exerçaient le droit dans le cadre d'une société en nom collectif peut utiliser la raison sociale de celle-ci comme dénomination sociale.

Interprétation : nom d'un actionnaire ou d'une personne

- (10) Pour l'application du présent article, le nom d'une personne qui exerce le droit par l'intermédiaire d'une société professionnelle ou le nom d'un ou d'une actionnaire s'entend du nom de cette personne ou actionnaire et, au choix de la personne ou de l'actionnaire, de son prénom ou de ses initiales.

## INFORMATION

### REPORT FROM THE PROFESSIONAL REGULATION DIVISION

10. The Professional Regulation Division's Quarterly Report, provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period April to June 2004.

## APPENDIX 1

### BY-LAW 34

Made: May 24, 2001

Amended: September 28, 2001

### PROFESSIONAL CORPORATIONS

## CORPORATE NAME

## Names of shareholders

1. (1) Subject to subsection (6), the name of a professional corporation may include the name of any shareholder, but it shall include the name of at least one shareholder who will be practising law through the corporation.

## Deceased shareholder

(2) A professional corporation may retain in its name the name of a deceased shareholder.

## Use of certain phrases

(3) Provided that three or more individuals practise law through the professional corporation, a professional corporation may include in its name phrases such as "and associates" and "and company".

## Use of honorific "Q.C."

(4) A professional corporation having one shareholder may include in its name the honorific "Q.C." properly attributable to the one shareholder of the corporation.

Prohibition: trade name, *etc.*

(5) The name of a professional corporation shall not include a trade name, commercial name or figure of speech.

## Prohibition: shareholder

(6) The name of a professional corporation shall not include the name of a shareholder who holds office as a member of a tribunal or who holds any other office the duties of which are incompatible with the practice of law.

## Prohibition: general

(7) The name of a professional corporation shall not include any language that is not expressly permitted under this By-Law or under the provisions of the *Business Corporations Act*, or any regulations made thereunder, that apply to professional corporations.

## Prohibition: identical or similar name

(8) A professional corporation shall not use a name,

(a) that is used by another professional corporation; or

(b) that so nearly resembles the name used by another professional corporation that it is likely to confuse or mislead the public.

## Use of past firm name

(9) Despite any other provision in this section, a professional corporation that is established by two or more members who, before the day the corporation is established, practised law as a partnership may use as its name the name of the partnership.

## Interpretation: name of shareholder

(10) For the purposes of this section, the name of a shareholder means the shareholder's surname and, at the shareholder's option, his or her given names or initials.

## Corporate name certificate

2. (1) A member may apply in writing to the Society for a certificate that the Society does not object to the establishment of a professional corporation under a proposed name.

## Decision of Society official

(2) A Society official shall consider every application made under subsection (1) and shall,

- (a) if the official is satisfied that the proposed name complies with section 1, issue a certificate to the member; or
- (b) if the official is not satisfied that the proposed name complies with section 1, reject the application.

Notice to member and application for review

(3) If a Society official rejects an application made under subsection (1), the official shall so notify the member and the member may apply to the committee of benchers appointed under section 11 for a review

CERTIFICATE OF AUTHORIZATION

Application for certificate

3. (1) A corporation that wishes to practise law shall apply to the Society for a certificate of authorization.

Same

- (2) An application under subsection (1) shall include,
  - (a) a completed application form provided by the Society;
  - (b) a copy of,
    - (i) the corporation's articles of incorporation and the certificate of incorporation, the corporation's articles of amalgamation and the certificate of amalgamation or the corporation's articles of continuance and the certificate of continuance, as the case may be, and
    - (ii) the corporation's articles of amendment, if any, and the certificate of amendment; and
  - (c) an application fee in an amount determined by Convocation from time to time.

Consideration by Society official

4. (1) A Society official shall consider every application under subsection 3 (1) made in accordance with subsection 3 (2).

Issuance of certificate

- (2) A Society official shall issue a certificate of authorization to a corporation if the official is satisfied that,
  - (a) the corporation is a subsisting corporation under the *Business Corporations Act* and meets the conditions for professional corporations specified in that Act and in any regulations made under that Act;
  - (b) the name of the corporation complies with section 1 of this By-Law;
  - (c) the directors of the corporation are members whose rights and privileges are not suspended; and
  - (d) the individuals who will practise law through the corporation are members who are entitled to engage in the private practice of law in Ontario, student members who are not the subject of an order made under section 35 or section 40 or other persons who are authorized to practise law under the *Law Society Act* and the by-laws made thereunder.

Refusal to issue certificate

(3) If a Society official is not satisfied that a requirement set out in subsection (2) has been met, the official shall notify the corporation and the corporation may meet the requirement or appeal to the committee of benchers appointed under section 11 if it believes that the requirement has been met.

Same

(4) Despite subsection (2), a Society official may refuse to issue a certificate of authorization to a corporation where,

- (a) the corporation has had a certificate of authorization revoked; or
- (b) a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(5) If a Society official refuses to issue a certificate of authorization to a corporation under clause (4) (a), the official shall so notify the corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 11.

Same

(6) If a Society official refuses to issue a certificate of authorization to a corporation under clause (4) (b), the official shall so notify the corporation and the corporation may appropriately re-appoint its directors and officers and alter its shareholders or appeal the refusal to the committee of benchers appointed under section 11.

Duration of certificate

(7) Subject to its being revoked, a certificate of authorization issued under this section is valid from the date of issue, as indicated on the certificate, until December 31 of the year in which it is issued.

Renewal

5. (1) A professional corporation may apply to the Society for a renewal of the corporation's certificate of authorization.

Application

- (2) An application under subsection (1) shall include,
  - (a) a completed application form provided by the Society; and
  - (b) a renewal fee in an amount determined by Convocation from time to time.

Consideration by Society official

(3) A Society official shall consider every application under subsection (1) made in accordance with subsection (2) and shall,

- (a) if the official is satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), renew the corporation's certificate of authorization; or
- (b) if the official is not satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), refuse to renew the corporation's certificate of authorization.

Refusal to renew

- (5) Despite clause (3) (a), a Society official may refuse to renew the certificate of authorization of a professional corporation where a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(6) If a Society official refuses to renew a certificate of authorization, the official shall so notify the professional corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 11.

Duration of renewal

(7) Subject to its being revoked, a certificate of authorization that has been renewed under this section is valid until December 31 of the year for which it is renewed.

Expiry of certificate

(8) A professional corporation shall not practise law if its certificate of authorization has expired.

Time for applying for renewal

(9) A professional corporation that wishes to renew its certificate of authorization without any disruption in its entitlement to practise law pending the renewal shall apply for the renewal not later than 90 days before the day on which its certificate expires.

Revocation of certificate

(10) If for any reason the certificate of authorization of a professional corporation is not renewed within 12 months after its expiry, the certificate of authorization is automatically revoked.

Renewal of revoked permit

(11) A professional corporation may not apply for a renewal of a certificate of authorization that has been revoked, but the corporation may apply for a new certificate of authorization.

Erroneous or incomplete certificate of authorization

6. (1) If a Society official receives information that a certificate of authorization held by a professional corporation contains an error or is incomplete, the official may, by so notifying the corporation in writing, require the corporation by the date specified in the notice to return its certificate of authorization to the Society for correction, completion or replacement.

Replacement certificate

(2) If the Society replaces an erroneous or incomplete certificate of authorization with a new certificate of authorization, the new certificate of authorization shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

No interruption in holding of certificate

(3) The return of a certificate of authorization under this section shall not constitute an interruption in the holding of the certificate by the professional corporation.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Correction, *etc.* following report of change

(5) If the replacement of a certificate of authorization under this section is necessitated as a result of a change reported by the professional corporation under section 10, the professional corporation shall pay to the Society a fee for the replacement certificate in an amount determined by Convocation from time to time.

Loss or destruction of certificate

7. (1) If the certificate of authorization of a professional corporation is lost or destroyed, the corporation may apply to the Society in writing for a replacement certificate.

Society official may issue replacement certificate

(2) Upon payment of a fee in an amount determined by Convocation from time to time, a Society official may issue a replacement certificate of authorization to the professional corporation.

#### Replacement certificate

(3) A replacement certificate of authorization issued under this section shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

#### Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

#### Form 34A

8. A certificate of authorization issued under this By-Law shall be in Form 34A.

#### Surrender of certificate

9. (1) A professional corporation shall apply to the Society for permission to surrender its certificate of authorization,

- (a) when the corporation does not wish to renew the certificate or when the corporation no longer wishes to practise law; and
- (b) prior to a voluntary winding up or voluntary dissolution of the corporation.

#### Same

(2) An application under subsection (1) shall be in writing and shall be accompanied by a statutory declaration signed by the directors of the professional corporation setting forth,

- (a) the name of the professional corporation, the corporation's Ontario Corporation Number, the address of the corporation's registered office, the address of the corporation's business office, the number of the corporation's certificate of authorization and the date of issue of the corporation's certificate of authorization;
- (b) the reasons for the application;
- (c) a declaration that all money or property held in trust for which the professional corporation was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the corporation has not been responsible for any money or property held in trust;
- (d) a declaration that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister or solicitor, or, alternatively, that the professional corporation has not engaged in the practice of law;
- (e) a declaration that the directors of the professional corporation are not aware of any claim against the corporation in its professional capacity or in respect of its practice; and
- (f) such additional information or explanation as may be relevant by way of amplification of the foregoing.

#### Same

(3) An accountant's certificate to the effect that all money and property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto shall be attached, and marked as an exhibit, to the statutory declaration required under subsection (2).

#### Publication of notice of intention to surrender certificate

(4) Subject to subsection (5), a professional corporation that wishes to surrender its certificate of authorization shall, at least thirty days before the day on which it applies to the Society under subsection (1), publish in the Ontario Reports a notice of intention to surrender a certificate of authorization.



Exemption from requirement to publish notice

(5) Upon the written application of the professional corporation, a Society official may exempt the corporation from the requirement to publish a notice of intention to surrender a certificate of authorization.

Notice of intention to surrender certificate

(6) The notice of intention to surrender a certificate of authorization which a professional corporation is required to publish under subsection (4) shall be in Form 34B [Notice of Intention to Surrender Certificate of Authorization].

Proof of publication of notice of intention to surrender certificate

(7) Unless a professional corporation is exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, an application under subsection (1) shall be accompanied by proof of publication in accordance with subsection (4) of a notice of intention to surrender a certificate of authorization.

Society official to consider application

(8) Subject to subsection (9), a Society official shall consider every application made under subsection (1) in respect of which the requirements set out in subsections (2), (3) and (7) have been complied with, and a Society official may consider an application made under subsection (1) in respect of which the requirements set out in subsection (2), (3) and (7) have not been complied with, and,

- (a) the official shall accept an application if he or she is satisfied,
  - (i) that all money or property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the corporation has not been responsible for any money or property held in trust,
  - (ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister or solicitor, or, alternatively, that the professional corporation has not engaged in the practice of law,
  - (iii) that there are no claims against the professional corporation in its professional capacity or in respect of its practice,
  - (iv) that the professional corporation is no longer the subject of or has fully complied with all terms and conditions of an order made under Part II of the Act, and
  - (v) that the professional corporation, if not exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, has complied with subsection (4); or
- (b) subject to subsection (9), the official shall reject an application if he or she is not satisfied of a matter mentioned in clause (a).

Acceptance of application

(9) A Society official may accept an application if he or she is not satisfied of the matter mentioned in subclause (8) (a) (iv) but is satisfied of the matters mentioned in subclauses (8) (a) (i), (ii), (iii) and (v).

Society official not to consider application

(10) A Society official shall not consider an application made under subsection (1) if the professional corporation or any individual practising law through the corporation is,

- (a) the subject of an audit, investigation, search or seizure by the Society; or

- (b) a party to a proceeding under Part II of the Act.

#### Documents, explanations

(11) For the purposes of assisting a Society official to consider its application, the professional corporation shall provide to the official such documents and explanations as the official may require.

#### Rejection of application

(12) If a Society official rejects its application, the official may specify terms and conditions to be complied with by the professional corporation as a condition of its application being accepted, and if the corporation complies with the terms and conditions to the satisfaction of the official, the official shall accept the application.

### CHANGE OF INFORMATION

#### Change of information

10. (1) A professional corporation shall notify the Society in writing immediately after,
- (a) any change in the information provided as part of the corporation's application for a certificate of authorization or for a renewal of a certificate of authorization; and
  - (b) any change in the corporation's articles of incorporation.

#### Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in the professional corporation's articles of incorporation, shall include the corporation's articles of amendment and the certificate of amendment.

### COMMITTEE OF BENCHERS: REVIEWS AND APPEALS

#### Committee of benchers

11. (1) Convocation shall appoint a committee of at least three benchers to consider applications for review and appeals made under this By-Law.

#### Term of office

- (2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

#### Consideration of review or appeal: quorum

(3) Three benchers who are members of the committee appointed under subsection (1) constitute a quorum for the purposes of considering an application for a review or an appeal made under this By-Law.

#### Time for making application for review

12. (1) An application for a review under subsection 2 (3) shall be commenced by the member notifying a Society official in writing of the application within thirty days after the day the official notifies the member that his or her application for a certificate has been rejected.

#### Time for appeal: appeals under subss 4 (3), (5) and (6)

(2) Subject to subsection (4), an appeal under subsection 4 (3), (5) or (6) shall be commenced by the professional corporation notifying a Society official in writing of the appeal within thirty days after,

- (a) the day the official notifies the corporation under subsection 4 (3) that a requirement has not been met; or
- (b) the day the official notifies the corporation under subsection 4 (5) or (6) that he or she is refusing to issue a certificate of authorization.

#### Time for appeal: appeal under subs. 5 (6)

(3) Subject to subsection (4), an appeal under subsection 5 (6) shall be commenced by the professional corporation notifying a Society official in writing of the appeal within thirty days after the day the official notifies the corporation that he or she is refusing to renew the corporation's certificate of authorization.

Extension of time for commencing appeal

(4) Upon the written request of the professional corporation, made no later than the last day for commencing an appeal as specified in subsection (2) or (3), a Society official may extend the time for commencing the appeal.

When notice given

(5) For the purposes of this section, a Society official will be deemed to have notified a person of a rejection or refusal,

- (a) in the case of oral notification, on the day that the official notified the person; and
- (b) in the case of written notification,
  - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
  - (ii) if it was faxed, on the first day after it was faxed.

Procedure: review and appeal

13. (1) Subject to subsection (2), the procedure applicable to the consideration by the committee of benchers appointed under section 11 of an application for a review under subsection 2 (3) or of an appeal under subsection 4 (3), 4 (5), 4 (6) or 5 (6) shall be determined by the committee and, without limiting the generality of the foregoing, the committee may decide who may make submissions to it, when and in what manner.

Same

(2) Unless the committee of benchers appointed under section 11 permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Powers on review

14. (1) After considering an application for a review under subsection 2 (3), the committee of benchers appointed under section 11 shall,

- (a) if it is satisfied that the proposed name complies with section 1, direct a Society official to issue a certificate to the member; or
- (b) if it is not satisfied that the proposed name complies with section 1, reject the application.

Powers on appeal: appeal under subs. 4 (3)

(2) After considering an appeal made under subsection 4 (3), the committee of benchers appointed under section 11 shall,

- (a) if it determines that the requirement has been met, direct a Society official to issue a certificate of authorization to the corporation; or
- (b) if it determines that the requirement has not been met, notify the corporation that the requirement has not been met and that the Society shall not issue a certificate of authorization to the corporation.

Powers on appeal: appeal under subs 4 (5), (6)

(3) After considering an appeal made under subsection 4 (5) or (6), the committee of benchers appointed under section 11 shall make such decision as it considers proper in the circumstances.

Powers on appeal: appeal under subs. 5 (6)

(4) After considering an appeal made under subsection 5 (6), the committee of benchers appointed under section 11 shall,

- (a) direct a Society official to renew the professional corporation's certificate of authorization if it is satisfied that,
  - (i) the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), and
  - (ii) despite the fact that the situation mentioned in subsection (5) is present, it is appropriate to renew the corporation's certificate of authorization; or
- (d) refuse to renew the professional corporation's certificate of authorization if,
  - (i) it is not satisfied that the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2); or
  - (ii) it determines that it is inappropriate to renew the corporation's certificate of authorization because the situation mentioned in subsection (5) is present.

Decisions final

- (5) The decisions of the committee of benchers appointed under section 11 are final.

## GENERAL

Register

15. The following information shall be contained in the register of professional corporations required under section 61.0.2 of the Act:

- 1. The name of the professional corporation.
- 2. The address of the professional corporation's registered office.
- 3. The business address of the professional corporation, if different from the address of its registered office.
- 4. The number of the certificate of authorization issued to the professional corporation.
- 5. The date on which the certificate of authorization was issued to the professional corporation.
- 6. The terms, conditions, limitations or restrictions that apply to the professional corporation's certificate of authorization.
- 7. The date on which the professional corporation's certificate of authorization was suspended, made subject to a term, condition, limitation or restriction, revoked or surrendered.

Application of by-laws

16. (1) The following by-laws, with necessary modifications, apply to a professional corporation:

- 1. By-Law 17 [Filing Requirements].
- 2. By-Law 18 [Record Keeping Requirements].
- 3. By-Law 19 [Handling of Money and Other Property].

4. By-Law 25 [Multi-Discipline Practices].
5. By-Law 29 [Payment of Costs].
6. By-Law 35 [Bankruptcy of Member].

#### No voluntary winding up or dissolution

17. The shareholders of a professional corporation shall not require the corporation to be wound up voluntarily and shall not authorize the voluntary dissolution of the corporation until the corporation has received permission under section 9 to surrender its certificate of authorization.

#### Interpretation: "Society official"

18. In this By-Law, a "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

#### Delegation of powers and duties of Secretary: Director, Client Service Centre

19. An officer or employee of the Society who holds the office of Director, Client Service Centre may exercise the powers and perform the duties of the Secretary under subsection 61.0.2 (1) and section 61.0.3 of the Act.

## APPENDIX 2

### LAW SOCIETY OF UPPER CANADA *RULES OF PROFESSIONAL CONDUCT*

#### 3.02 LAW FIRM NAME

##### Permissible Names

- 3.02 (1) A law firm name shall not include any name that is not
- (a) a name of a current, a retired from practice, or a deceased member of the firm who is or was qualified to practice law
    - (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or
    - (ii) in a jurisdiction outside of Canada where the law firm carries on its practice, or
  - (b) a descriptive or trade name that is in keeping with the dignity, integrity, independence, and role of the legal profession in a free and democratic society and in the administration of justice.
- (2) A 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

- (3) A law firm name shall not include a descriptive or trade name that is misleading about
  - (a) the identities, responsibilities, or relationships of the lawyers practicing under the firm name, or
  - (b) the association or relationship of the law firm with other lawyers or non-lawyers.
- (4) The name of a law firm shall not include the use of phrases such as "John Doe and Associates," "John Doe and Company," or "John Doe and Partners" unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm.
- (5) When a lawyer retires from a law firm to take up an appointment as a judge or master or to fill any office incompatible with the practice of law, the lawyer's name shall not be included in the firm name.
- (6) A lawyer or law firm may not acquire and use a firm name unless the name was acquired along with the practice of a deceased or retiring member who conducted a practice under the name.

#### Limited Liability Partnership

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

#### Professional Corporation

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

.....

Attached to the original Report in Convocation file, copy of the Professional Regulation Division Quarterly Report (April - June 2004).

(pages 11 - 52)

It was moved by Ms. Curtis, seconded by Mr. Pattillo that By-Law 34 be amended as follows:

That By-Law 34 [Professional Corporations], made by Convocation on May 24, 2001 and amended by Convocation on September 28, 2001, be further amended as follows:

1. Subsection 1 of By-Law 34 [Professional Corporations] is deleted and the following substituted:

#### Prohibition: general

1. (1) The name of a professional corporation shall not include any language that is not expressly permitted or required under this By-Law or under the provisions of the Business Corporations Act, or any regulations made thereunder, that apply to professional corporations.

#### Prohibition: identical or similar name

(2) A professional corporation shall not use a name,

(a) that is used by another professional corporation; or

(b) that so nearly resembles the name used by another professional corporation that is likely to confuse or mislead the public.

#### Names of shareholders or persons

(3) Subject to subsection (4), the name of a professional corporation may include the name of any person who practises law through the corporation or any shareholder.

#### Prohibition: shareholder or person holding office as member of tribunal

(4) The name of a professional corporation shall not include the name of any of the following persons who hold office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law:

1. Any person who, prior to taking office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law, practised law through the corporation.

2. Any shareholder.

#### Deceased shareholder or person

(5) A professional corporation may retain in its name the name of a deceased person who practised law through the corporation or a deceased shareholder.

#### Use of honorific “Q.C.”

(6) If a professional corporation has one shareholder, the one shareholder practises law through the corporation and the name of the corporation is the name of the one shareholder, the corporation may include in its name the honorific “Q.C.” properly attributable to the one shareholder of the corporation.

Use of certain phrases

(7) Provided that three or more persons practise law through the professional corporation, a corporation may include in its name phrases such as “and associates” and “and company”.

Use of trade name, etc.

(8) The name of a professional corporation may include a descriptive or trade name that is in keeping with the dignity, integrity, independence and role of the legal profession in a free and democratic society and in the administration of justice.

Use of past firm name

(9) Despite any other provision in this section, a professional corporation that is established by two or more members who, before the day the corporation is established, practised law as a partnership may use as its name the name of the partnership.

Interpretation: name of shareholder or person

(10) For the purposes of this section, the name of a person who practises law through the corporation or a shareholder means the person’s or shareholder’s surname and, at the person’s or shareholder’s option, his or her given names or initials.

Interdiction : dispositions générales

1. (1) La dénomination sociale d’une société professionnelle ne doit pas comprendre un libellé qui n’est pas expressément autorisé ou exigé par le présent règlement administratif ou par les dispositions de la Loi sur les sociétés commerciales ou par les règlements pris en application de celle-ci qui s’appliquent aux sociétés professionnelles.

Interdiction: dénomination sociale identique ou semblable

(2) Une société professionnelle ne doit pas utiliser une dénomination sociale qui, selon le cas :

- a) est utilisée par une autre société professionnelle;
- b) ressemble tellement à la dénomination sociale utilisée par une autre société professionnelle qu’elle risque de dérouter ou de tromper le public.

Nom des actionnaires ou de personnes

(3) Sous réserve du paragraphe (4), la dénomination sociale d’une société professionnelle peut comprendre le nom de toute personne qui exerce le droit par l’intermédiaire de la société professionnelle ou le nom de n’importe lequel ou laquelle des actionnaires.

Interdiction: actionnaire ou personne qui occupe la charge de membre d’un tribunal administratif

(4) La dénomination sociale d’une société professionnelle ne doit pas comprendre le nom de n’importe laquelle des personnes suivantes qui occupent la charge de membre d’un tribunal administratif ou toute autre charge incompatible avec l’exercice du droit

1. toute personne qui, avant d’occuper la charge de membre d’un tribunal administratif ou toute autre charge incompatible avec l’exercice du droit, a exercé le droit par l’intermédiaire de la société professionnelle.

2. tout actionnaire.

Actionnaire défunt ou personne décédée

(5) La société professionnelle peut conserver dans sa dénomination sociale le nom d'une personne décédée qui exerçait le droit par l'intermédiaire de la société professionnelle ou le nom d'un ou d'une actionnaire défunt.

Utilisation du titre honorifique « c.r. »

(6) Si une société professionnelle a un seul ou une seule actionnaire, si celui-ci ou celle-ci exerce le droit par l'intermédiaire de la société professionnelle et si son nom est le même que celui de la société, la société peut inclure, dans sa dénomination sociale, le titre honorifique « c.r. » dont est dûment titulaire cette personne.

Utilisation de certaines expressions

(7) Pourvu qu'au moins trois personnes exercent le droit par l'intermédiaire de la société professionnelle, la dénomination sociale de celle-ci peut comprendre des expressions telles que « et associés » ou « et compagnie ».

Utilisation d'un nom commercial, etc.

(8) La dénomination sociale d'une société professionnelle peut comprendre un nom descriptif ou commercial qui respecte la dignité, l'intégrité, l'indépendance et le rôle de la profession juridique dans une société libre et démocratique et l'administration de la justice.

Utilisation de l'ancienne raison sociale

(9) Malgré toute autre disposition du présent article, la société professionnelle qui est établie par au moins deux membres qui, avant la date de constitution de la société, exerçaient le droit dans le cadre d'une société en nom collectif peut utiliser la raison sociale de celle-ci comme dénomination sociale.

Interprétation : nom d'un actionnaire ou d'une personne

(10) Pour l'application du présent article, le nom d'une personne qui exerce le droit par l'intermédiaire d'une société professionnelle ou le nom d'un ou d'une actionnaire s'entend du nom de cette personne ou actionnaire et, au choix de la personne ou de l'actionnaire, de son prénom ou de ses initiales.

Carried

#### *ITEM FOR INFORMATION*

Quarterly Report from the Professional Regulation Division

#### REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Ruby presented the Quarterly Financial Statements, contained in the Finance & Audit Committee Report for information.

Finance and Audit Committee  
September 14, 2004

Report to Convocation

Purpose of Report:      Decision  
                                    Information

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

THE REPORT



1. The Finance and Audit Committee (“the Committee”) met on September 14, 2004. Committee members in attendance were: Clay Ruby (c), Abdul Chahbar (v.c.), Peter Bourque, Andrew Coffey, Paul Dray, Allan Gotlib, Holly Harris, Laurie Pawlitza, Gerry Swaye, Beth Symes and Bradley Wright.

Staff attending were Malcolm Heins, Wendy Tysall, Terry Knott, Fred Grady, and Andrew Cawse. Michelle Strom and Young Kim from LawPro also attended.

2. The Committee is reporting on the following matters:

For Decision

- J.S DENISON FUND (IN CAMERA)

For Information

- INTERIM FINANCIAL STATEMENTS
- INVESTMENT COMPLIANCE REPORTS
- NORTH WING RENOVATION

#### FOR INFORMATION:

#### INTERIM FINANCIAL STATEMENTS

7. The Committee received the Report of the Audit Sub-Committee which examined the following financial statements and found them to be satisfactory.

- The financial statements of the General Fund for the six months ended June 30, 2004 (page 7).
- The financial statements of the Lawyers Fund for Client Compensation for the six months ended June 30, 2004 (page 11).
- The financial statements of LibraryCo Inc for the three months ended March 31, 2004 (page 13).
- The financial statements of the Combined Errors & Omissions Fund and LawPro financial statements for the six months ended June 30, 2004 (page 23).

The Committee accepted the Report of the Audit Sub-Committee. The Committee will raise with LibraryCo Inc. the importance of producing up to date financial statements in a timely way so that the Audit Sub-Committee can fulfil its obligations.

#### FOR INFORMATION:

#### INVESTMENT COMPLIANCE REPORTS

8. The compliance reports for the following investment portfolios were also included in the Report from the Audit Sub-Committee:

- General Fund Short - Term Investments (page 15)
- General Fund Long - Term Investments (page 16)
- Lawyers Fund for Client Compensation Short - Term Investments (page 19)
- Lawyers Fund for Client Compensation Long - Term Investments (page 20).

#### FOR INFORMATION:

#### NORTH WING RENOVATION

9. The Committee was provided with an update of significant recent developments on the North Wing renovation which are:

- Schematic layouts have been developed including the redesign of the Lamont Lecture Hall
- Plans for the dormer windows and elevators have been approved by the City of Toronto Preservation Services
- Prequalification and submission processes have been completed. Six contractors were selected to provide bids and the evaluation of those bids is continuing
- The contract is expected to be awarded in the week of September 20th.
- Construction is scheduled to begin at the end of September, coinciding with the completion of the in-class portion of the BAC as scheduled. There is no indication that the budget approved by Convocation in January 2004 requires amendment.

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

- (1) Copy of the financial statements of the General Fund for the six months ended June 30, 2004.  
(pages 7 - 10)
- (2) Copy of the financial statements of the Lawyers Fund for Client Compensation for the six months ended June 30, 2004.  
(pages 11 - 12)
- (3) Copy of the financial statements of LibraryCo Inc for the three months ended March 31, 2004.  
(pages 13 - 14)
- (4) Copy of the financial statements of the Combined Errors & Omissions Fund and LAWPRO financial statements for the six months ended June 30, 2004.  
(pages 23 - 35)
- (5) Copy the compliance report re: General Fund Short - Term Investments.  
(page 15)
- (6) Copy of the compliance report re: General Fund Long - Term Investments.  
(page 16)
- (7) Copy of the compliance report re: Lawyers Fund for Client Compensation Short - Term Investments.  
(page 19)
- (8) Copy of the compliance report re: Lawyers Fund for Client Compensation long - Term Investments.  
(page 20)

#### REPORT OF THE HERITAGE COMMITTEE

##### Re: Proposal for a Sole and Small Firm Practitioners' History Project

Ms. Backhouse presented the Report of the Heritage Committee.

Heritage Committee  
September 23, 2004

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## Report to Convocation

Purpose of Report:        Decision  
                                 Information

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

### OVERVIEW OF POLICY ISSUE

#### PROPOSAL FOR SOLE AND SMALL FIRM PRACTITIONERS' HISTORY PROJECT

#### Request to Convocation

1. That Convocation approves funding in the amount of approximately \$33,548.32 to allow the Heritage Committee to conduct a sole and small firm practitioner history project with recently retired, or soon to be retiring lawyers.

#### Summary of the Issue

2. In September 2003, Convocation approved a proposal for a heritage pilot project to conduct in-depth interviews with senior former treasurers and to collect documentary and photographic materials, as well as video footage, where possible. During the discussion at Convocation a number of benchers requested that the Committee consider expanding the project to include similar historical research on sole practitioners and small firm practitioners, particularly those in smaller communities.
3. The Heritage Committee proposes that the next stage of its Heritage Pilot Project focus on lawyers in sole or small firm practice,
  - a. who are approaching retirement, or who have already retired;
  - b. who have practised in diverse communities throughout the province; and
  - c. who have expressed an interest in writing their memoirs and participating in roundtable discussions about documenting the history of their careers.
4. The project would consist of four stages:
  - a. Background research
  - b. Program development meeting in Toronto
  - c. Roundtable discussions in eight regions
  - d. Follow-up
5. Through the project sole and small firm practitioners would be encouraged to write their memoirs, which could then be housed in the Law Society's archives.
6. Details of the project and its proposed budget are set out in the report.

### THE REPORT

#### Terms Of Reference/Committee Process

7. The Committee met on September 8, 2004. Committee members in attendance were Constance Backhouse (Chair), Andrea Alexander, and Allan Lawrence. Patrick Furlong provided input on the policy item for recommendation to Convocation. Staff members Elise Brunet and Sophia Sperdakos also attended.
8. The Committee is reporting on the following matters:
  - Policy – For Decision
  - Proposal for Sole and Small Firm Practitioners’ History Project
  - Information
  - Report on the Treasurers’ Interview Project
  - The Commemoration of the 200th anniversary of the sinking of the HMS Speedy

#### PROPOSAL FOR SOLE AND SMALL FIRM PRACTITIONERS’ HISTORY PROJECT

##### Background

9. In September 2003, Convocation approved a proposal for a heritage pilot project to conduct in-depth interviews with senior former treasurers and to collect documentary and photographic materials, as well as video footage, where possible. Three senior treasurers have been involved in the successful project, which is now complete: the Hon. John D. Arnup Q.C., LSM, Brendan O’Brien, Q.C., and Laura L. Legge, Q.C. The Hon. George D. Finlayson, Q.C. was unable to participate due to time commitments.
10. During the discussion at Convocation a number of benchers requested that the Committee consider expanding the project to include similar historical research on sole and small firm practitioners, particularly those in smaller communities.
11. Sole practitioners and small firm lawyers have long been numerically the backbone of the legal profession, and many would argue, the foundation from which the majority of legal services are dispensed. The Sole Practitioner and Small Firm Task Force has been working for the past year to explore the challenges that are facing this branch of the profession. Its research has indicated that in smaller communities many sole practitioners are now close to retirement. In some cases, they are not being replaced by a new generation of young lawyers. It appears that in some areas, the practices of sole and small firm practitioners and their unique roles in their communities are changing irrevocably.
12. The Sole Practitioner and Small Firm Task Force is attempting to determine what barriers exist for these members of the profession and how the Law Society might support their work. The Heritage Committee sees a parallel role to this critical research. The Committee believes that it is fundamentally important to document the history of such practices and the individuals who have conducted them, to capture this historically sensitive information before any major transformation in the structure of the profession renders it no longer feasible to collect certain data.

##### Framework for the Proposal

13. The Heritage Committee proposes that the next stage of its Heritage Pilot Project focus on lawyers in sole or small firm practice,
  - a. who are approaching retirement, or who have already retired;
  - b. who have practised in diverse communities throughout the province; and
  - c. who have expressed an interest in writing their memoirs and participating in roundtable discussions about documenting the history of their careers.
14. The outreach efforts to locate senior sole and small firm practitioners who would be interested in participating will be undertaken with the help of,
  - a. county and district law associations;
  - b. senior members of the bar in communities;
  - c. law librarians;

- d. regional benchers from the eight regions.
15. The project would consist of four stages:
- a. Background Research
    - i. select interested participants from the regions;
    - ii. create of a preliminary package of information about how to compile historical records and document historical practices.
  - b. Program Development Meeting in Toronto
    - i. coordinate an initial meeting in Toronto with representative participants from the regions to discuss how to proceed with the project;
    - ii. determine what guidance prospective authors may need;
    - iii. consider the format for the development of the project in the regions;
    - iv. prepare kits to assist participants, with checklists and general guidance.
  - c. Roundtable Discussions in the Eight Regions
    - i. hold five-or six-hour sessions in each community;
    - ii. ask interested senior participants to recount the nature of practice in their communities over the history of their careers, and to recount personal experiences;
    - iii. sessions would be audio-taped and possibly videotaped to constitute self-contained pieces for the Law Society's Archives;
    - iv. disseminate kits and offer guidance to participants and others about how to create a memoir and document career histories.
  - d. Follow-Up
    - i. liaise periodical with authors;
    - ii. provide on-going support.
16. The project does not require the Law Society to expend significant funds on outside consultants or infrastructure. The bulk of the money will be spent on the Law Society's own members, primarily on the accommodation, transportation and meals of small firm lawyers and sole practitioners who attend meetings to implement the project objectives. Some additional funds are budgeted for research assistance and videotaping roundtable sessions. The proposed budget is attached as Appendix 1. The Finance and Audit Committee has accepted the proposed budget.

## INFORMATION

### REPORT ON THE TREASURERS' INTERVIEW PROJECT

17. In September 2003 Convocation approved a Heritage Committee pilot project to conduct interviews with senior former Treasurers, building upon the work done by the Osgoode Society. The project was to include audio-taped interviews, videotape of the interview participants and any donated archival material. The project consisted of two parts: an initial research and planning component, which took place in the early part of 2004, and the interviews, which took place over the summer. Allison Kirk-Montgomery undertook the initial research and planning and she and Alison Forrest conducted the interviews.
18. The project has now been completed. Interviews and videotaping were done with the Honourable John D. Arnup, Q.C., LSM, Brendan O'Brien, Q.C., and Laura Legge, Q.C. The interviews, videos and donated archival materials will add important information to the Law Society's archival holdings on the contributions each of the interviewed participants has made to the legal profession in Ontario. The interviewers have prepared a report on the interview project, which is attached as Appendix 2.

### COMMEMORATION OF THE 200TH ANNIVERSARY OF THE SINKING OF THE HMS SPEEDY

19. October 9, 2004 marks the 200th anniversary of the sinking of the HMS Speedy on October 9, 1804. Most of the passengers were to have been participants in the first trial to be held at the new courthouse in Newcastle. Ogetonicut, a native, was accused of the murder of John Sharpe who had murdered Ogetonicut's brother, Whistling Duck. In addition to Ogetonicut the other participants in the trial, who were also on board, were the Judge, Thomas Cochrane; the prosecutor, Robert Isaac Dey Gray; counsel for Ogetonicut, Angus MacDonnell; a law student, John Anderson; several witnesses; and an interpreter. Grey and MacDonnell were both former Treasurers of the Law Society of Upper Canada. All of the passengers and crew were lost. The ship has not been located. Former Treasurer Brendan O'Brien has written a book on the subject, entitled Speedy Justice.
20. To commemorate the 200th anniversary a number of activities and events were planned by a special Speedy Committee made up of staff from Presqu'ile Provincial Park, the Municipality of Brighton, Ontario, the Friends of Presqu'ile, Save our Heritage Foundation of Brighton and local historians. Brenda O'Brien agreed to serve as the Honourary Chairman of the commemoration. The events have been ongoing throughout the summer and will culminate with a sail past of the tall ship St. Lawrence II at Presqu'ile on October 9 and a ghost walk that evening called Spirits of the Speedy. For more information on events see [www.speedy1804.com](http://www.speedy1804.com).
21. The Law Society has sponsored two aspects of the commemoration. It purchased 35 copies of Brendan O'Brien's book from the Osgoode Society and donated these to the Speedy Committee for their re-sale to the public. Mr. O'Brien autographed all the copies. The Law Society has also contributed to the cost of a film interview with Brendan O'Brien in which he discusses the history of the Speedy. The total Law Society donation was \$2510.75. The Law Society's sponsorship is acknowledged in the commemoration promotional material as well as in the copies of Brendan O'Brien's book.

## APPENDIX 1

ANTICIPATED BUDGET  
SOLE/SMALL FIRM PRACTITIONERS' HISTORY PROJECT  
2004-2005

Seminar (9:00- 2:00) in Toronto with representatives from  
8 regions (2 people from each = 16 people) to  
craft the history project

## Dinner (night before seminar)

· \$106/person (\$106 x 16 + 4 LSUC)	\$ 2120.00
· 8% PST	169.60
· 15% service	318.00

1 night accommodation x 16 (*based on Hilton's 2004 rates*)

· standard room: \$201.62 (incl. taxes) x 16	\$ 3225.92
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## Breakfast (day of seminar)

· \$20/person (\$20 x 20)	\$ 400.00
· 8% PST	32.00
· 15% service	60.00

## Lunch (day of seminar)

· \$68/person (\$68 x 20)	\$ 1360.00
· 8% PST	108.80
· 15% service	204.00

## 8 roundtable discussions in the regions-

overnight accommodation (\$200 x 3 people x 4 nights)	\$ 2400.00
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Transportation to and from the regions-specifically Ottawa,

Sudbury, Thunder Bay, and London (approximately 16 fares total plus mileage for those driving)	\$ 16150.00
(possible research assistant/videographer)	\$ 2500.00
Videotaping	\$ 2000.00
Ongoing support to authors – possible meetings; additional accommodation, travel	\$ 2500.00
	\$ 33548.32

## APPENDIX 2

## REPORT ON THE TREASURERS' PROJECT

The Treasurers' project consisted of two phases. The first involved gathering background information on each of the interview subjects.<sup>1</sup> Allison Kirk-Montgomery was hired to undertake this research. The second phase involved preparing for and interviewing and videotaping the participants, transcribing the interviews and organizing the material for the Archives. Alison Forrest and Allison Kirk-Montgomery conducted the interviews and videotaping.

## THE RESEARCH

To prepare for the interviews, Allison Kirk-Montgomery conducted research extensively in the Archives of the Law Society with the help of Susan Lewthwaite, Paul Leatherdale and other Law Society Archives staff.

Research opportunities and directions varied from individual to individual, but Minutes of Convocation and files relating to each of the Treasurerships were examined and noted. These files are limited in scope, because until the 1970s Treasurers rather than the Law Society owned their files individually. Some contain material related to the work of specific committees; others hold correspondence from Treasurers to benchers, to individual lawyers, and to professional groups such as the Canadian Bar Association. There were also copies of speeches made as Treasurer and some newspaper clippings. Few photographs or documents relating to personal life are contained in the files. The Great Library as well as the Archives' library held copies of the numerous books, articles published in legal journals, and bar admission materials written by the author-Treasurers.

A second major resource was the set of oral histories that the Osgoode Society conducted with John Arnup and Brendan O'Brien. (Laura Legge's interviews are closed). The transcripts of these interviews are excellent sources of legal history in themselves, and suggested interview topics for the Law Society project. For instance, many of the interviews took place a number of years ago and therefore do not cover recent decades, nor do they reflect the interviewees' perspectives on late-life careers and events.

Texts about, as well as by, our Treasurers were examined. Christopher Moore's *The Law Society of Upper Canada, 1797-1997*<sup>2</sup> became a valuable guide. Not only did it provide a wealth of information on the problems and challenges faced by the profession at large, but also it briefly described the Law Society careers of each of our interviewees. The Osgoode Society's fine and growing collection of legal biographies, and other secondary material on the changing legal profession in the twentieth century, helped us to frame the professional and private lives of our subjects. Newspaper stories featuring court cases in which past Treasurers appeared as advocates or judges were

<sup>1</sup> Although four former Treasurers originally indicated they could participate, one, the Honourable George D. Finlayson, Q.C. was ultimately unable to do so due because of unexpectedly pressing time commitments. The participants were the Honourable John D. Arnup, Q.C., LSM, Brendan O'Brien, Q.C. and Laura Legge, Q.C.

<sup>2</sup> Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers, 1797-1997* (Toronto: Osgoode Society, 1997).

also collected. Finally, we consulted the latest texts on oral history to learn the theory and practice, including the techniques of interviewing.

A list of general topics plus a set of questions, some specific to each past Treasurer, was then prepared. At preliminary meetings with each participating Treasurer, we settled on general topics and the site for the interviews.

## THE TECHNICAL PREPARATION

Oral history projects in the last decade have benefited from technological improvements in the recording and formatting of the interview. Because the Law Society does not own its own equipment, our task was to research and acquire the equipment needed to create high-quality audio recordings, computer-friendly transcripts, and video recordings of some of the interviews.

In the past, high-quality recordings required digital tape recorders, but these are expensive. Many oral historians have turned to minidisc recorders for their superior audio quality, portability, and relatively low cost. Minidisc recorders use minidisks that can be easily stored. Accordingly, the Law Society purchased a Sony NetMD Minidisc Recorder and a microphone. An inexpensive microcassette tape recorder was purchased as a backup device.

Budget constraints meant that the equipment for videotaping the interviews be rented. The equipment used was a small Canon video camera, the Canon Optura 300 camcorder, which records high-quality video on tape cassettes. Other equipment necessary for processing the raw products of the interviews was also rented.

At the beginning of June, Alison Forrest joined the project and after reviewing the results of our first-phase research, we divided the interview work. Allison Kirk-Montgomery interviewed the Honourable John D. Arnup, Q.C., LSM. Alison Forrest interviewed Laura Legge, Q.C. and Brendan O'Brien, Q.C. Allison Kirk-Montgomery conducted the videotaping.

## THE INTERVIEWS

### John Arnup

Mr. Arnup was the first past Treasurer to be interviewed. He gave the project many hours in sessions held at his apartment, on five dates: May 7, May 10, May 13, June 3, and June 10. These resulted in a total of about ten hours recorded on minidisks. The June 10 interview was also videotaped. Mr. Arnup generously donated a number of documents and photographs to the Law Society.

To prepare for the interviews, Mr. Arnup reviewed the hundreds of pages of Minutes of Convocation from his three years as Treasurer. One of his purposes in participating in this project was to “set the record straight,” in his words, by highlighting the contributions of other lawyers and non-lawyers to Law Society work. Throughout the interviews Mr. Arnup returned often to the development of legal aid, legal education, and regulation of the profession, and the cooperation and controversy in these policy areas among benchers. Accordingly, our first interview began with his memories of the men who were his mentors and models in his career as bencher and Treasurer.<sup>3</sup> These included Cyril Carson, and G. W. Mason from Mr. Arnup’s own firm.

That many of these prominent lawyers and judges had not attended university led to a discussion of legal education, Mr. Arnup’s main area of service as a bencher. Two major accomplishments of the Law Society in the 1950s and 1960s were the development of university law schools, and the move of the Osgoode Hall Law School to York University. Mr. Arnup highlighted the involvement of benchers Parke Jamieson and Bill Howland, and related that he relied on the talents and support of Earl Smith, Secretary of the Law Society. The changing processes of discipline, adoption of the compensation fund, the Landreville and other cases, and the use of reprimand are some of the aspects of Law Society regulatory work that Mr. Arnup remembered. In his extended discussion of legal aid, he recalled the voluntary service of the 1950s and the benchers who worked hard before and after the publicly funded programme began in the 1960s.

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<sup>3</sup> The following description of the content of the interviews is not chronological; please see the index that accompanies the transcripts.



Ceremonial and traditional aspects of the Law Society proceedings are important to Mr. Arnup and interesting to scholars. Mr. Arnup described how the Law Society recognized and still remembers those who served in the wars of the twentieth century. While examining photographs of his portrait in oils commissioned by the Law Society, Mr. Arnup described the process of sitting for his portrait – and the mixed reviews his and other portraits received by past Treasurers and their spouses! Mr. Arnup attended the ceremony of the opening of the courts in January of each year for dozens of years. He recounts the central role James McRuer played in its development. Mr. Arnup was the first to make the Treasurer's speech an important event in the Law Society calendar, when he spoke about the need for public funding of legal aid in 1964.

The interviews touch on Mr. Arnup's career as advocate, but dwell mainly on renowned advocates and non-lawyers who populated the courtrooms of his past. He described the work and personal habits and styles of D. L. McCarthy, Arthur Slaght, and W. Tilley, and his own interest in collecting humorous and sober stories about lawyers. McCarthy was the Treasurer during the Second World War, a period that presented challenges not only for lawyers on active duty but for the lawyers who stayed behind to serve in other ways. Mr. Arnup himself served on the Wartime Prices and Trade Board; his appellate practice grew out of his Board work. With Mr. Arnup on the county court circuit were court reporters whose relationships with their judges were congenial -- and otherwise. He also described the role of juniors and how he organized exhibits and argument in complex cases. The names of John Robinette, Bertha Wilson, Jack Weir, Bill Gale, Joe Sedgwick, and many other colleagues appear in these memoirs. During the sessions, we also discussed aspects of Mr. Arnup's life before, after and outside the legal world. Mr. Arnup remembered his high school and university days with the help of a photograph of his high school magazine staff. He remained close friends all his life with a few of these colleagues, despite his busy legal career. Like other lawyers of his generation, he has passionately loved his summer cottage as a centre of family life and pastimes. Associated with a discussion of the difficulties of balancing career and home life, Mr. Arnup touched on the problems of alcohol and drug addiction that frequently surface as factors in professional misconduct. Because these interviews are open, Mr. Arnup has not wished to discuss his life on the bench or individuals still in practice, but has described his own activities, even his dreams, during retirement.

In the last interview, which was videotaped, Mr. Arnup described how the size, physical layout, technology and furnishings of the Mason Foulds offices changed from the 1930s. When he was a young lawyer, there were copybooks rather than photocopiers, and the firm used only one telephone. His firm's offices were "bare bones," very different from the lavish premises of large firms today. He also described the less-than-ideal working conditions for secretaries. The personalities and talents of secretaries he worked with were important to his daily life. He closed his discussion of his physical surroundings by noting the earlier and famous tenants who occupied the office he enjoyed as a judge on the Ontario Court of Appeal.

We last met on 28 June to review the documents and photographs he has donated to the Law Society. These include copies of speeches, personal memoirs, and photographs from his Law Society work and personal life. A complete list of these donated materials appears in the Appendix.

Brendan O'Brien

Mr. O'Brien was interviewed on four occasions at his home: June 21, 2004, June 28, 2004, July 7, 2004 and July 21, 2004. The second and third interviews were videoed and all four interviews were recorded on minidisk. Each interview was a little more than an hour in length, bringing the total hours spent interviewing to around five hours in all.

Mr. O'Brien has been extensively interviewed in the past so we were looking to fill in gaps in information we already have on his life. As well, the videos add a further dimension to the material held by the Law Society pertaining to Mr. O'Brien's long and prestigious career. Mr. O'Brien no longer has any records that might be of interest to the Law Society, but we captured on video his description of three personal photos including a photo taken at his Call to the Bar.

The four areas covered by the interviews were, in order, Mr. O'Brien's interest in history; prominent individuals in the legal profession and his memories of them; legal education; and the changing nature of the legal profession over his period in practice.

We began the first interview by looking at where his early interest in history began. He recalled his father's interest in Irish history and the choice of history as a subject at St Michael's College, University of Toronto as an undergraduate. We then focused on his book *Speedy Justice* and some of the major themes that emerge in it. We touched on his other book that is about Port Cockburn where Mr. O'Brien spent his summers from childhood onwards. Mr. O'Brien then talked about his role in the formation of the Osgoode Society and the purpose of the organization and the works published under the auspices of the Society. Finally, we looked at the importance of history to the legal profession and the LSUC.

The second interview focused on prominent individuals in the legal profession and Mr. O'Brien's memories of them and their work. He discussed former Treasurers he knew from his time as a Law Society Benchers in the 1950s, as well as lay benchers including June Callwood and Reginae Tait, and former Law Society Secretaries Ken Jarvis and Earl Smith. He also talked about his two terms as Treasurer of the Law Society of Upper Canada.

The third interview focused on legal education. We began by looking at Mr. O'Brien's own legal education from 1929 to 1932. He then talked about his experience as a lecturer at Osgoode followed by his experience teaching the Bar Admission Course at Osgoode. Mr. O'Brien discussed his work on legal education for the Law Society, and his views on the role and purpose of legal education.

The fourth and final interview looked at the changing nature of the legal profession over Mr. O'Brien's long career from 1929 when he began his articling to the 1990s when he retired from practice. Mr. O'Brien discussed changing courtroom practice. He also remembered how office practice developed with changes in technology, the changing roles of legal support staff, billing and docketing practices, the changing role of lawyers, changing average size of law firms, increased specialization of lawyers and so on.

#### Laura Legge

Mrs. Legge was interviewed four times: on July 6, 2004, July 13, 2004, July 21, 2004, and July 29, 2004. The third and fourth interviews were videoed and all four were recorded on minidisk. We met at Mrs. Legge's law offices. The first two interviews were approximately 1 1/2 hours in length and the final two approximately two hours in length. The total interviewing time was approximately seven hours in length. The video interviews capture Mrs. Legge's expressive tone of voice and vibrant personality in a way that written transcripts cannot and greatly add to Law Society records of her significant contribution to the legal community from the 1940s to the present day.

Mrs. Legge has been interviewed previously. However, access to these interviews is closed. By contrast, these interviews are to remain open. Mrs. Legge is willing to donate several photographs to the Law Society and she has indicated that she has extensive paper records that she is also willing to donate. These records include hundreds of congratulatory letters on her nomination to Treasurer of the Law Society in 1983. An archivist from the Law Society will meet with Mrs. Legge about her donations.

We determined that we should interview Mrs. Legge about her entire life, from childhood onwards, because earlier interviews are closed and there are relatively few records of Mrs. Legge's extensive contribution to the legal community. The first interview, then, covers the period of her childhood and youth up until the point where she left home to study. We looked at her early schooling, her memories of her family, her memories of growing up on a farm in rural Ontario in the 1920s and 1930s, the work her parents did in assisting people throughout the Great Depression and the strong sense of community service they demonstrated through this. This theme of service to community was one that we pursued in subsequent interviews, together with her ground-breaking role in achieving a number of "firsts", including first woman Benchers and first woman Treasurer of the LSUC.

The second interview picked up from the first and began by looking at Mrs. Legge's nursing training during the Second World War. She discussed her decision to leave nursing to pursue law, and her years articling in a small downtown office with a sole practitioner and then in the Ontario government's department of health. Mrs. Legge shared her memories of classes at Osgoode Law School and some of the other students (many of whom were returned service people), including her husband. She then went on to discuss her first job working at the provincial health department and the skills gained there and in articling in a small office. I asked her about being one of the few women practicing law in the 1950s and attending law school in the 1940s, and her decision to continue

practicing once she married and was raising a family (this was unusual at this time). We then looked at her early years in establishing her own law office including the nature of her practice, her clients, and the role of a lawyer particularly in a small law firm.

The third interview focused on Mrs. Legge's work as a Benchler and Treasurer for the LSUC. She talked about her decision to run for Benchler, the nature of the work, balancing commitments to her clients and family and other extensive committee work with Benchler commitments, her role and achievements as Treasurer, and her appointment as the first woman Benchler and Treasurer. As well, Mrs. Legge discussed some of the committees she participated in including the Muniments and Memorabilia Committee and its work of Mrs. Reginae Tait in creating the Law Society archives and the stained glass windows in Osgoode Hall.

The fourth and final interview looked at Mrs. Legge's extensive committee/volunteer work both in legal organizations (the Women's Law Association of Ontario and the Federation of Law Societies) and non-legal organizations. Mrs. Legge spoke at length about the importance of the Women's Law Association of Ontario in her early years of practice in providing practical and moral support for the few practicing lawyers who were women. She also shared her memories of a number of prominent early women lawyers, including Margaret Hyndman, and the importance of their role in leading the way for her generation. Other organizations discussed in the interview included the Soroptimist International of Toronto, Metropolitan Toronto Home Care Programme, Canada Life Assurance Company, and the Women's College Hospital.

## THE RESULTS

With videotapes, minidisks, documents, and photographs in hand, we now had to process our material. Computer and related technology has dramatically improved how faithfully the products of oral histories reflect the reality of the interview.

### The donated materials

As noted above, both Mr. Arnup and Mrs. Legge are contributing valuable photographs and other paper materials. With the digital and paper products of the interviews, they will enrich and expand the Law Society's holdings.

### The transcripts

The typical product of oral histories is the transcript, a printed text of the interview. In the past, special transcription machines with foot pedals were commonly used to transcribe from tape cassettes. Today, free software available on the internet plus a computer is all that is required. All the interviews have been transcribed and checked. Paper copies will be deposited at the Archives of the Law Society. (Copies of transcripts and videotapes are being given to participants who have requested them and their existence will be cross-referenced with the Osgoode Society.)

An index has been completed for the Arnup interviews, but the computer has made the time-consuming task of making an index less important. All of the transcripts are in digital format and the files can be easily searched for any word or phrase that appears in the text. All of the interviews can be searched at once. It is interesting to note that computer searching capabilities allow a more relaxed interview structure: either the interviewer or the interviewee can veer from a planned list of topics, change direction and pursue a memory thread, knowing that the material can be found readily. This is a major improvement over transcripts that are not digitally rendered.

Several of the transcripts have been enhanced by the addition of photographic images that were scanned into the documents. Readers can easily follow, for instance, Mr. Arnup's comments on individuals and events portrayed in the photographs in front of them.

### The sound files

Although transcripts provide an excellent method of accessing the content of the interview, they are poor conductors of the non-verbal expressions that make up a large part of human communication. With our project, researchers can also easily access the sound recording of the interview and hear and assess emphasis, laughter, pauses, and rate of speech. This is because the recordings on minidisk have been "captured" via computer in what is known as WAV

files. After removing extraneous material such as telephone interruptions, the WAV files were saved to compact discs (CDs) which can be “read” by almost any computer. WAV files can be edited (for instance, to remove blank space or filter out machine hums), copied, transferred to cassette or other media, converted to MP3 files for use on the internet. An individual with access to an ordinary computer and a pair of headphones or speakers can readily listen to all or part of the original interview, and compare it to the transcript.

#### The videos

As with the sound recordings, the content of the videotapes was captured to digital files. Several specialized computer programmes and a computer accessory called a DVD “burner,” rented, were required to complete this process. The result is that each interview is now available on a DVD, and able to be viewed on most computers and all DVD players. DVD technology allows viewers to stop, rewind, and fast forward with ease.

If audio files are a leap forward in representing what occurred during an interview, video is the closest we can provide to reliving the interview itself. With film, the researcher can see as well as hear expression, mood, and emotion, all of which might point to a different interpretation or meaning than words alone offer. In sum, the videotaped interviews help to capture not only the thoughts and career, but also the personality and sense of humour of each of the past Treasurers.

#### Other applications for the products of the Treasurers’ Project

Because they are in a variety of formats, the products of this pilot project can be incorporated into future projects of the Heritage Committee and the Law Society. For example, the audio and video files can be copied and edited easily and inexpensively by computer, and at a later date could form the basis of a more elaborate production such as a narrated documentary. Alternatively, sound and video clips and still images from the oral histories can be incorporated into lively and informative web pages on the Law Society’s website. These applications of the future, and the completed oral history products and accompanying material described above, can help to fulfill the Law Society’s mandate of communicating its legal heritage to the people of Ontario.

Alison Forrest  
Allison Kirk-Montgomery  
31 August 2004

Materials Donated by John D. Arnup, O.C., Q.C.

DATE	TYPE	DESCRIPTION/Caption
n.d.	Photograph	“Madelyn Weir, Zeta Evans, Gregory Evans, JDA”
Fall 1988	Photograph, 2 sizes	JDA, by Peter Croydon, for Osgoode Law School
1963	Photograph	JDA in Banff
1963	Photograph	JDA, Q.C.
1995	Photograph, 3	For church directory, 1995
May 1992	Photograph colour	JDA

	Photograph colour, 2 sizes	JDA receiving Order of Canada from Jeanne Sauvé
n.d. [1950?]	Photograph	Portrait, JDA on being appointed KC?, by Douglas Paisley
May 1970	Photographs, 4	Portraits, JDA
7 May 1975	Photograph	“O.L.P.B.” [Ontario? Prayer Breakfast], JDA and unknown
7 May 1975	Photograph	“O.L.P.B.” [Ontario? Prayer Breakfast], unknown, JDA, and Betty Kennedy
1963	Photographs	Proofs, 5 poses, by Gilbert A. Milne, Toronto
1963?	Photograph	Reprinted in <i>VicReport</i> , Spring 1990
10 Jan 1952	Photograph	JDA, David J. Walker, K.C., and Cyril F. H. Carson, K.C., by portrait of Cyril Carson at LSUC
1966	Photograph	“Gale and Arnup unveiling” of portraits at LSUC
n.d.	Photograph, 2 prints	“The Honourable John D. Arnup by Ken Jarvis for hanging in the Arnup Room at Weir & Foulds
18 April 1970	Photograph	John Cartwright, Treasurer William Howland, and benchers including JDA, John Robinette, and Joseph Sedgwick
25 April 1923	Photograph	Oakwood Collegiate Institute Editorial Staff, including JDA
30 January 1953	Photograph	Edson Haines, John Robinette, JDA, George Mitchell, S. Springsteen, and G. Arthur Martin, at Canadian Bar Association Meeting, Windsor
1966	Photograph	Portrait of Treasurer JDA, LSUC
12 July 1997	Bound typed document	“A Celebration of the Life of Carol Arnup, “April 9, 1946-July 4, 1997”
October 1997	Journal article	“The Importance of Advocacy.” <i>Le Journal The Advocates’ Society</i> , 1 page
1998	Bound document	“Reminiscences of John D. Arnup, O.C., Q.C.” 18 pages
n.d.? 1966	Typewritten speech	Welcome to “Students, 1 <sup>st</sup> Year,” Osgoode Hall
n.d.	Handwritten speech	To honour Chief Justice William Parker of the High Court on his retirement
13 Nov 1964	Typed speech	On the occasion of the retirement of Mr. Justice D.P.J. Kelly

15 June 1965	Typed speech	On the 750 <sup>th</sup> Anniversary of the Magna Charta
13 Sep 1965	Typed speech	To the Saint Thomas More Guild, Hamilton
16 Oct. 1965	News clipping	“UCLS Treasurer Warns “Beware the Easy Buck,” <i>Can Register</i> .
14 September 1965	News Clipping	“Beware Fast Buck: Lawyer,” <i>Globe &amp; Mail</i> .
10 June 1969	Typed speech	On opening of the new law school building, York University
7 February 1970	Typed speech	Introduction of Northrop Frye, Canadian Bar Association Midwinter Meeting
8 January 1971	Typed speech	To Toronto cricket Skating and Curling Club Directors’ Dinner
n.d.	Handwritten document	List of speeches and articles written, mostly by JDA; captions for various photographs, not attached.
21 Nov 1974	Typed speech	“Behind Those Security Doors,” to Lawyers Club
20 Feb 1975	Typed speech	“Introduction of Chief Justice Laskin” to Lawyers Club
10 January 1983	Typed speech	“Be a Witness.” At luncheon for Court Opening, Hamilton
31 May 1983	Typed remarks	Tribute to J. C. McRuer
24 October 1985	Typed remarks	“Retirement Ceremony [of JDA] - Courtroom #1”
27 November 1985	Typed remarks	On St. Andrew’s Day, at Men’s Venison Dinner, Orillia
29 November 1985	Typed remarks	Judges’ Retirement Dinner
23 October 1986	Typed remarks	Tribute to G. A. Gale, lawyers’ Club.
1987	Typed compilation	Includes table of contents, speeches given, biographical notes, and remarks by JDA as part of “1987 Canadian American Legal Exchange”
4 Feb 1988	Handwritten speech with pasted excerpts	“Advocacy-Old and New,” to the Women’s Law Association
23 May 2001	Typed remarks	Tribute to Arthur Martin, Q.C.

18 April 1970	News clipping	"Arnup appointed to Ontario Appeal Court," <i>Globe &amp; Mail</i> , 30.
n.d.	Typed	Memoirs. 56 pages, unpublished.

It was moved by Ms. Backhouse, seconded by Ms. Alexander that Convocation approve funding in the amount of approximately \$33,548.32 to allow the Heritage Committee to conduct a sole and small firm practitioner history project with recently retired, or soon to be retiring lawyers.

Carried

*ITEMS FOR INFORMATION*

Treasurer's Interview Project  
Commemoration of the 200th Anniversary of the Sinking of the *HMS Speedy*

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REPORT OF THE FINANCE & AUDIT COMMITTEE

Re: J. Shirley Denison Fund Grants (in camera)

It was moved by Mr. Ruby, seconded by Mr. Wright that Convocation approve the grants set out in the Report.

Carried

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*REPORTS FOR INFORMATION*

Report of the Equity & Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones  
LibraryCo Inc.

Report of the Professional Development, Competence & Admissions Committee Report

## REPORT OF THE EQUITY & ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES

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Equity and Aboriginal Issues Committee/  
Comité sur l'équité et les affaires autochtones

September 23, 2004

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Report to Convocation

Purpose of Report: Information

Prepared by the Equity Initiatives Department  
(Josée Bouchard: 416-947-3984)

### THE REPORT

#### Terms of Reference/Committee Process

1. The Committee met on September 14, 2004. Committee members Joanne St. Lewis (Chair) (by telephone), Derry Millar (Vice-Chair), Marion Boyd and Dr. Sy Eber attended. Bencher Mark Sandler also attended. Invited members Senka Dukovich (Chair of the Equity Advisory Group (EAG)), Katherine Hensel (Co-Chair of Rotiio> taties) and Sonia Ouellet (Executive Director of Association des juristes d'expression française de l'Ontario (AJEFO)) attended. Invited members Sylvia Davis (Alternate Discrimination and Harassment Counsel) and Cynthia Petersen (Discrimination and Harassment Counsel) made presentations to the Committee. Staff member Josée Bouchard also attended.
2. The Committee is reporting on the following matters:

#### Information

- Report of the Activities of the Discrimination and Harassment Counsel, January 1 to June 30, 2004
- Studies of the legal profession:
  - o Professor Fiona Kay, *Turning Points and Transitions: Women's Careers in the Legal Profession, 2004*

- o Professor Fiona Kay, *Diversity and Change: The Contemporary Legal Profession in Ontario, 2004*
- Disability Working Group –Consultation with Law Students, Law Graduates and Lawyers with Disabilities
- 2004-2005 Equity Public Education Events Schedule

## INFORMATION

### REPORT OF THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL – JANUARY 1 TO JUNE 30, 2004

#### Background

3. Subsection 5(1) (a) of by-law 36 – *Discrimination and Harassment Counsel* provides that the DHC shall make a report to the Committee not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.
4. Subsection 5(2) of by-law 36 provides that:  
The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting.
5. The DHC Program presents to the Committee, pursuant to subsection 5(1)(a) of by-law 36, the Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada – January 1, 2004 to June 30, 2004 (Appendix 1).

#### Summary of Report

6. This is the third semi-annual report from Cynthia Petersen. During the reporting period, 117 individuals contacted the DHC Program, for an average of 19.5 new contacts per month. This represents a significant increase in the volume of new contacts relative to the first six months of 2003, during which there were 86 new contacts (on average 15 per month) and the last six months of 2003, during which there were 94 new contacts (on average 16 per months).
7. During the reporting period, 2 individuals communicated with the DHC in French. In 2003, a total of 10 individuals (out of 180) communicated with the DHC in French.
8. Of the 117 new contacts, 41 (35%) related to matters outside the scope of the Program's mandate. Of the 76 new contacts relating to matters within the mandate of the DHC Program, 37 (49%) involved general inquiries rather than complaints about incidents of discrimination or harassment. General inquiries came primarily from within the legal profession, but also from members of the public.
9. During the reporting period, 39 individuals contacted the DHC Program with complaints of discrimination or harassment against a lawyer, law firm or legal clinic in Ontario. This represents a slight increase over the last reporting period in which 31 complaints were made to the DHC, and the previous reporting period in which 35 complaints were made.
10. A little more than half of the complaints (22 or 56%) came from members of the public, with the remaining 17 or 44% from members of the legal profession. Three of the 17 complaints from within the profession were from student members of the bar.
11. Of the 22 members of the public who contacted the DHC Program, 13 (59%) were women and 9 (41%) were men. Of the 17 complaints from members of the profession, women made the overwhelming majority of complaints (14 or 82%), and men made only 3 (18 %) complaints.

12. Of the 22 complaints from members of the public, 5 involved individuals complaining about employers, 13 were clients complaining about their lawyer or legal clinic, 3 were litigants complaining about counsel representing an opposing party and 1 was an individual complaining about a lawyer who worked for the public service.
13. Of the 17 complaints from the profession, 7 lawyers and 2 law students complained about their employer, 2 lawyers and 1 student complained about a co-worker, 4 lawyers complained about another lawyer outside of their employment context and 1 lawyer called on behalf of a staff member in his office who was the victim of harassment by another lawyer in the office.
14. For complaints made by members of the public, sex was raised in 10 (45%) of the 22 complaints, disability was raised in 8 (36%) complaints, religion was raised in 3 (14%) complaints, race was raised in 2 (9%) complaints and family status was raised in 1 (4%) complaint.<sup>1</sup>
15. Of the 17 complaints made by members of the profession, sex was raised in 11 (65%) complaints, race in 4 (24%) complaints, family status in 2 (12%) complaints, and disability in 1 (5%) complaint.<sup>2</sup>
16. The DHC offered free mediation services to the complainants. During this reporting period, one complainant opted for mediation, but the respondent did not agree to participate. One other complainant initially requested mediation, but later changed her mind before the respondent was contacted.
17. Where appropriate, complainants were offered the option of having the DHC intervene informally. Two complainants opted for this approach. In one case, the complaint was resolved to the complainant's satisfaction. In the other instance, the complainant remained unsatisfied and indicated that he would pursue a formal complaint to the Law Society.

#### STUDIES OF THE LEGAL PROFESSION

##### Background

18. Recommendation 2 of the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*<sup>3</sup> (the Bicentennial Report) states that "the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence."
26. In 1990, the Law Society published *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the Bar Between 1975 and 1990*<sup>4</sup> (the *Transitions Report*). The *Transitions Report* outlined the findings of a large-scale survey of members of the Ontario legal profession. The survey gathered information about relationships between gender and work variations in the profession of law, including transitions across fields of law, entries to and exits from private practice, changes across and within various work settings and motives for leaving the practice of law.
27. Among the recommendations in the *Transitions Report* was one calling for further research to be undertaken. As a result, in 1996, the Law Society conducted the follow-up study entitled *Barriers and Opportunities within Law, Women in a Changing Legal Profession, 1990-1996*<sup>5</sup> (the *Barriers Report*). The report showed that new issues were emerging, such as issues of managing dual careers, family responsibilities and workplace commitments.

<sup>1</sup> Since some of the complaints involve multiple grounds of discrimination, the percentages do not necessarily add up to 100%.

<sup>2</sup> Since some of the complaints involve multiple grounds of discrimination, the percentages do not necessarily add up to 100%.

<sup>3</sup> (Toronto: Law Society of Upper Canada, 1997).

<sup>4</sup> (Toronto: Law Society of Upper Canada, 1990).

<sup>5</sup> (Toronto: Law Society of Upper Canada, 1996).

28. In November 2002, Convocation approved a follow-up study of the *Transitions* and *Barriers Reports* with the same cohort of lawyers. Convocation also approved a study of the legal profession with a new cohort of 5000 lawyers to examine contemporary law practice in Ontario. The Law Society of Upper Canada retained Professor Fiona Kay, Queen's University, to undertake the studies.
29. Professor Kay's third longitudinal study entitled *Turning Points and Transitions: Women's Careers in the Legal Profession* and her study entitled *Diversity and Change: The Contemporary Legal Profession in Ontario* are presented to Convocation for information under separate cover.
30. The studies will inform the work of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones and be used as a resource to develop policy options, initiatives and programs.

#### DISABILITY WORKING GROUP – UPDATE OF CONSULTATION WITH LAW STUDENTS, LAW GRADUATES AND LAWYERS WITH DISABILITIES

##### Background

31. In September 2004, Joanne St. Lewis, Chair of the Committee, created the Disability Working Group (the Working Group) to develop strategies to:
  - a. Address barriers faced by law students and members of the profession with disabilities in accessing and being successful in the legal profession;
  - b. Increase the quality of legal services offered to clients with disabilities;
  - c. Ensure that the Law Society takes on a leadership role in providing high quality services to lawyers and clients with disabilities and in ensuring that its workplace accommodates the needs of persons with disabilities.
32. The members of the Working Group are:
  - a. Thomas Heintzman (Chair of the Working Group)
  - b. Joanne St. Lewis (Chair of the Committee)
  - c. Laurie Pattillo (Bencher)
  - d. Mojisola Akpata (member of EAG)
  - e. Martin Anderson (Department of Justice)
  - f. Margherita Braccio (Department of Justice)
  - g. Ena Chadha (Counsel at the Legal Resource Centre for Persons with Disabilities -ARCH)
  - h. David Crocker (Davis & Company)
  - i. Phyllis Gordon (Executive Director of ARCH and member of the Equity Advisory Group (EAG))
  - j. Milé Komlen (Employment Equity consultant at the CIBC and member of EAG)
  - k. Stefanie Marinich (Sole Practitioner)
  - l. Chris Montague (Senior Vice-President, Toronto Dominion Bank)
33. The Working Group determined that its priority is to develop strategies to assist student members and recent calls to the bar in accessing and remaining in the legal profession.
34. Staff of the Law Society prepared a Working Document outlining:
  - a. Available statistics about law students and members of the legal profession with disabilities;
  - b. Law Society's initiatives in this area;
  - c. Relevant research and publications; and
  - d. Proposed strategies and best practices.
35. The Working Group decided that:
  - a. The Equity and Diversity Mentorship Initiative of the Law Society should be reviewed and adapted to include a focus on mentoring for students and members with disabilities.
  - b. The Law Society should undertake a consultation with members with disabilities to determine what programs and initiatives could be developed to address barriers faced by members with disabilities.



36. The Working Group determined that the Law Society of Upper Canada does not have much information about the demographic of the legal profession, particularly its members with disabilities and their needs.
37. The Working Group decided to consult with law students, law graduates and members with disabilities to identify the nature and extent of support that could be developed to assist them when they enter the legal profession and progress through their careers in law.
38. The Strategic Counsel was retained to do in-depth interviews with law students, law graduates and members with disabilities. The Strategic Counsel will provide a report of its findings to the Working Group. The Working Group will use the qualitative information to develop policy options for consideration by the Committee.
39. The research is designed to consult with people with disabilities from all regions of Ontario, practising in all areas of law and types of practice or working in other environments. Participants may include those called to the Ontario Bar who are not employed or who reside outside of Ontario.
40. A bilingual (French and English) call for participants appeared in the Ontario Reports on August 27, 2004 and on September 17, 2004 (Appendix 2). The call for participants is also posted on the Law Society's website and has been sent by email to members of the profession.
41. A letter of invitation (Appendix 3) to participate was sent to the following organizations:
  - a. ARCH - A Legal Resource Centre for Persons with Disabilities
  - b. The Canadian Council of the Blind
  - c. Canadian Hard of Hearing
  - d. The Canadian National Institute for the Blind
  - e. Canadian Paraplegic Association
  - f. Counseling and Development, Psychiatric Disabilities Program
  - g. DisAbleD Women's Network Ontario
  - h. The Learning Disabilities Association of Canada
  - i. Multiple Sclerosis Society of Canada
  - j. Ontario Association of the Deaf
  - k. Ontario Bar Assistance Program
  - l. Queen's University, Faculty of Law, Career Services
  - m. RBC Institute for Disability Studies Research and Education
  - n. REACH Canada
  - o. University of Ottawa, Faculty of Law, Student Service
  - p. University of Toronto, Faculty of Law, Career Services
  - q. University of Western, faculty of Law, Career Services
  - r. University of Windsor, Faculty of Law, Career Services
  - s. Women's Legal Education and Action Fund
  - t. Osgoode Hall Law School, Career Services
42. The deadline for indicating an interest to participate is September 30, 2004.
43. Based on discussions with the Working Group, The Strategic Counsel developed a screening questionnaire to determine eligibility of participants.
44. A number of individuals have already contacted The Strategic Counsel to indicate their interest in participating in the study.
45. The Strategic Counsel, in cooperation with the Working Group, will develop an interview questionnaire and proceed with in-depth interviews this fall.
46. It is anticipated that The Strategic Counsel will provide its report to the Working Group before the end of 2004 and the Working Group will provide a report with policy options to the Committee in the Spring 2005.

## 2004-2005 EQUITY PUBLIC EDUCATION EVENTS SCHEDULE

47. The 2004-2005 Equity Public Education Events Schedule is presented at Appendix 4.

## APPENDIX 1

REPORT OF THE ACTIVITIES OF THE  
DISCRIMINATION AND HARASSMENT COUNSEL

JANUARY 1 TO JUNE 30, 2004

Prepared by:  
Cynthia Petersen

July 29, 2004

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### Overview of New Contacts with the DHC Program

#### *Number of New Contacts*

1. During this reporting period (January 1 to June 30, 2004), 117 individuals contacted the DHC Program. On average, there were 19.5 new contacts per month, distributed as follows:  
  
(see graph in Convocation Report)
2. This represents a significant increase in the volume of new contacts relative to the first six months of 2003, during which there were 86 new contacts (on average 15 per month) and the last six months of 2003, during which there were 94 new contacts (on average 16 per month).

#### *Method of Communication*

3. The DHC toll-free telephone line remains the most common way in which individuals make contact with the Program. During this reporting period, 94 people (80%) made their first communication with the Program by telephone, and 23 people (20%) used e-mail to contact the Program.

#### *Language of Communication*

4. The DHC Program offers services in English and French. During this reporting period, of the 117 new contacts with the Program, 2 individuals communicated with the DHC in French. In 2003, a total of 10 individuals (out of 180) communicated with the DHC in French.

#### *Sources of Referral to the DHC Program*

5. Individuals who contacted the DHC Program by telephone with issues that are within the Program's mandate were asked how they heard about the Program. Callers either could not recall or advised that they had learned of the Program's existence from the following sources:  
  
(see graph in Convocation Report)
6. The "other" category shown on the above chart includes one individual who was referred by a family member who is a lawyer, one individual referred by a psychologist, an individual who had previously used the DHC service, and a law student who saw the DHC make a presentation during the Bar Admissions Course.
7. Two individuals who contacted the DHC Program with issues that are outside the Program's mandate indicated that they were referred to the DHC by the Office of the Ombudsperson of Ontario. The DHC will write to the Ombudsperson to clarify the scope of the Program's mandate in order to avoid further inappropriate referrals in the future.

#### Matters Outside the DHC Mandate

8. Of the 117 new contacts with the DHC during this reporting period, 41 (35%) related to matters outside the scope of the Program's mandate.
9. The contacts that related to matters outside the Program's mandate can be grouped into three categories:
  - ☐ complaints of discrimination against judges;
  - ☐ complaints of discrimination or harassment against non-lawyers (eg. complaints against landlords, the police, non-legal employers, and unions); and
  - ☐ complaints against lawyers that do not involve any equity or human rights issues (eg. billing disputes, conflicts of interest, and negligence allegations).
10. Individuals who contacted the DHC with matters outside the scope of the Program's mandate were, whenever possible, referred to another organization for information or assistance, such as a judicial council, the Law Society, a human rights commission, or the Lawyer Referral Service. An explanation of the scope of the DHC Program's mandate was provided to these individuals.
11. These "outside mandate" contacts typically do not consume much of the DHC's time, but they nevertheless constitute a drain on DHC Program resources. I am therefore making ongoing efforts to reduce the volume of these contacts. The promotional brochures for the Program were revised last year to clarify the scope of the mandate and the new brochures have begun to enter circulation. The DHC website will similarly be revised this year.

#### Inquiries Within the DHC Mandate

12. Of the 76 new contacts relating to matters within the mandate of the DHC Program, 37 (49%) involved general inquiries rather than complaints about incidents of discrimination or harassment.
13. Inquiries came primarily from within the legal profession, but also from members of the public. The inquiries included:
  - ☐ questions from lawyers and articling students regarding their rights and obligations in employment contexts involving equity issues, such as questions about parental leave, about protection from possible reprisals for making a human rights complaint, and about disclosure obligations relating to a disability or pregnancy;
  - ☐ questions about whether simultaneous complaints could be filed at both the LSUC and the Ontario Human Rights Commission;
  - ☐ calls from members of the legal profession who had suffered discrimination or harassment and seek a referral to support resources (eg. addiction counseling services, depression counseling services, peer support, stress management counseling);
  - ☐ laws faculties and government legal departments inquiring about educational and/or promotional workshops provided by the DHC;
  - ☐ legal employers seeking information regarding the development of workplace harassment and discrimination policies;
  - ☐ law students and other researchers seeking access to data collected by the DHC and to other data on equity issues in the legal profession;
  - ☐ members of the public and of the legal profession inquiring about the LSUC Rules of Professional Conduct and equity issues; and
  - ☐ members of the public and the legal profession seeking clarification of the DHC Program's mandate and services.

#### Discrimination and Harassment Complaints

14. During this reporting period, 39 individuals contacted the DHC Program with complaints of discrimination or harassment against a lawyer, law firm, or legal clinic in Ontario.

15. This represents a slight increase over the last reporting period (July to December 2003), in which 31 complaints were made to the DHC, and the previous reporting period (January to June 2003), in which 35 complaints were made.

*Public/Profession Ratio*

16. A little more than half of the complaints (22 or 56%) came from members of the public, with the remaining (17 or 44%) coming from members of the legal profession.

(see graph in Convocation Report)

17. This ratio is relatively constant in comparison with the last reporting period, in which 55% of complaints came from the public.

*Profession: Lawyer/Student Ratio*

18. Of the 17 complaints from within the legal profession, 3 were made by student members of the bar. This represents a decrease in the number and proportion of complaints from students relative to the last reporting period, in which more than a third of complaints from within the profession were made by students.

*Public: Male/Female Ratio*

19. Of the 22 lay individuals who contacted the DHC Program with a complaint of discrimination or harassment, 13 were female (59%) and 9 were male (41%).

(see graph in Convocation Report)

20. One of the men who contacted the Program was calling on behalf of his wife and was complaining about sex discrimination by his wife's lawyer.

21. Of the total number of complaints from the public in 2003, 64% were made by women and 36% by men. There was therefore a slight increase in the proportion of complaints by men (41%) in the first six months of 2004.

*Profession: Male/Female Ratio*

22. Of the 17 complaints from within the legal profession, the overwhelming majority (14 or 82%) were made by women, and only 3 (18%) were made by men.

(see graph in Convocation Report)

23. One of the male lawyers who contacted the Program was doing so on behalf of a female non-lawyer who worked in his office and who was the victim of sexual harassment by another male lawyer in the office.

24. Of the 3 student members of the bar who contacted the DHC Program with a complaint, 2 were female and 1 was male.

25. In 2003, two thirds of the total complaints from within the profession were made by women.

*Context of Public Complaints*

26. Of the 22 complaints from members of the public:

- ❑ 5 involved individuals complaining about their employer;
- ❑ 13 were clients complaining about their own lawyer or a legal clinic;
- ❑ 3 were litigants complaining about counsel representing an opposing party; and

- ❑ 1 was an individual complaining about a lawyer who worked for the public service.
27. The following chart depicts the contexts in which public complaints arose during this reporting period:
- (see graph in Convocation Report)
28. Overall, 59% of the public complaints involved clients of lawyers, 23% involved employees of law firms or legal departments, and 14% involved litigants complaining about opposing counsel.
29. Relative to the data collected in 2003, there was a slight decrease in the proportion of client complaints and corresponding increase in the proportion of employee complaints. In 2003, 66% of public complaints were made by clients, 15% were made by employees, and 15% were made by litigants complaining about opposing counsel.

#### *Context of Complaints Within the Profession*

30. Of the 17 complaints from within the profession,
- ❑ 7 lawyers and 2 law students complained about their employer;
  - ❑ 2 lawyers and 1 law students complained about a co-worker;
  - ❑ 4 lawyers complained about another lawyer outside of their employment context (usually opposing counsel); and
  - ❑ 1 lawyer called on behalf of a staff member in his office who was the victim of harassment by another lawyer in the office.
31. Thus 76% of all complaints from within the profession arose in the context of the complainant's employment.
32. In 2003, 85% of all complaints from within the profession arose in the context of the complainant's employment or in the context of a job interview.

#### *Nature of Public Complaints*

33. The 22 complaints made by members of the public were based on one or more of the following prohibited grounds of discrimination: sex, disability, race, family status and religion.
34. Almost half (10) of the public complaints involved discrimination based on sex. Of these,
- ❑ 4 involved female clients complaining about sexual harassment by their own male lawyer;
  - ❑ 3 involved female staff who worked in a law office and were complaining about discrimination by their employer based on pregnancy and/or maternity level; and
  - ❑ 3 involved other sex discrimination complaints by women-2 by clients of male lawyers and 1 by a woman who worked in a law office and was complaining about her employer.
35. One of the public complaints involved a female staff member of a law firm who complained that her family status (as a single mother) was not being accommodated by her employer and that she was suffering discrimination at work because of her child care responsibilities.
36. More than a third (8) of the public complaints were based on disability. Of these,
- ❑ 4 involved clients who complained that their own lawyer (or a legal clinic serving them) was exploiting their disability in a discriminatory fashion or was failing to accommodate their disability;
  - ❑ 3 involved litigants who complained that opposing counsel was harassing them based on their disability; and
  - ❑ 1 involved a complaint that a public service lawyer was failing to accommodate an individual's disability in providing a service.

37. The remaining 5 public complaints were based on religion and race. Of these,
- ❑ 4 involved clients who complained that their own lawyer had discriminated against them - 2 based on their race and 2 based on their religion; and
  - ❑ 1 involved an employee who complained that his employer had discriminated against him based on his religion.
38. In summary, sex was raised in 10 (45%) of the 22 public complaints, disability was raised in 8 (36%) of the complaints, religion was raised in 3 (14%) of the complaints, race was raised in 2 (9%) of the complaints and family status was raised in 1 (4%) complaint.<sup>1</sup>
39. The following chart depicts the number and proportion of public complaints in which each of the prohibited grounds of discrimination was raised during this reporting period:

(see graph in Convocation Report)

#### *Nature of Complaints Within the Profession*

40. The 17 complaints made by members (and student members) of the Law Society were based on one or more of the following prohibited grounds of discrimination: sex, disability, race, and family status.
41. The majority (65%) of complaints from the profession involved sex discrimination. Of these
- ❑ 5 involved complaints of sexual harassment in the workplace (2 women lawyers complained about sexual harassment by a male colleague; 1 female student complained about sexual harassment by a male student; 1 female student complained about sexual harassment by a male lawyer; and one male lawyer called on behalf of a female non-lawyer in his office who was being sexually harassed by another male lawyer);
  - ❑ 4 involved female lawyers complaining about discrimination at work based on their pregnancy and/or the fact that they had taken maternity and parental leaves; and
  - ❑ 2 involved female lawyers complaining about sex discrimination by other counsel outside of their employment context.
42. Two complaints from within the profession were based on family status. Both complaints were made by students, one male and one female. Both students complained that their employer was discriminating against them based on their child care obligations.
43. Approximately one quarter of the complaints from within the profession were based on race. Of these,
- ❑ 2 involved complaints of race discrimination at work (one by a lawyer and one by a law student); and
  - ❑ 2 involved complaints about opposing counsel who had made racially derogatory remarks during litigation.
44. One lawyer complained that her disability was not being properly accommodated by her employer.
45. In summary, sex was raised in 11 (65%) of the 17 complaints from within the profession, race was raised in 4 (24%) of the complaints, family status was raised in 2 (12%) of the complaints, and disability was raised in 1 (5%) complaint.
46. The following chart depicts the number and proportion of complaints from members of the profession in which each of the prohibited grounds of discrimination was raised:

(see graph in Convocation Report)

#### *Summary of Total Complaints<sup>2</sup>*

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<sup>1</sup> Since some of the complaints involve multiple grounds of discrimination, the percentages do not add up to 100%.

47. Overall, of the 39 public and professional complaints received during the first 6 months of 2004,
- ❑ sex was raised in 21 complaints (54%) -- pregnancy was specifically raised in 7 complaints (18%) and 9 complaints involved sexual harassment (23%);
  - ❑ disability was raised in 9 complaints (23%);
  - ❑ race was raised in 6 complaints (15%);
  - ❑ religion was raised in 3 complaints (8%); and
  - ❑ family status was raised in 3 complaints (8%).
48. In comparison, in 2003, out of a total of 66 public and professional complaints,
- ❑ sex was raised in 30 complaints (45%) -- pregnancy was specifically raised in 3 complaints (4%) and 17 complaints involved sexual harassment (28%);
  - ❑ race was raised in 19 complaints (29%);
  - ❑ disability was raised 10 complaints (15%);
  - ❑ age was raised in 5 complaints (8%);
  - ❑ ethnic and national origin were raised in 4 complaints (6%);
  - ❑ sexual orientation was raised in 3 complaints (5%); and
  - ❑ family status was raised in 1 complaint (2%).

#### Demographic Survey of Complainants

49. Individuals who contacted the DHC by telephone with complaints of harassment or discrimination were asked whether they would be willing to participate in a short demographic survey to enable the DHC to record anonymous statistical data about them. During this reporting period 33 surveys were conducted. Twenty one (21) public complainants and 12 members of the Law Society (including 2 student members) were surveyed, with the following results:

	<u>Profession</u>	<u>Public</u>
<i>Gender/Sex</i>	10 female 2 male	13 female 8 male
<i>Race/Ethnicity</i>	1 Black 2 Chinese 1 South Asian 8 White/Caucasian	1 Aboriginal 1 Arab 1 Chinese 1 Phillipino 2 South Asian 1 Southeast Asian 14 White/Caucasian
<i>Sexual Orientation</i>	10 Heterosexual 2 Lesbian/Gay	20 Heterosexual 1 Lesbian/Gay
<i>First Language</i>	10 English 1 Chinese 1 Patois	15 English 1 French 1 Chinese 1 Dutch 1 Persian 1 Punjabi 1 Tagalog

<sup>2</sup> Since some of the complaints involve multiple grounds of discrimination, the percentages do not add up to 100%.



<i>Disability</i>	2 disabled	11 disabled
<i>Age</i>	7 were 25-34 years old 5 were 35-49 years old	6 were 25-49 years old 10 were 35-49 years old 3 were 50-64 years old 2 were 65+ years old
<i>Region of Residence</i>	7 Greater Toronto Area 1 Central Ontario 2 Southwestern Ontario 2 Unknown	10 Greater Toronto Area 1 National Capital Region 3 Southwestern Ontario 1 Central Ontario 2 Northern Ontario 4 Unknown

#### Services Provided to Complainants

50. Complainants who contacted the DHC were advised of the various avenues of redress open to them, including:
- ☐ reporting to the police (where criminal conduct is involved);
  - ☐ filing an internal complaint or a grievance within the workplace (including, where appropriate, contacting their union or employee association for assistance);
  - ☐ filing a complaint with a human rights commission (usually the Ontario Human Rights Commission, but sometimes the Canadian Human Rights Commission);
  - ☐ making a complaint to the Law Society; and
  - ☐ contacting a lawyer for advice regarding other possible legal actions (eg. wrongful dismissal, defamation, *Charter* equality claim).
51. Complainants were also provided with information regarding each of these options, including:
- ☐ what (if any) costs might be involved in pursuing an option;
  - ☐ whether legal representation is required to pursue an option;
  - ☐ how to file a complaint or make a report (eg. whether it can be done electronically on line, by telephone, or in writing; whether particular forms are required, etc.);
  - ☐ the process involved in each option (eg. investigation, conciliation, hearing, etc.);
  - ☐ what remedies might be available in different for a (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.) and
  - ☐ the time limits for each avenue of redress (or, in some instances, complainants were advised to immediately seek legal advice regarding the applicable time limits in their case).
52. Complainants were not only advised of the options available to them, but also that the options were not mutually exclusive.
53. Complainants were also given information about who to contact in the event that they decided to pursue any of their options. Sexual harassment and sexual assault complainants were provided with direct contact information for the Sexual Misconduct Unit within the Law Society's investigations department.
54. In some cases, upon request, strategic tips were provided on how to handle a situation without resort to a formal complaints process (eg. confronting the offender, speaking to a mentor, writing a letter of complaint to the managing partner of the law firm in question).
55. In some cases, complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other sources.

56. In some cases, complainants were referred to support services, such as OBAP (the Ontario Bar Assistance Program) or to legal associations such as BLSAC (the Black Law Students Association of Canada).

#### *Mediation Services*

57. In addition to being advised of the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program.
58. Where mediation was offered, the nature and purpose of mediation were explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties to reach a mutually satisfactory resolution of the complaint.
59. During this reporting period, one complainant opted for mediation, but the respondent did not agree to participate. One other complainant initially requested mediation, but later changed her mind before the respondent was contacted.
60. Most complainants who rejected the offer of mediation expressed a desire to have their complaint investigated and/or a preference for an adjudicative approach to the resolution of their complaint. Many also expressed a belief that the respondent would not be willing to participate in mediation, though they did not authorize me to contact the respondent to inquire about their willingness.
61. Where appropriate, complainants were also offered the option of having the DHC intervene informally, to contact the respondent and advise them of the complainant's concerns in an effort to resolve the complaint without resort to a formal mediation process. Two complainants opted for this approach. In one case, the complaint was resolved to the complainant's satisfaction through the informal intervention of the DHC. In the other instance, the complainant remained unsatisfied and indicated that he would pursue a formal complaint to the Law Society.

#### *Promotional Activities*

62. During this reporting period, a number of promotional activities were undertaken to enhance the visibility of the DHC Program.
63. In March 2004, I spoke on a panel at the "Re-imagining Touchstones" conference on women in the legal profession, hosted by the University of Ottawa Faculty of Law.
64. I also spoke on an International Women's Day panel organized by the Department of Justice in Toronto in March 2004.
65. In May 2004, I was invited to address the students in the Bar Admissions course in Toronto; my speech was broadcast to other students across the province.
66. I communicated with career counseling services in various faculties of law throughout the province to ensure that they are aware of the DHC Program and that they disseminate information regarding the program to graduating law students.
67. Throughout this reporting period, regular bi-weekly English and French advertisements for the DHC Program have been placed in the Ontario Reports.
68. Bilingual brochures for the Program continue to be circulated to legal clinics, community centres, law firms, government legal departments, and faculties of law.

### Educational Activities

69. In January 2004, I participated in a half-day Continuing Legal Education seminar organized by the Law Society on “Responding to Harassment and Discrimination in the Legal Workplace”.
70. In February 2004, I conducted workshops in law firms on harassment and discrimination, together with the Director of Equity for the Law Society, Josée Bouchard. Our workshops are tailored to the specific needs of the law firms and/or legal clinics that invite us to speak to their staff and/or lawyers. We provide information about recent developments in the law, training with respect to their internal complaints policies, and information about external avenues of redress for discrimination and harassment. We assist them in learning to identify and respond appropriately to incidents of harassment or discrimination within their workplaces.
71. In addition to their educational function, these workshops and Continuing Legal Education seminar also serve to promote the DHC Program, because attendees are provided with information about the Program and the resources that it offers.

### Coordination with Alternate DHC

72. Earlier this year, the Law Society appointed Sylvia Davis as Alternate DHC to assume the duties and responsibilities of the DHC when Cynthia Petersen is temporarily unavailable (eg. due to illness, vacation, or conflict of interest). Ms. Davis acted as DHC for 3 weeks in March and April 2004, while Ms. Petersen was out of the country, and again for two weeks in June 2004, while Ms. Petersen was recovering from surgery. The transition was smooth in both cases.

### APPENDIX 4

#### EQUITY PUBLIC EDUCATION EVENTS SCHEDULE 2004-2005

##### Louis Riel Day

Event date: November 16, 2004

Workshop: Lecture Hall - 3:00 p.m. to 5:30 p.m.

Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.

##### Black History Month

Event date: February 23, 2005

Workshop: Lecture Hall - 3:00 p.m. to 5:30 p.m.

Reception: Convocation Hall - 5:30 p.m. to 8:30 p.m.

##### International Women's Day

Event date: March 8, 2005

Workshop: Lecture Hall - 3:00 p.m. to 5:30 p.m.

Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.

##### International Day for the Elimination of Racial Discrimination

Event date: March 21, 2005

Workshop: Lecture Hall - 3:00 p.m. to 5:30 p.m.

Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.

##### National Holocaust Memorial Day

Event date: April 18, 2005

Workshop: Lecture Hall - 3:00 p.m. to 5:30 p.m.  
 Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.

South Asian Heritage Month

Event date: May 5, 2005

Workshop: Lecture Hall - 3:00 p.m. to 5:30 p.m.

Reception: Convocation Hall - 5:30 p.m. to 8:00 p.m.

National Access Awareness Week

Event date: May 31, 2005

Workshop: Museum Room – 3:00 p.m. to 5:30 p.m.

Reception: Convocation Hall - 5:30 p.m. to 8:30 p.m.

National Aboriginal Day

Event date: June 8, 2005

Workshop and reception: Convocation Hall: 3:00 p.m. to 8:00 p.m.

Pride Week Reception

Event date: June 23, 2005

Workshop and reception: Convocation Hall: 5:00 p.m. to 8:00 p.m.

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

- (1) Copy of a Notice in the Ontario Reports re: a bilingual (French and English) Call for Participants.  
 (Appendix 2, pages 32 - 33)
- (2) Copy of a letter of invitation sent to various organizations Re: Call for Participants - The Law Society of Upper Canada to consult with law students, law graduates and lawyers with disabilities.  
 (Appendix 3, pages 34 - 37)

REPORT OF LIBRARYCO INC.

LibraryCo Inc.  
 September 23, 2004

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Report to Convocation

Purposes of Report: Information

*Promoting service excellence:*  
 A Report to Convocation for information

Mandate

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

Incorporation

LibraryCo was established under the laws of the Province of Ontario by *Articles of Incorporation* originally registered on December 20, 2000 and later amended by Articles registered on April 12, 2001. LibraryCo has two shareholders: the Law Society of Upper Canada and the County and District Law Presidents' Association.

### Governance

LibraryCo's affairs are governed by a 15-member Board of Directors with rotating terms of office. The composition is made of representatives appointed by the Law Society of Upper Canada (LSUC), the County and District Law Presidents' Association (CDLPA), the Ontario Bar Association (OBA), the Ontario Courthouse Librarians Association (OCLA), the Toronto Lawyers Association (TLA), and several members appointed at large. The current Board Chair is Gavin MacKenzie, a Benchler and lawyer with the firm of Heenan Blaikie LLP in Toronto.

The role of a Director of LibraryCo Inc. is one of stewardship. Directors are responsible for monitoring, rather than actively managing the business affairs of the Corporation. They oversee the financial management of the corporation, determine future directions and priorities in keeping with the mandate of the corporation and set policies in accordance with the *Unanimous Shareholders Agreement for LibraryCo Inc.* while consulting with interested stakeholders.

The Corporation is staffed by an Executive Director, an Assistant to the Executive Director and a Roving Law Librarian.

### The County and District Law Library System

Consisting of 48 County and District Law Libraries across the province, these libraries are staffed from 4 to 40 hours per week with a variety of personnel ranging from Library Assistants to professional Law Librarians. In total, there is some 80+ staff. The staffs are wholly employed by Law Associations of dedicated, volunteer lawyers serving on Boards of Directors. The majority of the direct funding allocations come through LibraryCo from a portion of the Law Society of Upper Canada fees paid annually by the lawyers of Ontario.

### Key developments in 2004

- Developing staffing standards for County and District law library staff to:
  - ensure uniform position descriptions for Library Assistants, Library Technicians and Law Librarians across the province;
  - ensure equitable and fair salaries for staff with like education, skills and competencies who are perform jobs of equal value;
  - ensure an ongoing high quality of staffing through standardized performance measurement.
- Promoting continuing education opportunities for library staff across the province in order to ensure competency when supporting the work of Ontario's lawyers.
- Establishing document delivery protocols and delivery mechanisms to ensure Ontario's lawyers access to law and law-related materials no matter where they are geographically located in the province.
- Co-operating in nation-wide resource sharing arrangements with all Law Society and Courthouse Law libraries from coast to coast to coast including the Law Society of Upper Canada's Great Library.
- Employing toll free numbers for the five Regional Law Libraries in order to assure the lawyers of the province that during business hours, there will always be a professional law librarian available to assist with their research.
- Delivering more and better commercially available electronic resources to the lawyers of Ontario through their County and District Law Libraries and the *tool kit of legal resources* on the LibraryCo webpage. Lawyers now have access to 11 key internet-based electronic tools and more in their law libraries.
- Communicating the work and services of the law libraries through the LibraryCo brochure series including: *Just the Facts!; What's in a Law Library? and What's in a name?*
- Supporting the work of the CDLPA Library Committee to ensure better communications with the lawyers of Ontario.

- Continually exploring opportunities with the Great Library to develop creative options of bringing better service delivery and resources to the lawyers of Ontario.
- Partnering with legal publishers and vendors including BAR-eX and the Law Society to deliver appropriate, meaningful and timely training and continuing education opportunities for lawyers in Ontario.
- Funding capital expenditures in law libraries to upgrade facilities, equipment, and furnishings.
- Assisting County and District Law Associations with their hiring practices in the law libraries through the brochure *Hiring Law Library Staff?* (See also *Human Resource Guide #1: Hiring new law library staff? Some tips on how LibraryCo can help ...* and *Human Resource Guide #2: Employment Standards Information* on the LibraryCo webpage at [www.libraryco.ca](http://www.libraryco.ca))
- Providing continuing education opportunities to library staff of all levels from all County and District law libraries through an annual meeting and conference called *Conference for Ontario Law Associations' Libraries (COLAL)*, October 27 through 29, 2004.
- Providing consultation services regarding collections, facilities, space planning, training and technology for the Local Associations through the services of the Roving Law Librarian.
- Getting our message out through the new communication tool *FOCUS ... the quarterly newsletter of LibraryCo Inc.*
- Coordinating more bulk purchase opportunities for legal resources in order to take advantage of discount prices to make member dollars stretch further. (In 2004 two new arrangements were negotiated with Irwin Law and LexisNexis Butterworths publishers).
- Delivering hard dollar grants in 2004 of some \$4.9 million as well as distributing on average an additional \$43,000 in centralized purchases for each of the law libraries. (In 2003 the figures were \$4.6 million in grants and \$42,500 per law library).

#### REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

Professional Development, Competence & Admissions Committee  
September 23, 2004

Report to Convocation

Purpose of Report: Information

Policy Secretariat  
(Sophia Spurdakos 416-947-5209)

#### THE REPORT

##### Terms Of Reference/Committee Process

1. The Committee met on September 14, 2004. Committee members Bill Simpson (Vice-Chair), Peter Bourque and Kim Carpenter-Gunn attended. Bill Simpson chaired the meeting. Staff members Diana Miles and Sophia Spurdakos also attended.
2. The Committee is reporting on the following matters:

Information

- New Licensing Program – Blueprints
- Professional Development and Competence Director's Benchmark Quarterly Report

## INFORMATION

### NEW LICENSING PROGRAM – BLUEPRINTS

3. In December 2003 Convocation approved a new licensing program to commence in 2006. The Professional Development and Competence department has been directed to design and implement the new program and present the proposed new approach to Convocation for approval.
4. In June 2004 Convocation received an information report setting out the competencies that will underlie the new program. The report outlined the development process and set out the specific competency profiles that will form the backbone of the licensing examinations and the skills and professional responsibility program.
5. Having developed and validated the competencies, the next stage in the design process was to develop the licensing examination blueprints and the skills and professional responsibility program curriculum design. The blueprints have now been completed using the competency profiles as a foundation.
6. The Director of Professional Development and Competence has prepared a report outlining the blueprinting process and providing the blueprints for Convocation's information. The report and blueprints are set out at APPENDIX 1. If benchers have questions or require further information on the blueprints they should contact the Director of Professional Development and Competence.
7. To date, 1,614 lawyers in Ontario have had substantial input into the development of the new licensing process. This will continue over the coming months.

### DIRECTOR'S QUARTERLY BENCHMARK REPORT

8. APPENDIX 2 contains the Director of Professional Development and Competence's quarterly benchmark report and articling placement report, for Convocation's information.

## APPENDIX 1

### NEW LICENSING PROCESS FOR ADMISSION TO THE BAR IN ONTARIO

- A. Status Report on the Development of the New Licensing Process (for information)
- B. Blueprint Documents for the Barrister and Solicitor Licensing Examinations (for approval)

Prepared for:  
Professional Development, Competence & Admissions Committee

Prepared by:  
Diana Miles, Director  
Professional Development & Competence  
416-947-3329  
dmiles@lsuc.on.ca

September 2004

A. Status Report on the Development of the New Licensing Process

Licensing Examinations Development Process

1. As a first step in the process of developing the competencies for the examinations, a team of nineteen exemplar practitioners representing different practice areas, sizes, professional and personal demographics, convened for eight days to create an initial draft of the competencies required of an entry-level lawyer. A competency is defined as a “knowledge, skill, ability, attitude or judgment required for entry-level practice.”
2. Following the initial development of the entry-level barrister and solicitor competency profiles, a series of four focus groups were conducted across Ontario providing an opportunity for practitioners to review the competencies and suggest additions, deletions and modifications to the competency statements.
3. Following the focus groups, another experienced team of lawyers reviewed and approved the focus group comments and suggestions and the competency profile was prepared for final validation through a provincial membership survey.
4. 4000 members, randomly chosen and representative of the demographics of the profession, were sent the competency validation survey. The 421 returned surveys were used to validate the overall competency profiles as well as determine a relative hierarchy of importance among the competencies within the profiles.
5. Competencies were rated to determine the extent to which they will be represented on the licensing examinations. Importance of a competency is determined by the applicability, frequency and consequence (risk factor) of each competency as applied to an entry-level practitioner.
6. The rating or weighting of these competencies formed the backbone of the next important phase in the development of the new licensing examinations, the blueprinting process.
7. The blueprinting process is the most important process in the derivation of licensing examinations. It is used to determine the basis for test specifications (types of questions, length of examinations, scoring methodology), to provide direction to the exam developers who will derive content for the examinations, and as a way of verifying that the examination questions are valid and representative of entry-level practice. The questions on an examination will vary, but they will always be linked to the competencies.
8. Over the course of six days in June, a Barrister Blueprint Working Group and a Solicitor Blueprint Working Group (once again consisting of exemplar practitioners) reviewed the weighted competencies validated through the processes outlined above. The members of the Working Groups considered the input from the competency development teams, focus groups and the survey results. The Working Group members achieved unanimous agreement in relation to all Blueprint decisions.
9. The final Blueprints for the Barrister and Solicitor Licensing Examinations are currently before the Professional Development, Competence & Admissions Committee for consideration and referral to Convocation for approval. The Blueprint Documents are attached at Tab 1 and Tab 2.
10. Demographic information on the participants involved in the working groups and focus groups for both the licensing examinations and the Skills and Professional Responsibility Program competency development is attached at Tab 3. Survey analysis and demographic information on the respondents to the survey is contained in the Blueprints.

Next Steps



#### Development of the Licensing Examination Questions

11. Question development (also known as item writing) must be based on the previously defined and validated competencies using the parameters specified in the Blueprint. The examination item writers will be directed to draft only those questions that will measure the previously established and validated competencies and other parameters to be assessed.
12. Item writing for the examinations will commence in late September. Item writers will receive training on how to develop effective questions based on the Blueprint specifications. Question development for both examinations will be completed by the end of February 2005 with review and validation of all of the questions to commence in March 2005.
13. To protect the integrity and the security of the developed examination questions, all item developers and examinations reviewers will be required to sign a confidentiality agreement not to discuss the contents of the questions with any party other than appointed Law Society representatives and agents.
14. PD&C Department staff will work closely with the Law Society's current performance evaluation technology (PET) provider, TDA Inc., to ensure that appropriate security enhancements are in place for the new licensing examination environment. TDA Inc.'s clients are educational and testing organizations ranging from school boards, colleges, universities and professional certification boards to corporations throughout North America. TDA Inc.'s client list is extensive and includes the Canadian Association of General Surgeons, Institute of Chartered Accountants of Ontario, the National Dental Examining Board of Canada, Royal Canadian Mounted Police, and numerous other organizations engaged in licensing activities.

#### Articling Term and Enhancements

15. Articling will continue to play an important competence function in the new licensing process. Enhanced educational supports are contemplated under the new model to ensure that students receive the tools they need to prepare for practice. An Articling Enhancement Survey to past and current principals and newly called lawyers (4000 total) has been undertaken and the response rate so far has been excellent (over 25%).
16. A report will be presented to Committee and then referred to Convocation in November 2004. The report will outline the length of articling term based on feedback from the survey and provide a proposed list of educational enhancements that will be developed by the PD&C Department to support this component of the licensing process.

#### Skills and Professional Responsibility Program

17. The validation of the most important skills and professional responsibility competencies to be taught and assessed in the Skills and Professional Responsibility Program has been completed and was presented in June.
18. The curriculum for the Skills and Professional Responsibility course, which will dictate the length of the Program, will be presented to Committee and then referred to Convocation in January 2005.

#### Operations

19. Alongside the formal development of the content for the licensing process, the PD&C Department staff has been working on the administrative and operational issues for implementation of the new process. This includes a complete review of all the current policies and procedures, by-laws and all administrative activities required to implement the Skills and Professional Responsibility Program, the Licensing Examinations and the Articling Program.
20. Policy and by-law activities will be coordinated and completed with other departments such as Professional Regulation, Membership Services and Legal Affairs to ensure continuity and clarity so that all parties are fully apprised and operational in the spring of 2006.
21. In addition to the above internal operational activities, the Deans of the law schools and their students are being kept fully apprised of all components of the development and this will continue as each component is presented at Convocation. The law schools and their students will be provided, on a regular basis, with

communications and reminders about the new licensing process and the impact of this change on the admissions process.

22. In addition, PD&C communicates regularly with the Directors and Managers of Students and Associates at law firms (approximately 50 individuals) to discuss upcoming changes and the impact on scheduling and articling procedures.

#### Lawyer Participation To Date

23. Up to this point in the process 1614 lawyers in Ontario have had substantial input into the development of the new licensing process, validation and blueprinting of the licensing examinations, defining the competencies for the instruction and assessment in the Skills and Professional Responsibility Program, the term of the Articling Program, and the proposed educational enhancements during Articling.

#### B. Executive Summary: Blueprint Documents for the Barrister and Solicitor Licensing Examinations

1. The Executive Summary sets out the key aspects of the Blueprint documents which will be used to derive future licensing examinations. For specifics, refer to the Barrister Blueprint Document at Tab 1 and the Solicitor Blueprint Document at Tab 2.

#### Blueprint Document

2. The foundation of the barrister and solicitor licensure examinations begins with the Licensure Examinations Blueprint document. The Blueprint provides a summary of:
  - a) the development processes followed;
  - b) the content to be assessed (what is tested);
  - c) the structure of the examinations (the method by which the content is to be tested);
  - d) the representative contexts presented within the examinations (the situations within which the content is to be tested);
  - e) the scoring of the examinations.
3. The Blueprint is essentially the recipe that outlines all the ingredients for the examinations and the relative proportions of each. What is being assessed, along with the experience for the candidates, is always replicated as closely as possible.
4. The Blueprint serves the following purposes:
  - a) ensures the relevance of the examinations by indicating links to the competency profile for entry-level Barristers and Solicitors;
  - b) maximizes the functional equivalence of alternative forms of the examinations;
  - c) provides direction for content developers when writing new items (questions) for the examinations; and
  - d) facilitates evaluations of the appropriateness and effectiveness of the examinations by content experts and other stakeholders.
5. The competency-based Blueprint advances the above purposes by definitively stating what is assessed, for what purpose, to what extent, with what types of items, in what contexts and to what standards. It also provides documentation of the processes leading to each of these decisions.

#### Blueprint Development Process and Specifications

6. The current Blueprints were developed by a Barrister Working Group and a Solicitor Working Group comprised of exemplar lawyers representing a cross section of different practice areas, sizes, and professional and personal demographics. The Blueprint documents reflect all the testing specifications those Working Groups believe are necessary for the future success of the examinations and the candidates taking the examinations.

7. The members of the Working Groups considered the input and outcomes derived by 498 lawyers involved in the examination competency development process to this stage.
8. The Working Group members achieved unanimous agreement in relation to all Blueprint decisions. Those decisions are set out below.

#### Candidates

9. The academic prerequisite to be eligible to write the Licensing examinations as a student-at-law is either:
  - a) Graduation from a common law program, approved by the Law Society, in a university in Canada; or
  - b) Certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Committee of Canadian Law Deans.

#### Competencies to be Assessed

10. It is important the competencies assessed by the examinations are those that:
  - a) have the most direct impact on public protection;
  - b) influence effective and ethical practice; and
  - c) can be measured reliably and validly by the assessment item (question) format used by the examinations.

#### Examinations

11. The competencies have been weighted to determine the extent to which they will be represented on the examinations. All of the competencies fall into one of four categories based on criticality and frequency. Every competency will not necessarily be included on a particular version of the examinations; however, competency weightings ensure the competencies that are the most important to the purpose of licensure are assessed more thoroughly.

#### Structure of the Examinations

12. The examinations will consist of four-option multiple-choice questions.
13. The multiple-choice questions are presented as both “independent” items (the text provided is used to answer one question) and in “cases” typical of general legal practice where 4 to 10 items are linked to each case. In the latter situation, a scenario or set of facts will be provided and the student will answer a number of questions pertaining to the specific scenario.
14. A range of 75 - 85% of the questions will be independent and 15 - 25% of the questions will be case-based.
15. The examinations will be open book.
16. The length of the examinations is typically driven by their purpose, the number of competencies to be assessed, and practicality concerns (e.g., resource availability and demands placed on candidates). To ensure reliable results for the total pass score and adequate coverage of the defined competency categories, each Examination will consist of approximately 250 questions.
17. Based on this number of questions, the assessment length on each Examination will be approximately seven hours. The specific length of time to complete the examinations, time limits and break duration will be determined in the pilot testing phase. Both English and French examinations will be pre-tested for the length of time required to write.

18. As has been the Law Society's practice, accommodations may be granted on the basis of individually assessed needs. Such accommodations have included extra time to write, split sessions, assistance of scribes and readers, and various other provisions.

#### Reference Materials

19. The correct answers to all the Examination questions will be found in the reference materials. The Law Society will compile the reference materials at the same time as the examinations and the candidates will be provided with these materials in advance of the examinations.
20. Candidates will be permitted to mark the materials and bring them to the examinations. Immediately upon completion of the examinations, each candidate will be required to return all materials, including the copy of the reference materials used at the examination sitting, to the Law Society for security purposes.
21. It is noted that all admissions materials continue to be made available for the students on the e-Learning site at all times during the licensing process and can be printed as the students wish.

#### Context

22. The specific context variables in which the examination questions will be set has also been determined. This adds realism to the examinations while at the same time, ensuring that a particular context is not overemphasized. The context variables reflect a representation of an entry-level lawyer's day-to day practice and they are broken down according to:
  - a) client types (e.g., individuals, corporations, partnerships, charities);
  - b) client situations (e.g., civil litigation, real estate, family law); and
  - c) legal environments (e.g., sole practitioner, law firm, government, legal clinic).

#### Scoring the Examination

23. The Angoff method will be used. This methodology is widely used in setting standards for professional assessments and is the scoring method currently used in the Law Society admissions process.
24. In applying the Angoff method, when Examination questions are more difficult, the required pass mark on that question will be lower; when Examination questions are less difficult, the required pass mark on that question will be higher. Both adjustments keep the underlying required standard constant. As questions change, the pass marks will change to precisely reflect any questions that are removed as well as those that are added.
25. An Examination Review Working Group comprised of content experts will review the results of the pilot testing extensively. This Working Group will then set the pass mark for each Examination. Identifying the pass mark for each Examination requires that each question be rated in terms of the percentage of candidates anticipated to answer correctly.
26. The Examination answer sheets will be scanned and scored using computer software. Only one outcome will result from scoring the Examination, overall pass/fail. The unsuccessful candidates will receive an evaluation form that will identify their relative strengths and weaknesses vis-à-vis the major competency categories. This will assist the candidates to enhance their performance for the next sitting of the Examination. Candidates will be allowed to write each Examination a total of 3 times before being required to reapply to the licensing process. Convocation has already approved that candidates will have three years in which to pass the examinations for a potential total of nine sittings of each examination.
27. A number of statistics will be used to assess the effectiveness of the examinations, diagnostic categories, and individual questions. Candidate feedback is also obtained following each administration of the examinations to further assess its subjective validity and effectiveness from the perspective of candidates.

Candidate feedback will include ratings of the adequacy of time limits, question clarity, relevance to practice and the perceived fairness of the assessment.

#### Summary

28. The Blueprint parameters will be reviewed on an annual basis and/or when significant changes occur in the profession and practice which would require modifications to the examinations. Subject matter experts will be involved in this review process in the form of a Barrister Advisory Group and a Solicitor Advisory Group. The Professional Development, Competence & Admissions Committee will select the members of the Advisory Groups. Qualifications and terms of reference for membership in the Advisory Groups will be developed for this purpose in Fall 2004 with a view to establishing the Advisory Groups early 2005.

TAB 1

### BLUEPRINT DOCUMENT FOR THE BARRISTER LICENSURE EXAMINATION

Prepared for the  
  
LAW SOCIETY OF UPPER CANADA

Prepared by the  
  
PERFORMANCE ASSESSMENT GROUP INC.

July 2004

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### Blueprint Development Overview

The foundation of the Barrister Licensure Examination (hereafter referred to as the “Examination”) begins with the Barrister Licensure Examination Blueprint document (hereafter referred to as the “Blueprint”). The Blueprint provides a summary of the development processes followed, the content to be assessed (i.e., what is tested), the structure of the Examination (the method by which the content is to be tested), the representative contexts presented within the Examination (the situations within which the content is to be tested) and the scoring of the Examination. The Blueprint is essentially the recipe that outlines all the ingredients for the Examination and the relative proportions of each so what is being assessed, along with the experience for the candidates, is always replicated as closely as possible.

#### Background to the Assessment Process

In December 2003, Convocation approved the implementation of a competency-based licensure process for admission to the Bar in Ontario. Traditionally, candidates have taken a series of substantive law courses in addition to skills training provided by the Law Society of Upper Canada (hereafter referred to as the “LAW SOCIETY”) over a four month period and were required to pass examinations and skills assessments as part of the requirements to be

admitted to the Bar. Starting in 2006, candidates will attend a mandatory skills training program and assessments and will be required to write two newly developed competency-based licensure examinations. One examination will focus on the competencies expected of entry-level lawyers performing in the capacity of a Barrister, while the other will focus on the competencies expected of entry-level lawyers performing in the capacity of a Solicitor. All candidates will be required to pass both examinations and the skills assessments.

#### Barrister Licensure Examination Blueprint Purposes

The Blueprint serves the following purposes:

- ensures the relevance of the Examination by indicating links to the competency profile for entry-level Barristers;
- maximizes the functional equivalence of alternative forms of the Examination;
- provides direction for content developers when writing new items for the Examination; and
- facilitates evaluations of the appropriateness and effectiveness of the Examination by content experts and other stakeholders.

The competency-based Blueprint advances the above purposes by definitively stating what is assessed, for what purpose, to what extent, with what types of items, in what contexts, to what standards, and provides documentation of the processes leading to each of these decisions.

The PERFORMANCE ASSESSMENT GROUP has developed a comprehensive Blueprint system that identifies five types of key assessment information including the process, content, structure, context and scoring of the Examination. In summary:

#### Process

- A clear statement of the purpose of the Examination;
- A definition of the candidate target population;
- The methodology employed for all key Blueprint activities; &
- A list of the content experts involved in the Blueprint development process.

#### Content

- Competencies related to the purpose of the Examination;
- Entry-level Barrister competency weightings;
- Entry-level Barrister competency categories; &
- Cognitive domain weightings of the Examination.

#### Structure

- Item format of the Examination;
- Item presentation (e.g., individual, case, multiple response) of the Examination;
- Response format (e.g., selected, constructed, written, computerized answer sheets) of the Examination;
- The Examination length, duration and breaks;
- Assessment aids permitted for writing the Examination;
- Percentage of “new” content to appear on new versions of the Examination;
- The number of experimental items to be assessed on each administration of the Examination; &
- Number of forms of the Examination.

#### Context

- Client type (e.g., individual, family, population, community) specified in the Examination;
- Client age & gender specified in the Examination;
- Client legal situation specified in the Examination;
- Client culture included in the Examination; &
- Occupational environment (e.g., health care setting) specified in the Examination.

### Scoring

- Standard setting method(s) employed for the Examination;
- An overview of the scoring procedures of the Examination; &
- The acceptable statistical item characteristics.

### The Blueprint Process

Process information provides important documentation of the methodology used to develop the contents of the Blueprint. Despite its global focus, process information is a key component for establishing the content validity of the Examination

The Blueprint was developed based on the input of a Blueprint Development Working Group (hereafter the “Working Group”). The Working Group consisted of eight (8), experienced and respected Barristers. For the names of the Working Group members, please refer to the Acknowledgements section in Appendix B.

The current Blueprint was developed by the Working Group of exemplar lawyers representing different practice types, sizes, and professional and personal demographics to reflect all the testing specifications they believe are necessary for the future success of the Examination. These specifications were derived from group processes and not based on the content of the current examinations.

What follows is an overview of the process followed to develop this Blueprint; however, additional process information is included within every section of the Blueprint.

#### 1. The Purpose of the Barrister Licensure Examination

The Examination is designed to assess competency in civil and criminal litigation, family law, public law, and related ethics and professional responsibility issues. Candidate competency is assessed on a pass/fail basis.

The Examination is one criterion used in making the decision to license an entry-level lawyer. Licensure can be defined as the official recognition by the Law Society of Upper Canada (Law Society) that an individual has met all the qualifications specified by the Law Society and is, therefore, approved to practice as a lawyer in Ontario. Successful completion of the Barrister Licensure Examination is a necessary, but not the only prerequisite for a lawyer to be licensed to practice law. The ultimate goal of the Examination is to protect the public.

#### 2. The Candidates for the Barrister Licensure Examination

The academic prerequisite to be eligible to write the Licensing examinations as a student-at-law is either:

- a) Graduation from a common law program, approved by the Law Society, in a university in Canada; or
- b) Certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Committee of Canadian Law Deans.

#### 3. Blueprint Methodology

A Working Group participated in the development of the Blueprint. The Working Group was composed of experienced lawyers who identified their practice as being representative of the work performed primarily by “Barristers”.

The Working Group and the PERFORMANCE ASSESSMENT GROUP facilitators systematically defined the specifications of the Blueprint through consultation with a number of resources and group discussions. Core resources used by the facilitators included:



- *Standards for Educational and Psychological Testing* (APA, 1999)
- *Certification: A NOCA Handbook* (NOCA, 1996)
- *Blueprint Development Overview and Working Document* (PERFORMANCE ASSESSMENT GROUP INC., 2000)

The PERFORMANCE ASSESSMENT GROUP'S *Blueprint Development Overview and Working Document* (2000) served as a guide for developing the five major components of the Blueprint. For each issue involving a Working Group decision, the PERFORMANCE ASSESSMENT GROUP facilitators presented an overview of the importance of the decision and the potential consequences of various courses of action. When determining a particular Blueprint specification, relevant archival information was consulted followed by considerable discussion among the Working Group members. In some cases, representatives of the Law Society were called upon to provide clarification, historical context or other information collected by the Law Society to assist the Working Group members in arriving at a decision. The Working Group members achieved unanimous agreement in relation to all Blueprint decisions.

A brief biographical data form was distributed to all Working Group members. This data has been retained to demonstrate to stakeholders the individuals providing content direction for the program are experienced and accomplished professionals who are qualified, as a group, to participate in performing these important licensure program activities. The names of the Working Group appear in Acknowledgement section of the Blueprint (Appendix B).

It is the recommendation of the Working Group that the Blueprint parameters be revisited on a regular cycle (e.g., every 3 to 5 years) and/or when significant changes to the profession occur requiring modifications to the Examination described in this Blueprint.

#### Content Variables

Content variables involve the essential nature of what is being measured by the items comprising the Examination. They specify the competencies to be assessed and define how these competencies will be sampled and to what extent. Competency categories have also been identified and the cognitive domains to be addressed by the Examination content have been defined and weighted.

When content variables call for percentages of the Examination to be allocated to different variables, these have been expressed as ranges (e.g., 35 - 45%) to allow for the Examination to be compiled when numerous percentages must be met simultaneously.

#### 1. The Competencies to be Assessed

It is important the competencies assessed by the Examination are those that:

- a) have the most direct impact on public protection;
- b) influence effective and ethical practice; &
- c) can be measured reliably and validly by the assessment item format used by the Examination.

As a first step in the process of developing the competencies for the Examination, a team of eleven (11) experienced and respected Barristers convened for four days to create an initial draft of the competencies required of an entry-level Barrister. A competency is defined as a "knowledge, skill, ability, attitude or judgement required for entry-level practice." A number of resources were consulted in the creation of this initial draft including the *BAC Skills Chart* (LSUC, 2003); *The Competency Profile: BC Admission Program* (2001); *Competency Profile: Western Provinces* (Canadian Centre for Professional Legal Education; 2003); and the *Law Society Rules of Professional Conduct* (LSCU, 2003). Following the initial development of the entry-level Barrister competency profile, a series of four focus groups were conducted across Ontario providing an opportunity for Barristers to review the competencies and suggest additions, deletions, and modifications to the wording of the competency statements.

Following the focus groups, an experienced team of Barristers reviewed and approved the focus group comments and suggestions and the competency profile was prepared for final validation through a provincial membership survey.

The validation survey was sent to 2000 Barristers across Ontario through a random selection process. One hundred ninety seven Barristers responded to the survey. Analysis of the sample provided support that those lawyers who participated in the survey adequately represented all regions of Ontario, areas of practice, and size and type of practices. A summary of the demographic analysis is provided in Appendix C.

## 2. Competency Weightings

Competencies have been weighted to determine the extent to which they will be represented on the Examination. Every competency will not necessarily be included on a particular version of the Examination; however, competency weightings ensure the competencies that are the most important to the purpose of licensure are assessed more thoroughly.

The following ratings scales were used to determine each competency's relevance, criticality and frequency for the purpose of assisting in the process of weighting the Examination:

Is this competency RELEVANT/APPROPRIATE for ENTRY-LEVEL BARRISTERS?

1. Yes
2. No

How CRITICAL is it if ENTRY-LEVEL BARRISTERS FAIL to perform this competency appropriately?

1. Not important (causes no harm or consequences to a Barrister's practice or to the client).
2. Minimally important (causes an inconvenience to a Barrister's practice or to the client).
3. Moderately important (may negatively affect a Barrister's practice or the client's interest).
4. Critically important (creates a situation that jeopardizes a Barrister's practice or the client's interests).

How OFTEN, on average, do ENTRY-LEVEL BARRISTERS perform this competency?

1. Rarely (once or less per month).
2. Weekly (about once per week).
3. Daily (about once per day).
4. Ongoing (throughout a working day).

As a preliminary step, the Working Group reviewed the data for competency relevance. Upon reviewing the statistical summary for each competency, 64 competencies were deleted from the final profile resulting in 236 competencies to be assessed using the Examination. Of the 64 competencies deleted, 30 were removed from the profile to be assessed through the skills assessment program. The remaining 34 competencies were deleted due to their low relevance or because they were deemed to be sufficiently measured through other existing competencies.

Based on this information, a four-variable classification system was adopted (a fully factorial design crossing criticality with frequency). The four-variable classification system is illustrated below:

	A) More Frequently Performed	B) Less Frequently Performed
1) More Critical	1-A	1-B
2) Less Critical	2-A	2-B

In order to maximize control over the weighting of the competencies for the Examination, the Working Group attempted to allocate equal numbers of competencies to each applicable competency-weighting category. By having equal numbers of competencies in each rating category, the categories can be weighted optimally to ensure the most critical/frequently performed competencies are represented by more Examination items than competencies of lesser criticality/frequency.

### ENTRY-LEVEL BARRISTER COMPETENCY RATING RESULTS

#### A) More Frequently Performed    B) Less Frequently Performed

##### 1) More Critical

59 competencies (35 - 45% of the Examination)	59 competencies (25 - 35% of the Examination)
59 competencies (15 - 25% of the Examination)	59 competencies (5 - 15% of the Examination)

##### 2) Less Critical

Eight competencies from the 1-A category were identified as “crucial competencies”. These competencies were identified to ensure they are measured by at least one question on every version of the Examination. These “crucial competencies” are identified in Appendix D.

The table that follows outlines the competencies falling into each criticality/frequency category, the weighting of each of the four categories, the average number of items that will be reflected on the Examination by category and the average number of Examination items per competency in each category (based on a 250 item Examination). A complete list of the entry-level Barrister competencies by Competency Category and criticality/frequency ratings is provided in Appendix E and F respectively.

### COMPETENCY WEIGHTING FOR THE EXAMINATION

Critical /Freq	Number of Competencies	Percent of Total Competencies	Weighting for the Examination	Average items per Examination	Average Items per Competency
1-A	59	25%	35 - 45%	100	1.69
1-B	59	25%	25 - 35%	75	1.27
2-A	59	25%	15-25%	50	0.85
2-B	59	25%	5 - 15%	25	0.42
overall	236	100%	100%	250	1.1

### 3. Competency Categories

The categorizing framework that is used to organize the competencies is important whenever candidates are to be provided with performance feedback organized by each competency category. In order for such feedback to be meaningful, the competencies representing each category must be assessed by a sufficiently high number of Examination items to provide reliable results. This can be accomplished in one of two ways. Either there must be a large number of competencies in each category, or the competencies within the category must be measured by a large number of Examination items.

The tables that follow outline the competency categories and the number of competencies in each, plus the average number of questions that would be anticipated to represent each category based on a 250 item Examination.

BARRISTER COMPETENCY CATEGORIES	Average # of Examination items per category
1. Ethical and Professional Responsibilities (22 competencies: 15 x 1-A, 2 x 1-B, 4 x 2-A, 1 x 2-B)	32
2. Knowledge of the Law (94 competencies: 18 x 1-A, 14 x 1-B, 20 x 2-A, 42 x 2-B)	83
3. Establishing and Maintaining the Barrister-Client Relationship (25 competencies: 7 x 1-A, 2 x 1-B, 14 x 2-A, 2 x 2-B)	27
4. Problem/Issue Identification, Analysis, and Application of Expert Knowledge (14 competencies: 9 x 1-A, 1 x 1-B, 4 x 2-A, 0 x 2-B)	20
5. Dispute Resolution (19 competencies: 3 x 1-A, 1 x 1-B, 14 x 2-A, 1 x 2-B)	19
6. Litigation Process (62 competencies: 7 x 1-A, 39 x 1-B, 3 x 2-A, 13 x 2-B)	69
TOTAL AVERAGE EXAMINATION ITEMS	250

In general, “subscales” containing fewer than approximately 25 items will not yield results with a degree of reliability that would support meaningful feedback for failing candidates. As can be seen from the above table, it may be possible to provide failing candidates with meaningful feedback for four (4) categories of Barrister competencies: Ethical and Professional Responsibilities, Knowledge of the Law, Establishing and Maintaining the Barrister-Client Relationship, and the Litigation Process.

#### 4. Cognitive Domain Weightings

To ensure that competencies are measured at different levels of cognitive ability, each question on the Examination will be written to reflect the following cognitive taxonomy (an adaptation of a taxonomy originally developed by Bloom in 1956).

Knowledge/Comprehension (KC): The ability to recall facts, policies, procedures, standards, research findings, etc. (e.g., citing ethical guidelines when asked to do so).

Application (AP): The ability to apply knowledge/comprehension in a straightforward applied situation (e.g., recognizing the appropriate procedure to employ when faced with a routine (uncomplicated) situation).

Critical Thinking (CT): The ability to apply knowledge/comprehension in complex applied situations. Requires analytical problem solving in addition to knowledge/comprehension and application (e.g., selecting and prioritizing appropriate courses of action when faced with complex situations; recognizing the relative importance of conflicting pieces of information and arriving at a conclusion requiring sound judgment).

COGNITIVE DOMAINS	% OF EXAMINATION
Knowledge/Comprehension:	15 - 25%
Application:	40- 50%
Critical Thinking:	30 - 40%
TOTAL	100%

#### Structural Variables

Structural variables include those characteristics determining the general design and appearance of the Examination. They define the format and presentation of the Examination items, the length and duration of the Examination, and special functions of Examination items (e.g., anchor items for the purpose of equating pass marks). As with content

variables, when structural variables require percentages to be allocated, these are also expressed as ranges (e.g., 40 - 50%).

### 1. Item/Tool Type

The Examination will be comprised of four-option multiple-choice items.

### 2. Item Presentation

The multiple-choice items are presented as “independent” items (the text provided is used to answer one item) and in “cases” typical of general legal practice where 4-10 items are linked to each case. A range of 75 - 85% of the items will be independent and 15 – 25% of the items will be case-based.

The Examination will originally be presented and responded to in a pencil-and-paper format.

### 3. Examination Length

The length of the Examination is typically driven by the purpose of the Examination, the number of competencies to be assessed, and practicality concerns (e.g., resource availability and demands placed on participants). To ensure reliable results for the total score and adequate coverage of the defined competency domain, the Examination will consist of 200 to 300 items.

### 4. Examination Duration, Books & Breaks

The duration of the Examination depends on the length of the Examination to be administered. Unless performance under time pressure is integral to the competencies being measured, candidates’ performance should not be confounded by lack of time. Assessments measuring candidates’ performance unconstrained by time are referred to as “power” assessments; whereas, assessments differentiating candidates based on the number of correct responses provided in a “time limited” situation are referred to as “speed” assessments. Typically, when time limits are placed on assessments of competence, these limits are intended to be reasonable for the vast majority of candidates to be able to complete all items (i.e., a power assessment strategy). A rule of thumb for multiple-choice items is to allow approximately 70 seconds per independent item and about 90 seconds per case-based item. Therefore, based on the number of items presented above, the assessment length will be seven (7) hours in duration. Time limits and break duration will be finalized following pilot testing for both the English and French versions of the Examination.

When the assessment process approaches three and one half hours in duration, candidates will be permitted a break. To ensure consistency, the Examination will be divided into two “booklets”. A booklet is a partial form of the assessment administered within its own time limitation, at the completion of which a break of 30 - 60 minutes will be provided.

### 5. Assessment Aids Permitted

The types of assessment aids candidates will be permitted to bring to the Examination is contingent upon the content being assessed on any given version of the Examination. Each item will be referenced to a specific source where the correct answer can be found and a determination will be made regarding which specific items merit the use of candidate aids (resources). These resources will be compiled with the Examination and provided to each candidate by the Law Society. After considerable discussion, the Working Group recommended the Law Society provide candidates with all the permitted written materials prior to the Examination. Candidates will be permitted to mark these materials prior to the Examination, however, immediately upon completion of the Examination, each candidate will be required to return ALL these materials to the Law Society for Examination security purposes.

### 6. Percentage of New Content for New Versions of the Examination

When new versions of the Examination are planned (i.e., three administrations per year with the primary administration in July) there is a need to have the content of these versions vary to protect the integrity of the licensure program. When candidates become familiar with assessment content, their resulting scores may be contaminated by this knowledge and are no longer a pure assessment of their individual competence/performance. In order to ensure consistency across various forms of the Examination, a core percentage of items are selected to remain constant from one version to the next (typically those with superior item characteristics). Additional items are added that did not appear as operational on the previous administration of the Examination. The Working Group determined the range of “new” items to appear on subsequent administrations of the Examination will be 25% - 50%.

### 7. Experimental Items

Closely tied to the percentage of “new” content on subsequent versions of the Examination is the issue of experimental items. Experimental items are included on versions of the Examination for the purpose of gathering statistical information, but are NOT used in calculating candidates’ scores. The Working Group determined experimental items will constitute approximately 5 – 10% of each version of the Examination.

### 8. Forms of the Examination

Most assessment programs specify a minimum of two forms of the assessment tool (English and French). Larger assessment programs may specify more than one English form of the assessment tool that generally differ only in the experimental items included. When multiple forms of the Examination are used, it is possible to assess many more experimental items each year for inclusion on subsequent versions of the Examination. The number of forms of the Examination will depend upon the number of candidates writing the Examination. In general, a new form will be created for every 200 candidates writing the Examination. Each form will contain the same operational questions. The only difference will be the experimental questions.

STRUCTURAL VARIABLES	EXAMINATION SUMMARY
Administration Time:	7 hours
Break Time:	1 hour
Independent Items	75 - 85%
Case-based Items	15 - 25%
Total Number of Questions	200 - 300
“New” Content	25 - 50%
Experimental Items	5 - 10%
Number of Forms	1 for every 200 candidates
Examination Booklets:	2
Examination Aids:	To Be Determined

### Contextual Variables

Context variables qualify the content domain by specifying the legal contexts in which the assessment questions will be set (e.g., client type, client culture, client situation and occupational environment). As with content and structure variables, when contextual variables call for percentages of the Examination to be allocated to different variables, these are expressed as ranges (e.g., 15 - 25%).

#### 1. Client Type

By specifying the types of clients that will appear in the Examination, one step has been taken toward ensuring the Examination reflects a realistic representation of the entry-level Barrister's day-to-day practice. While not all items in the Examination will introduce a client, it is beneficial to set guidelines for items where the presentation of one or more clients is required to assess the competencies.

In order to develop an Examination representative of the types of clients entry-level Barristers will typically encounter, the Working Group consulted a number of resources including the data obtained from the survey respondents. From this information, the following breakdown of client types was developed:

TYPES OF CLIENTS	% OF EXAMINATION
Individuals	65 - 75%
Partnerships and Unincorporated Associations	0 - 5%
Corporations	10 - 20%
Statutory Bodies	0 - 5%
Governments (federal, provincial, municipal)	5 - 15%
TOTAL	100%

## 2. Client Situation

Specifying the various legal "contexts" adds realism to the Examination while at the same time, ensures a particular context is not over-emphasized. It is important to realize that some competencies will not need to be assessed using a legal context (e.g., knowledge questions) however, where necessary, it is important to create a context that candidates perceive is realistic. Specific client legal situations were discussed and weighted by the Working Group as representative of a typical entry-level Barrister's practice. The following breakdown was developed:

LEGAL CONTEXT	% OF EXAMINATION
Administrative Law	5 - 15%
Civil Litigation	35 - 45%
Criminal/Quasi Criminal Law	20 - 30%
Family/Matrimonial Law	20 - 30%
TOTAL	100%

## 3. Legal Environment

Specifying the various legal "environments" adds realism to the Examination while ensuring a particular environment is not over-emphasized. Such issues as sole proprietor, legal clinic, or government office are all examples of different legal environments in which an entry-level Barrister might work. It is important to realize that some competencies will not need to be assessed using a legal environment (e.g., knowledge questions) however, where necessary, it is important to create a context that candidates perceive as realistic.

Specific legal environments were discussed and weighted by the Working Group as representative of a typical entry-level Barrister's practice. The following breakdown was developed:

LEGAL ENVIRONMENT	% OF EXAMINATION
Sole Practitioner	20 - 30%
Law Firm	55 - 65%

Legal Clinic	0 - 5%
In-House Counsel (Private)	0 - 5%
Government	5 - 15%
TOTAL	100%

#### 4. Client Culture

While the Examination will not test candidates' knowledge of specific values, beliefs and practices linked to individual cultures, it will require candidates to demonstrate awareness, sensitivity, and respect for cultural values, beliefs, and practices. When information related to client culture is presented in Examination items, this will be done without introducing biases or stereotypes.

### Scoring the Examination

#### 1. Standard and Pass Mark Setting Method Employed

Because the Examination will be designed to assess a candidate's competence with a focus on safe, effective, and ethical practice, setting a standard is not strictly a question of how well a participant is performing relative to her/his peers (i.e., normative standards), but rather how effectively the candidate is providing effective, and ethical services in the public interest from an absolute perspective. In theory, the average performance of a sample of the profession does not guarantee acceptable levels of performance. This is particularly true when one considers that the normative data will originally be based on a smaller administration of the Examination. If, by chance, this sample turns out to be particularly weak (or strong) performers, the feedback provided to subsequent participants may be overstating (or understating) their competence.

The procedure used to set the standard for the Examination must be one that provides an indication of whether or not participants have achieved a sufficient level of mastery of their content domain (i.e., absolute standards). Furthermore, various levels of performance need to be set within each of the diagnostic categories in order to provide a meaningful diagnostic profile to the participants. Given that an extensive body of research supports the use of the Angoff method in setting standards for professional assessments, a version of this process will be used to set the standard for the Examination.

The standard for the Examination will be based on an understanding of "minimal competence", defined as the level of competence that separates those who should receive a license to practice law from those who should not. A panel of content experts will be charged with developing the definition of minimal competence by discussing the differences between different levels of competence (mastery, incompetence and minimal competence). Through extensive discussions, the expert panel will agree upon a definition of what would be expected of an individual who is "at the borderline" of competence to practice law in the capacity of a Barrister. The expert panel will also discuss the potential consequences of setting the standard either too high or too low in terms of the impact this would have on candidates, the public, the Law Society and the legal profession. Using this carefully derived "working standard," the content experts will then proceed to the second step in the process, identifying the pass mark for a specific version of the Examination.

Identifying the pass mark for the Examination requires each item (i.e., multiple-choice) be rated by content experts in terms of the percentage of minimally competent candidates who "will" answer the item correctly. Ratings may vary from 0 – 100% and are recorded in increments of 5% (e.g., 60%, 65%, 70%, etc.). The content expert ratings for each item are then tabulated to arrive at a mean (arithmetic average) item rating. The pass mark for the Examination is based on the grand mean (overall average) of all the items that will count towards the scores of candidates.

The Angoff method is fair because it is based on a standard derived from the ability level required of the minimally competent candidate. When Examination items are more difficult, the required pass mark will be lower; when Examination items are less difficult, the required pass mark will be higher. Both adjustments keep the underlying



required standard constant. As items change, the pass marks will change to precisely reflect any items that are removed as well as those that are added.

It is important to note that the pass mark for the overall Examination and each of its diagnostic categories will be developed to provide guidance to candidates in the identification of their relative strengths and weaknesses. Finally, it should be noted that the working standard will become increasingly refined over time as content experts expand upon their previous work and new content experts are brought into the process with fresh perspectives.

## 2. An Overview of the Scoring Procedures

The Examination response sheets will be scanned and scored using computer software. Each correctly answered multiple-choice item will contribute one (1) point to a candidate's score. Candidates' final scores will be converted to a percentage and compared to the percentage pass mark for the Examination. Only one outcome will result from scoring the Examination, overall pass/fail.

## 3. Statistical Analyses

A number of statistics will be used to assess the effectiveness of the Examination, diagnostic categories, and individual items. These statistics include: Cronbach's Alpha, p values, Point Biserial Correlations, and distractor analyses. Candidate feedback is also obtained following each administration of the Examination to further assess its subjective validity and effectiveness from the perspective of candidates. Candidate feedback will include ratings of the adequacy of time limits, item clarity, relevance to practice and the perceived fairness of the assessment.

## APPENDIX A

### Barrister Licensure Examination Blueprint Summary Sheet

<i>STRUCTURE</i>			
All Items: Medium	Paper & pencil	Duration (time):	7.0 Hours
All Responses: Medium	Paper & pencil	Booklets (#):	2
M-C Individual Items:	75 - 85%	Breaks (#/time):	1 / 60 minutes
M-C Case Items:	15 - 25%	New content (%):	25 - 50%
M-C Response Presentation:	Four-option	Experimental Items (%):	5 - 10%
M-C Length (#):	200 - 300 Items	Forms (#):	1 Per 200 Candidates
Assessment Aids:	To Be Determined		

<i>CONTENT</i>			
1-A Weighting:	40 - 50%	2-A Weighting:	15 - 25%
1-B Weighting:	25 - 35%	2-B Weighting:	5 - 15%
Knowledge/Comprehension:	15 - 25%	Critical Thinking:	30 - 40%
Application:	40 - 50%		

A	B	C	D	E	F
Ethical and Professional Responsibilities	Knowledge of the Law	Establishing and Maintaining the Barrister-Client Relationship	Problem/Issue Identification, Analysis, and Application of Expert Knowledge	Dispute Resolution	Litigation Process
6 CRUCIAL (1,3,5,12,15,18)	2 CRUCIAL (27,28)	Not weighted	Not weighted	Not weighted	Not weighted

<i>C O N T E X T</i>				
Client Types:	Individual Clients	65 - 75%	Corporations	10 - 20%
	Governments	5 - 15%	Partnerships and Unincorporated Associations	0 - 5%
	Statutory Bodies	0 - 5%		
Legal Context:	Civil Litigation	35 - 45%	Criminal/Quasi Criminal Law	20 - 30%
	Family/Matrimonial Law	20 - 30%	Administrative Law	5 - 15%
Legal Environment:	Law Firm	55 - 65%	Sole Practitioner	20 - 30%
	Government	5 - 15%	In-House Counsel	0 - 5%
	Legal Clinic	0 - 5%		
Client Culture	The assessment program reflects awareness, sensitivity, and respect for cultural values, beliefs, and practices. Cultural issues are integrated within the Examination without introducing cultural stereotypes or biases.			

## APPENDIX B

Acknowledgements

The following individuals participated in the creation of the Law Society Entry-Level Barrister Competency Profile:

· Michael Bowman	· Josee Forest-Niesing	· Douglas Watters
· Ronald Caza	· Brian Gover	· Ivan Whitehall
· May Cheng	· Kristen Lopes	· Francesca Yaskiel
· Dianne Corbiere	· Barbara Thompson	

The following individuals participated in the focus group review of the Law Society Entry-Level Barrister Competency Profile:

· Mr. Justice Elliott Allen	· Brian Gover	· Lise Parent
· Philip Augustine	· Daniel Guttman	· Norman Peel, QC
· George Biggar	· Kenneth Hall	· Roger Rowe
· Daniel Boivin	· Ian Hull	· Jeffrey Schlemmer
· Jonathan Brunet	· Marion Korn	· Carene Smith
· James Butson	· Tim Lowman	· Sandra Thomas
· May Cheng	· Alfred Mamo	· Mr. Justice David Wake
· Carole Dahan	· Patrick J. Murphy	· Douglas Watters
· Diana Dimmer	· Wendela Napier	· Ivan Whitehall
· John Foreman	· Ann Nelson	

The following individuals participated in the Law Society Barrister Blueprint Development Meeting:

· Osbourne Barnwell	· Jeffery G. Hewitt	· Francine Roach
· Josee Forest-Niesing	· Susan Metzler	· Rhona Waxman
· Henny Harmsen	· Stephen Pitel	

## APPENDIX C

Summary of the Demographic Characteristics of Those Responding to the Survey  
of the Competencies for Entry-Level Barristers

1. What is your gender?

(see graph in Report)

2. How many lawyers are in your practice?

(see graph in Report)

3. How many individuals (including lawyers, non-lawyer employees and partners) are in your practice?

(see graph in Report)

4. How many years have you been practising law?

(see graph in Report)

5. What was your year of call to the bar?

Respondents were originally asked to provide the exact year of call; however, for ease of interpretation this data has been recoded to reflect call to bar for each of five decades ranging from the 1950's to the 2000's.

(see graph in Report)

6. Are you engaged in the private practice of law?

(see graph in Report)

6. If you ARE engaged in the private practice of law what are your main areas of practice?

Respondents were asked to select ANY areas of private practice they considered to reflect their “main areas of practice” from the following list:

· ADR/Mediation services	· Corporate/Commercial Law	· Family/Matrimonial Law
· Administrative Law	· Criminal/Quasi Criminal Law	· Wills, Estates, Trusts Law
· Civil litigation	· Employment/Labour Law	· Real Estate Law

To determine the percentage of respondents considering each area to be a “main area of practice” the total number of valid responses to question #6 (N=197) was used as a baseline for comparison; however, due to multiple responses, the totals across practice areas do not sum to 100%. As a result, the summary table provides only the frequency and percentage of respondents endorsing each area of private practice (valid and cumulative percentages cannot be calculated). The summary statistics for questions 6a-i appear on the next page.

Response Provided	Freq	Valid	Percent	Response Provided	Freq	Valid	Percent
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			total N				total N	
A	ADR/Mediation services	22	197	11%	F	Employment/Labour Law	38	197
B	Administrative Law	46	197	23%	G	Family/Matrimonial Law	35	197
C	Civil litigation	72	197	37%	H	Wills, Estates, Trusts Law	19	197
D	Corporate/Commercial Law	13	197	7%	I	Real Estate Law	10	197
E	Criminal/Quasi Criminal Law	34	197	17%				

(see graph in Report)

- 6a. If you ARE engaged in the private practice of law what are your main areas of practice? (select all that apply). OTHER:

Although an “OTHER” category was NOT provided on the survey, a couple of respondents wrote in an “OTHER” area of private practice they considered to be among their “main areas of practice”. These responses are summarized below along with the number of respondents providing each one (frequency):

#	Response Provided	Frequency
1	GOVERNMENT MEDIATOR	1
2	corporation	1
3	LEGAL AID	2
4	COUNSEL REGULATORY BODY	1
5	LABOUR ARBITRATION	1
6	UNEMPLOYED	1
7	counsel	1

- 6b. If you are NOT engaged in the private practice of law please select the ONE (1) category that best represents, through your employment or engagement, your primary activity in law.

(see graph in Report)

7. Where do you practice law?

(see graph in Report)

An “OTHER” category WAS provided on the survey for respondents who did not find their practice location among the options provided. These responses are summarized below along with the number of respondents providing each one (frequency):

#	Response Provided	Frequency
1	CENTRAL ONTARIO	1
2	TORONTO	1
3	MUSKOKA	2
4	BRITISH COLUMBIA	1
5	NIAGARA	2

8. Do you consider yourself to be a member of an equality seeking community (Please select all that apply?)

(see graph in Report)

## APPENDIX D

### CRUCIAL COMPETENCIES MANDATORY FOR TESTING ON EVERY EXAMINATION

#### A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES

##### Ethics and Professionalism

- declines to act or seeks appropriate assistance when the matter is beyond own abilities (A 1).
- avoids or manages conflicts of interest (e.g., clarifies joint retainers, acting against a client, dealing with self-represented persons, doing business with a client [e.g., borrowing from a client], acting for family members) (A 3).
- recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege) (A 5).
- avoids engaging in sharp practice (A 12).
- recognizes all obligations to the court under the Rules and as an officer of the court (A 15).
- demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the Law Society, responsibility to other lawyers) (A 18).

#### B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW

##### Limitation Periods

- demonstrates an understanding of the Limitations Act 2002 (B 27).
- recognizes current and applicable limitation periods at the commencement of and during the course of the proceedings (B 28).

## APPENDIX E

### ENTRY-LEVEL BARRISTER COMPETENCIES BY CATEGORY

#### A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES

##### Ethics and Professionalism

1. declines to act or seeks appropriate assistance when the matter is beyond own abilities.
2. accepts only retainers that are reasonable and capable of performance under law.

3. avoids or manages conflicts of interest (e.g., clarifies joint retainers, acting against a client, dealing with self-represented persons, doing business with a client [e.g., borrowing from a client], acting for family members).
4. charges fair and reasonable fees and disbursements (e.g., division of fees and referral fees, full disclosure of fees, appropriation of funds).
5. recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege).
6. obtains all necessary consents at the time of the retainer, respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation).
7. ensures staff understands and adheres to relevant Rules of Professional Conduct (e.g., confidentiality, solicitor-client privilege, justified disclosure, integrity, honesty).
8. delegates and supervises appropriately (e.g., provides opportunities for others to learn, enhances cost efficiencies for the client, does not delegate where inappropriate).
9. withdraws from representation in compliance with the rules of the Law Society, the court or tribunal (e.g., optional withdrawal, mandatory withdrawal, client request for withdrawal).
10. understands the obligation to keep the client informed.
11. fulfils all undertakings and does not give an undertaking that cannot be fulfilled.
12. avoids engaging in sharp practice.
13. recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice, dealing with the media, public statements, lawyer as a witness).
14. recognizes issues involving the Law Society books and records bylaws (e.g., manages trust funds, preserves the clients' property).
15. recognizes all obligations to the court under the Rules and as an officer of the court.
16. avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, evidence, fraud).
17. recognizes any other issues involving the Law Society Rules of Professional Conduct (e.g., dishonesty or fraud by the client, administration of justice, reporting other lawyers' conduct where appropriate).
18. demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the Law Society, responsibility to other lawyers).
19. demonstrates an understanding of the obligation to represent the client within the limits of the law (e.g., takes appropriate steps to ensure that the lawyer maintains professional distance from the client).
20. markets and advertises ethically as per Law Society Rules (e.g., making services available, law firm name, letterhead, advertising, offering professional services).
21. approaches ethical issues in accordance with the Law Society model (e.g., follow the law, look to the rules, seek guidance from senior barristers or practice advisory, exercise caution when in "gray areas").
22. maintains appropriate professional relationships with lawyers, students, employees and others (e.g., treats others with courtesy and respect, avoids sexual harassment and human rights violations, respects multi-cultural issues, respects the relationship of opposing counsel and their client).

## B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW

### Jurisdiction and Fundamentals

23. identifies the appropriate jurisdiction (e.g., federal/provincial, statutory/regulatory).
24. identifies the appropriate forum.
25. identifies issues related to the Canadian Charter of Rights and Freedoms.
26. identifies issues related to the Constitution Act, 1867 (e.g., division of powers) and the Constitution Act, 1982 (e.g., Aboriginal rights).

### Limitation Periods

- 27. demonstrates an understanding of the Limitations Act 2002.
- 28. recognizes current and applicable limitation periods at the commencement of and during the course of the proceedings.

### Evidence

- 29. applies the appropriate statutory rules of evidence (e.g., federal and provincial legislation).
- 30. applies the appropriate common law rules of evidence (e.g., hearsay).
- 31. demonstrates an understanding of different rules of evidence for various tribunals.

### Principles of Statutory Interpretation

- 32. applies the principles of statutory interpretation (e.g., federal and provincial Interpretation Acts, subordinate legislation, and common law, Charter).

### Public Law

- 33. demonstrates an understanding of aspects of the Canadian Charter of Rights and Freedoms and the related case law.
- 34. demonstrates knowledge of primary public law including the following statutes and related case law:
  - a. Crown Liability and Proceedings Act, Proceedings Against the Crown Act, & Public Authorities Protection Act.
  - b. Federal Court Act.
  - c. Human Rights Legislation.
  - d. Judicial Review Procedures Act.
  - e. Statutory Powers Procedure Act.
- 35. demonstrates knowledge of secondary public law including the statutes and related case law (e.g., Access to Information Act; Competition Act; Employment Standards Act 2000; Freedom of Information and Protection of Privacy Act; Immigration and Refugee Protection Act; Ombudsman Act; PIPEDA).
- 36. demonstrates an understanding of the basic principles of administrative law (e.g., procedure: natural justice and fairness, substantive review of public decision making).
- 37. demonstrates an understanding of practice before administrative tribunals (e.g., advocacy before administrative tribunals).
- 38. demonstrates an understanding of the review of federal and provincial administrative action (e.g., jurisdiction, practice and procedure).
- 39. demonstrates an understanding of standing to sue or to apply for judicial review.
- 40. demonstrates an understanding of appeals, judicial review and standard of review.
- 41. demonstrates an understanding of civil procedure in Charter litigation including appropriate notices to the Attorneys General.
- 42. demonstrates an understanding of litigating Charter claims (i.e., legal, factual, evidentiary and procedural foundations).
- 43. demonstrates an understanding of Charter remedies (e.g., available remedies, tactical considerations).

### Criminal Procedure

44. demonstrates knowledge of primary criminal procedure including the following statutes and related case law:
  - a. Charter of Rights and Freedoms.
  - b. Controlled Drugs and Substances Act and Regulations.
  - c. Criminal Code.
  - d. Youth Criminal Justice Act.
45. demonstrates knowledge of secondary criminal procedure and provincial regulatory law including the statutes and related case law (e.g., Highway Traffic Act; Pardons Act; Provincial Offences Act, Safe Schools Act).
46. demonstrates an understanding of the interrelationship between criminal law consequences and other rights and privileges (e.g., family and immigration).
47. demonstrates an understanding of professional responsibilities in criminal practice (e.g., duty to the client, duty to the court, duty to society).
48. demonstrates an understanding of the role of the police and crown in the judicial system.
49. demonstrates an understanding of the classification of offences and trial jurisdiction.
50. demonstrates an understanding of investigatory powers (e.g., search and seizure, investigation and questioning of suspects).
51. demonstrates an understanding of judicial interim release and bail review procedures.
52. demonstrates an understanding of crown disclosure and third party production (e.g., the Crown has an ongoing obligation to disclose all relevant information, Crown briefs are the property of the Crown).
53. considers disclosure obligations on defence counsel (e.g., expert reports, alibi defences).
54. demonstrates an understanding of pretrial conferences.
55. demonstrates an understanding of the various Rules of Court.
56. demonstrates an understanding of diversion options.
57. demonstrates an understanding of pleas (e.g., voluntary, informed, secondary consequences).
58. demonstrates an understanding of the preliminary inquiry.
59. demonstrates an understanding of compelling witnesses.
60. demonstrates an understanding of pre-trial applications in criminal proceedings.
61. demonstrates an understanding of representing clients with psychiatric issues.
62. demonstrates an understanding of the criminal trial (e.g., modes of trial, pre-hearing conference, trial procedure, jury selection).
63. demonstrates an understanding of sentencing (e.g., purpose and objectives, principles of sentencing, sentencing powers and restrictions, distinction between reformatory and penitentiary sentences, availability of conditional sentences, DNA orders, weapons prohibitions).
64. demonstrates an understanding of appeals and bail pending appeals (e.g., indictable appeals, the sentence hearing, summary conviction appeals).
65. demonstrates an understanding of aboriginal peoples and the criminal justice system (e.g., jurisdiction - on reserve and off reserve).

### Family Law

66. demonstrates knowledge of primary family law including the following legislation and related case law:
  - a. Children's Law Reform Act.
  - b. Family Law Act.



67. demonstrates knowledge of secondary family law including the statutes and related regulations and case law (e.g., Change of Name Act; Family Responsibility and Support Enforcement Act; Income Tax Act; Indian Act; Marriage Act; Pension Benefits Act; Pension Benefits Division Act; Succession Law Reform Act; The Partition Act).
68. demonstrates an understanding of the conduct of an action in family law proceedings.
69. demonstrates an understanding of the Family Law Rules (e.g., motions, conferences, offers to settle, costs, case management, timelines).
70. demonstrates an understanding of divorce law and procedure (e.g., Divorce Act).
71. demonstrates an understanding of custody and access and the enforcement of a custody order (e.g., mobility rights).
72. demonstrates an understanding of law relating to matrimonial property.
73. demonstrates an understanding of the law relating to spousal support.
74. demonstrates an understanding of the law relating to child support (e.g., Child Support Guideline Regulations).
75. demonstrates an understanding of the law relating to cohabitation.
76. demonstrates an understanding of the law relating to same-sex relationships and marriages.
77. demonstrates an understanding of financial disclosure in family law matters.
78. demonstrates an understanding of enforcement of support orders.
79. demonstrates an understanding of tax principles of family law.
80. demonstrates an understanding of domestic contracts.
81. demonstrates an understanding of representing clients who have been exposed to violence or are accused of perpetrating violence.
82. demonstrates an understanding of child protection law (e.g., Child and Family Services Act.).
83. demonstrates an understanding of aboriginal law in a family context.
84. demonstrates an understanding of all options available for the resolution of family law disputes.
85. demonstrates an understanding of the role of The Children's Lawyer.
86. demonstrates knowledge of the interrelationship of family law consequences and other areas of the law (e.g., criminal, real estate).
87. demonstrates an understanding of appeals under the Family Law Rules.
88. demonstrates an understanding of the valuation of specific assets (e.g., pension, share options).

#### Civil Litigation

89. demonstrates an understanding of the rules of civil procedure (e.g., Ontario Rules of Civil Procedure, Federal Rules of Court, 1998).
90. applies the appropriate rules of civil procedure (e.g., Ontario Rules of Civil Procedure, Federal Rules of Court, 1998).
91. demonstrates an understanding of the jurisdiction and organization of the courts of Ontario.
92. demonstrates an understanding of capacity and parties under disability.
93. demonstrates an understanding of the procedural issues relevant to estate and trust law litigation (e.g., capacity).
94. demonstrates an understanding of parties (persons or entities who can sue and be sued) and joinder.
95. demonstrates an understanding of the commencement of proceedings (e.g., statement of claim, notice of action, application).
96. demonstrates an understanding of service of process.
97. demonstrates an understanding of the law of remedies.
98. demonstrates an understanding of pleadings (e.g., content, time for delivery, form of pleadings, purpose of pleadings).
99. demonstrates an understanding of disposition without trial (e.g., summary judgment, determination of an issue before trial).
100. demonstrates an understanding of subsidiary claims (e.g., counterclaims, cross claims, third party claims).
101. demonstrates an understanding of court-directed mediation.

- 102. demonstrates an understanding of interlocutory proceedings and their purposes.
- 103. demonstrates an understanding of discovery and its purposes.
- 104. demonstrates an understanding of offers to settle and costs.
- 105. demonstrates an understanding of pre-trial conferences and case management.
- 106. demonstrates an understanding of simplified procedure under Rule 76.
- 107. demonstrates an understanding of the enforcement of judgments (e.g., examination in aid of execution, writs of seizure and sale, garnishment).
- 108. demonstrates an understanding of the appeal process.

### C. ESTABLISHING AND MAINTAINING THE BARRISTER-CLIENT RELATIONSHIP

#### Identifying the Client

- 109. takes appropriate steps to determine the client and the client's role (e.g., multiple parties, spouses/family members, business partners, trustee vs. beneficiary, officers/directors/ shareholders vs. corporation, authority to bind).
- 110. takes appropriate steps to avoid problems associated with phantom clients.
- 111. obtains identification from the client where appropriate (e.g., follows the Proceeds of Crime [Money Laundering] and Terrorist Financing Act, takes steps to identify fraudulent transactions).

#### Conflicts of Interest

- 112. uses a conflict of interest checking system.
- 113. identifies potential conflicts of interest before acquiring confidential information (e.g., multiple parties).
- 114. takes appropriate action in situations where an actual or potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish firewall procedures where appropriate, advises the client of the consequences in the event the potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified).

#### Interviewing Principles

- 115. determines the client's goals, objectives and expectations.
- 116. makes an initial assessment of whether or not the client's goals, objectives, and expectations can be met through legal processes and ethical solutions.
- 117. asks questions to determine whether or not the client is capable of giving instructions (e.g., mental capacity, authority, duress, undue influence).

#### The Retainer

- 118. establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions).
- 119. identifies the instructing client (i.e., who has the authority to provide instructions).
- 120. confirms the actions to be taken by the parties in the retainer.
- 121. sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, rates for various personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements).
- 122. outlines the delegation of responsibilities in the retainer (e.g., within the firm, external consultants, client).
- 123. confirms the acceptable forms of client communication in the retainer (e.g., media and timeframes).
- 124. addresses solicitor-client privilege and privacy issues in the retainer (e.g., distribution of e-mails, sharing information with other advisors).
- 125. addresses conflict of interest issues in the retainer (e.g., termination, confidentiality, consent).

- 126. addresses termination issues in the retainer (e.g., non-payment of fees, no instructions, loss of confidence).
- 127. confirms the retainer and any limitations in writing.
- 128. obtains a monetary retainer where appropriate.
- 129. confirms changes to the retainer as appropriate (e.g., new client instructions, method/channels for making changes).

#### Client Communications

- 130. communicates with clients in a timely and effective manner (e.g., returns messages in a timely manner, copies the client on correspondence as appropriate, advises on developments).
- 131. manages and updates the client's expectations with respect to timeframes, results, and costs.
- 132. recognizes and is sensitive to clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language [need for interpreters], gender, disability, socioeconomic status, demeanour).
- 133. explains to clients the risk of communicating the details of the case by means of electronic media (e.g., cell phones, e-mail).
- 134. maintains an electronic or written record for each matter for which the lawyer is retained.

### D. PROBLEM/ISSUE IDENTIFICATION, ANALYSIS, AND ASSESSMENT

#### Information Gathering, Case Analysis and Planning

- 135. obtains relevant facts and documents.
- 136. recognizes urgency and takes emergency steps where necessary (e.g., injunctive relief, issuing a claim to preserve rights).
- 137. reviews and identifies relevant facts and documents.
- 138. identifies the factual and legal issues.
- 139. identifies and obtains additional information and/or resources as needed (e.g., experts, legal research, specialized counsel).
- 140. conducts or delegates research and investigations related to the matter as appropriate.
- 141. complies with all privacy legislation.

#### Notice to Affected Parties

- 142. identifies those who may be entitled to notice of the proceedings (e.g., Attorneys General, municipality, insurers) and provides appropriate notice.

#### Theory of the Case

- 143. develops an informed theory of the case based on the lawyer's assessment of the facts and law.
- 144. reassesses the theory of the case as the case evolves.

#### Litigation Strategy

- 145. develops an appropriate plan and strategies in consultation with the client to achieve desired results.
- 146. considers and communicates to the client the costs and consequences of various courses of action.
- 147. recommends and obtains instructions from the client regarding the most effective tools to achieve desired results.

## E. ALTERNATIVE DISPUTE RESOLUTION

### Negotiation

- 148. demonstrates an understanding that negotiation is an integral part of the conduct of the matter from inception to completion.
- 149. identifies disputed versus undisputed issues.
- 150. identifies issues that can be negotiated.
- 151. explains to the client the potential consequences of negotiating or failing to negotiate.
- 152. obtains instructions concerning negotiations.
- 153. explores opportunities to negotiate or otherwise resolve issues short of litigation.
- 154. identifies the strategy and tactics to be used in negotiation.
- 155. prepares the client for the negotiation process.
- 156. uses principles of effective negotiation.
- 157. documents the resolution of issues through negotiation.

### Mediation and Dispute Resolution

- 158. demonstrates an understanding of various dispute resolution mechanisms (e.g., mediation, arbitration).
- 159. identifies issues appropriate for dispute resolution.
- 160. explains to the client the potential consequences of mediating or failing to mediate.
- 161. obtains instructions concerning mediation.
- 162. identifies additional remedies that may be uniquely available through dispute resolution.
- 163. considers appropriate dispute resolution options (e.g., mediation, arbitration).
- 164. identifies the strategy and tactics to be used during dispute resolution.
- 165. prepares the client for the dispute resolution process.
- 166. documents the resolution of issues through dispute resolution.

## F. LITIGATION PROCESS

### Initiating Litigation

- 167. considers decision-maker (e.g., judge or jury).

### Disclosure, Production, and Discovery

- 168. demonstrates an understanding of applicable document disclosure and discovery requirements.
- 169. obtains timely disclosure, production and discovery as required.
- 170. provides timely disclosure and discovery as required.
- 171. advises the client of disclosure obligations (e.g., full and complete disclosure; ensuring the preservation of relevant documents for disclosure, knowledge of privilege issues).
- 172. prepares for the conduct of any discovery process (e.g., preliminary inquiry, examination for discovery).
- 173. prepares the client for any discovery process.
- 174. takes appropriate steps to enforce disclosure and discovery rights.

### Trial or Hearing Preparation

- 175. meets timelines for trial or hearing.
- 176. determines the evidence required to support the theory of the case.
- 177. marshals evidence (e.g., obtains witness statements, expert reports, preserves evidence).

- 178. obtains discovery or other relevant transcripts.
- 179. reviews relevant transcripts.
- 180. manages trial or hearing related documents.
  
- 181. determines the evidence to be called.
- 182. demonstrates an understanding of the use of expert evidence at trial (e.g., expert reports, qualifying the expert).
- 183. identifies the order of the evidence to be called.
- 184. demonstrates an understanding of Requests to Admit where relevant (e.g., facts and documents).
- 185. demonstrates an understanding of any notice and delivery requirements for specific documentary evidence (e.g., business records, medical and other expert reports).
- 186. demonstrates an understanding of the requirements of a family law trial for the filing of updated financial statements and net family property statements.
- 187. demonstrates an understanding of the purpose and proper form of direct examination.
- 188. prepares own witnesses for direct examination.
- 189. ensures the attendance of witnesses (e.g., subpoena/summons to witness).
- 190. demonstrates an understanding of the purpose and proper form of cross-examination (e.g., impeachment, eliciting evidence helpful to own case).
- 191. prepares own witnesses for cross-examination.
- 192. prepare for cross-examination of witnesses of other parties.
- 193. demonstrates an understanding of the purpose and proper form of re-examination (e.g., rehabilitate the credibility of the witness, clarify evidence).
- 194. explains to witnesses the purpose of re-examination.
- 195. prepares any applications for relief under the Charter and service on the Crown.
- 196. anticipates and prepares objections and possible motions.
- 197. considers issues of admissibility of evidence.
- 198. prepares submissions on costs, where applicable.
- 199. prepares submissions on sentence, where applicable.

#### Applications to Court, Judicial Reviews and Prerogative Remedies

- 200. demonstrates an understanding of the rules and tests for applications, judicial reviews and prerogative remedies.
- 201. considers if applications, judicial reviews and prerogative remedies are warranted.
- 202. meets applicable timelines for applications, judicial reviews and prerogative remedies.
- 203. reviews the merits of applications, judicial reviews and prerogative remedies with the client.
- 204. obtains client instructions regarding applications, judicial reviews and prerogative remedies.
- 205. ensures applications, judicial reviews and prerogative remedies are taken to the proper forum.
- 206. prepares all the necessary documents for conduct of applications, judicial reviews and prerogative remedies (e.g., application for judicial review, application records, preparation of facta, order transcript).
- 207. makes oral submissions concerning applications, judicial reviews and prerogative remedies.
- 208. demonstrates an understanding of costs principles relating to applications, judicial reviews and prerogative remedies where available and appropriate.

#### Conduct of the Trial or Hearing

- 209. deals with any preliminary matters (e.g., jurisdictional, pretrial motion, exclusion of witnesses and publication bans, jury selection).
- 210. plans the delivery of evidence to support the theory of the case.
- 211. considers whether or not to call a particular witness (e.g., the accused in a criminal trial).
- 212. adduces admissions (e.g., introduces excerpts of transcripts where applicable, presents agreed statements of fact).
- 213. initiates and responds to motions as appropriate.
- 214. raises appropriate objections on the record.

### Appeals

- 215. demonstrates an understanding of the rules and tests for an appeal of the decision.
- 216. considers if an appeal is warranted.
- 217. meets the timelines for appeals.
- 218. reviews the merits of an appeal with the client.
- 219. obtains client instructions regarding appeals.
- 220. ensures appeals are taken to the proper forum.
- 221. prepares all the necessary documents for conduct of an appeal (e.g., notices of appeal, order transcript, appeal books, compendium, preparation of facta).
- 222. prepares and argues the appeal.
- 223. demonstrates an understanding of costs principles relating to an appeal.
- 224. demonstrates awareness of the procedure to file a notice of appeal in the name of the client only to preserve appellate rights.
- 225. demonstrates awareness of the availability of settlement conferences and the ongoing availability of dispute resolution in appeals.

### Post-Disposition of Matter

- 226. ensures the matter has been disposed of appropriately (e.g., minutes of settlement, judgment/order issued and entered, final releases, dismissal order).
- 227. provides final reports and accounting to clients.
- 228. conducts a final review of the file prior to closing the file.

## APPENDIX F

### ENTRY-LEVEL BARRISTER COMPETENCIES BY CRITICALITY/FREQUENCY CLASSIFICATION

#### Group 1-A

#### A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES

##### Ethics & Professionalism

- 1. declines to act or seeks appropriate assistance when the matter is beyond own abilities.
- 2. accepts only retainers that are reasonable and capable of performance under law.
- 3. avoids or manages conflicts of interest (e.g., clarifies joint retainers, acting against a client, dealing with self-represented persons, doing business with a client [e.g., borrowing from a client], acting for family members).
- 4. recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege).
- 5. ensures staff understands and adheres to relevant Rules of Professional Conduct (e.g., confidentiality, solicitor-client privilege, justified disclosure, integrity, honesty).
- 6. fulfils all undertakings and does not give an undertaking that cannot be fulfilled.
- 7. avoids engaging in sharp practice.
- 8. recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice, dealing with the media, public statements, lawyer as a witness).
- 9. recognizes issues involving the Law Society books and records bylaws (e.g., manages trust funds, preserves the clients' property).
- 10. recognizes all obligations to the court under the Rules and as an officer of the court.

11. recognizes any other issues involving the Law Society Rules of Professional Conduct (e.g., dishonesty or fraud by the client, administration of justice, reporting other lawyers' conduct where appropriate).
12. demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the Law Society, responsibility to other lawyers).
13. demonstrates an understanding of the obligation to represent the client within the limits of the law (e.g., takes appropriate steps to ensure that the lawyer maintains professional distance from the client).
14. approaches ethical issues in accordance with the Law Society model (e.g., follow the law, look to the rules, seek guidance from senior barristers or practice advisory, exercise caution when in "gray areas").
15. maintains appropriate professional relationships with lawyers, students, employees and others (e.g., treats others with courtesy and respect, avoids sexual harassment and human rights violations, respects multi-cultural issues, respects the relationship of opposing counsel and their client).

**B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW**

**Jurisdiction and Fundamentals**

16. identifies the appropriate jurisdiction (e.g., federal/provincial, statutory/regulatory).
17. identifies the appropriate forum.

**Limitation Periods**

18. demonstrates an understanding of the Limitations Act 2002.
19. recognizes current and applicable limitation periods at the commencement of and during the course of the proceedings.

**Evidence**

NA

**Principles of Statutory Interpretation**

NA

**Public Law**

20. demonstrates an understanding of aspects of the Canadian Charter of Rights and Freedoms and the related case law.
21. demonstrates an understanding of the basic principles of administrative law (e.g., procedure: natural justice and fairness, substantive review of public decision making).

**Criminal Procedure**

22. demonstrates knowledge of primary criminal procedure including the following statutes and related case law: Criminal Code.
23. demonstrates an understanding of professional responsibilities in criminal practice (e.g., duty to the client, duty to the court, duty to society).

### Family Law

- 24. demonstrates knowledge of primary family law including the following legislation and related case law: Family Law Act.
- 25. demonstrates an understanding of divorce law and procedure (e.g., Divorce Act).
- 26. demonstrates an understanding of law relating to matrimonial property.
- 27. demonstrates an understanding of the law relating to spousal support.
- 28. demonstrates an understanding of the law relating to child support (e.g., Child Support Guideline Regulations).

### Civil Litigation

- 29. demonstrates an understanding of the rules of civil procedure (e.g., Ontario Rules of Civil Procedure, Federal Rules of Court, 1998).
- 30. applies the appropriate rules of civil procedure (e.g., Ontario Rules of Civil Procedure, Federal Rules of Court, 1998).
- 31. demonstrates an understanding of the commencement of proceedings (e.g., statement of claim, notice of action, application).
- 32. demonstrates an understanding of pleadings (e.g., content, time for delivery, form of pleadings, purpose of pleadings).
- 33. demonstrates an understanding of offers to settle and costs.

## C. ESTABLISHING AND MAINTAINING THE BARRISTER-CLIENT RELATIONSHIP

### Identifying the Client

- 34. takes appropriate steps to determine the client and the client's role (e.g., multiple parties, spouses/family members, business partners, trustee vs. beneficiary, officers/directors/ shareholders vs. corporation, authority to bind).

### Conflicts of Interest

- 35. uses a conflict of interest checking system.
- 36. identifies potential conflicts of interest before acquiring confidential information (e.g., multiple parties).
- 37. takes appropriate action in situations where a potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish firewall procedures where appropriate, advises the client of the consequences in the event the potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified).

### Interviewing Principles

- 38. asks questions to determine whether or not the client is capable of giving instructions (e.g., mental capacity, authority, duress, undue influence).

### The Retainer

- 39. establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions).

### Client Communications

- 40. communicates with clients in a timely and effective manner (e.g., returns messages in a timely manner, copies the client on correspondence as appropriate, advises on developments).



**D. PROBLEM/ISSUE IDENTIFICATION, ANALYSIS, AND ASSESSMENT****Information Gathering, Case Analysis and Planning**

- 41. maintains an electronic or written record for each matter for which the lawyer is retained.
- 42. obtains relevant facts and documents.
- 43. recognizes urgency and takes emergency steps where necessary (e.g., injunctive relief, issuing a claim to preserve rights).
- 44. reviews and identifies relevant facts and documents.
- 45. identifies the factual and legal issues.

**Notice to Affected Parties**

- 46. identifies those who may be entitled to notice of the proceedings (e.g., Attorneys General, municipality, insurers) and provides appropriate notice.

**Theory of the Case**

NA

**Litigation Strategy**

- 47. develops an appropriate plan and strategies in consultation with the client to achieve desired results.
- 48. considers and communicates to the client the costs and consequences of various courses of action.
- 49. recommends and obtains instructions from the client regarding the most effective tools to achieve desired results.

**E. ALTERNATIVE DISPUTE RESOLUTION****Negotiation**

- 50. obtains instructions concerning negotiations.
- 51. uses principles of effective negotiation.
- 52. documents the resolution of issues through negotiation.

**Mediation and Dispute Resolution**

NA

**F. LITIGATION PROCESS****Initiating Litigation**

NA

**Disclosure, Production, and Discovery**

- 53. demonstrates an understanding of applicable document disclosure and discovery requirements.
- 54. obtains timely disclosure, production and discovery as required.
- 55. provides timely disclosure and discovery as required.
- 56. advises the client of disclosure obligations (e.g., full and complete disclosure; ensuring the preservation of relevant documents for disclosure, knowledge of privilege issues).
- 57. prepares for the conduct of any discovery process (e.g., preliminary inquiry, examination for discovery).

Trial or Hearing Preparation

- 58. determines the evidence required to support the theory of the case.
- 59. marshals evidence (e.g., obtains witness statements, expert reports, preserves evidence).

Applications to Court, Judicial Reviews and Prerogative Remedies

NA

Conduct of the Trial or Hearing

NA

Appeals

NA

Post-Disposition of Matter

NA

Group 1-B

**A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES**

---

Ethics & Professionalism

- 1. withdraws from representation in compliance with the rules of the Law Society, the court or tribunal (e.g., optional withdrawal, mandatory withdrawal, client request for withdrawal).
- 2. avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, evidence, fraud).

**B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW**

Jurisdiction and Fundamentals

- 3. identifies issues related to the Canadian Charter of Rights and Freedoms.
- 4. identifies issues related to the Constitution Act, 1867 (e.g., division of powers) and the Constitution Act, 1982 (e.g., Aboriginal rights).

Evidence

NA

Principles of Statutory Interpretation

NA

Public Law

NA

### Criminal Procedure

5. demonstrates knowledge of primary criminal procedure including the following statutes and related case law: Charter of Rights and Freedoms.
6. demonstrates an understanding of investigatory powers (e.g., search and seizure, investigation and questioning of suspects).
7. demonstrates an understanding of judicial interim release and bail review procedures.
8. demonstrates an understanding of crown disclosure and third party production (e.g., the Crown has an ongoing obligation to disclose all relevant information, Crown briefs are the property of the Crown).
9. demonstrates an understanding of pleas (e.g., voluntary, informed, secondary consequences).
10. demonstrates an understanding of the criminal trial (e.g., modes of trial, pre-hearing conference, trial procedure, jury selection).
11. demonstrates an understanding of sentencing (e.g., purpose and objectives, principles of sentencing, sentencing powers and restrictions, distinction between reformatory and penitentiary sentences, availability of conditional sentences, DNA orders, weapons prohibitions).

### Family Law

12. demonstrates knowledge of primary family law including the following legislation and related case law: Children's Law Reform Act.
13. demonstrates an understanding of custody and access and the enforcement of a custody order (e.g., mobility rights).
14. demonstrates an understanding of tax principles of family law.
15. demonstrates an understanding of child protection law (e.g., Child and Family Services Act.)

### Civil Litigation

16. demonstrates an understanding of parties (persons or entities who can sue and be sued) and joinder.

## C. ESTABLISHING AND MAINTAINING THE BARRISTER-CLIENT RELATIONSHIP

### Identifying the Client

17. obtains identification from the client where appropriate (e.g., follows the Proceeds of Crime [Money Laundering] and Terrorist Financing Act, takes steps to identify fraudulent transactions).

### Conflicts of Interest

NA

### Interviewing Principles

NA

### The Retainer

18. identifies the instructing client (i.e., who has the authority to provide instructions).

### Client Communications

NA

**D. PROBLEM/ISSUE IDENTIFICATION, ANALYSIS, AND ASSESSMENT**

## Information Gathering, Case Analysis and Planning

19. identifies and obtains additional information and/or resources as needed (e.g., experts, legal research, specialized counsel).

## Notice to Affected Parties

NA

## Theory of the Case

NA

## Litigation Strategy

NA

**E. ALTERNATIVE DISPUTE RESOLUTION**

## Negotiation

NA

## Mediation and Dispute Resolution

20. obtains instructions concerning mediation.

**F. LITIGATION PROCESS**

## Initiating Litigation

NA

## Disclosure, Production, and Discovery

21. prepares the client for any discovery process.  
22. takes appropriate steps to enforce disclosure and discovery rights.

## Trial or Hearing Preparation

23. meets timelines for trial or hearing.  
24. obtains discovery or other relevant transcripts.  
25. reviews relevant transcripts.  
26. manages trial or hearing related documents.  
27. determines the evidence to be called.  
28. demonstrates an understanding of the use of expert evidence at trial (e.g., expert reports, qualifying the expert).  
29. demonstrates an understanding of Requests to Admit where relevant (e.g., facts and documents).  
30. demonstrates an understanding of the requirements of a family law trial for the filing of updated financial statements and net family property statements.

31. demonstrates an understanding of the purpose and proper form of direct examination.
  32. prepares own witnesses for direct examination.
  33. ensures the attendance of witnesses (e.g., subpoena/summons to witness).
  34. demonstrates an understanding of the purpose and proper form of cross-examination (e.g., impeachment, eliciting evidence helpful to own case).
  35. prepares own witnesses for cross-examination.
  36. prepare for cross-examination of witnesses of other parties.
  37. prepares any applications for relief under the Charter and service on the Crown.
  38. considers issues of admissibility of evidence.
  39. prepares submissions on costs, where applicable.
  40. prepares submissions on sentence, where applicable.
- Applications to Court, Judicial Reviews and Prerogative Remedies

41. demonstrates an understanding of the rules and tests for applications, judicial reviews and prerogative remedies.
42. meets applicable timelines for applications, judicial reviews and prerogative remedies.
43. obtains client instructions regarding applications, judicial reviews and prerogative remedies.
44. ensures applications, judicial reviews and prerogative remedies are taken to the proper forum.
45. demonstrates an understanding of costs principles relating to applications, judicial reviews and prerogative remedies where available and appropriate

#### Conduct of the Trial or Hearing

46. plans the delivery of evidence to support the theory of the case.
47. considers whether or not to call a particular witness (e.g., the accused in a criminal trial).
48. initiates and responds to motions as appropriate.

#### Appeals

49. demonstrates an understanding of the rules and tests for an appeal of the decision.
50. considers if an appeal is warranted.
51. meets the timelines for appeals.
52. reviews the merits of an appeal with the client.
53. obtains client instructions regarding appeals.
54. ensures appeals are taken to the proper forum.
55. prepares all the necessary documents for conduct of an appeal (e.g., notices of appeal, order transcript, appeal books, compendium, preparation of facts).
56. prepares and argues the appeal.
57. demonstrates an understanding of costs principles relating to an appeal
58. demonstrates awareness of the procedure to file a notice of appeal in the name of the client only to preserve appellate rights.

#### Post-Disposition of Matter

59. ensures the matter has been disposed of appropriately (e.g., minutes of settlement, judgment/order issued and entered, final releases, dismissal order).

Group 2-A**A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES****Ethics and Professionalism**

1. charges fair and reasonable fees and disbursements (e.g., division of fees and referral fees, full disclosure of fees, appropriation of funds).
2. obtains all necessary consents at the time of the retainer, respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation).
3. delegates and supervises appropriately (e.g., provides opportunities for others to learn, enhances cost efficiencies for the client, does not delegate where inappropriate).
4. understands the obligation to keep the client informed.

**B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW****Jurisdiction and Fundamentals**

NA

**Limitation Periods**

NA

**Evidence**

5. applies the appropriate statutory rules of evidence (e.g., federal and provincial legislation).
6. applies the appropriate common law rules of evidence (e.g., hearsay).

**Principles of Statutory Interpretation**

7. applies the principles of statutory interpretation (e.g., federal and provincial Interpretation Acts, subordinate legislation, and common law, Charter).

**Public Law**

NA

**Criminal Procedure**

8. demonstrates knowledge of primary criminal procedure including the following statutes and related case law: Youth Criminal Justice Act.
9. demonstrates an understanding of the role of the police and crown in the judicial system.
10. considers disclosure obligations on defence counsel (e.g., expert reports, alibi defences).
11. demonstrates an understanding of the classification of offences and trial jurisdiction.

**Family Law**

12. demonstrates an understanding of the conduct of an action in family law proceedings.
13. demonstrates an understanding of the Family Law Rules (e.g., motions, conferences, offers to settle, costs, case management, timelines).

14. demonstrates an understanding of the law relating to cohabitation.
15. demonstrates an understanding of financial disclosure in family law matters.
16. demonstrates an understanding of enforcement of support orders.
17. demonstrates an understanding of all options available for the resolution of family law disputes.

#### Civil Litigation

18. demonstrates an understanding of capacity and parties under disability.
19. demonstrates an understanding of service of process.
20. demonstrates an understanding of the jurisdiction and organization of the courts of Ontario.
21. demonstrates an understanding of the law of remedies.
22. demonstrates an understanding of subsidiary claims (e.g., counterclaims, cross claims, third party claims).
23. demonstrates an understanding of interlocutory proceedings and their purposes.
24. demonstrates an understanding of discovery and its purposes.

### C. ESTABLISHING AND MAINTAINING THE BARRISTER-CLIENT RELATIONSHIP

#### Identifying the Client

25. takes appropriate steps to avoid problems associated with phantom clients.

#### Conflicts of Interest

NA

#### Interviewing Principles

26. determines the client's goals, objectives and expectations.
27. makes an initial assessment of whether or not the client's goals, objectives, and expectations can be met through legal processes and ethical solutions.

#### The Retainer

28. confirms the actions to be taken by the parties in the retainer.
29. sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, rates for various personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements).
30. outlines the delegation of responsibilities in the retainer (e.g., within the firm, external consultants, client).
31. confirms the acceptable forms of client communication in the retainer (e.g., media and timeframes).
32. addresses solicitor-client privilege and privacy issues in the retainer (e.g., distribution of e-mails, sharing information with other advisors).
33. addresses conflict of interest issues in the retainer (e.g., termination, confidentiality, consent).
34. addresses termination issues in the retainer (e.g., non-payment of fees, no instructions, loss of confidence).
35. confirms the retainer and any limitations in writing.
36. obtains a monetary retainer where appropriate.

#### Client Communications

37. manages and updates the client's expectations with respect to timeframes, results, and costs.
38. recognizes and is sensitive to clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language [need for interpreters], gender, disability, socioeconomic status, demeanour).

**D. PROBLEM/ISSUE IDENTIFICATION, ANALYSIS, AND ASSESSMENT****Information Gathering, Case Analysis and Planning**

- 39. conducts or delegates research and investigations related to the matter as appropriate.
- 40. complies with all privacy legislation.

**Notice to Affected Parties**

NA

**Theory of the Case**

- 41. develops an informed theory of the case based on the lawyer's assessment of the facts and law.
- 42. reassesses the theory of the case as the case evolves.

**Litigation Strategy**

NA

**E. ALTERNATIVE DISPUTE RESOLUTION****Negotiation**

- 43. demonstrates an understanding that negotiation is an integral part of the conduct of the matter from inception to completion.
- 44. identifies disputed versus undisputed issues.
- 45. identifies issues that can be negotiated.
- 46. explains to the client the potential consequences of negotiating or failing to negotiate.
- 47. explores opportunities to negotiate or otherwise resolve issues short of litigation.
- 48. identifies the strategy and tactics to be used in negotiation.
- 49. prepares the client for the negotiation process.

**Mediation and Dispute Resolution**

- 50. demonstrates an understanding of various dispute resolution mechanisms (e.g., mediation, arbitration).
- 51. identifies issues appropriate for dispute resolution.
- 52. explains to the client the potential consequences of mediating or failing to mediate.
- 53. identifies additional remedies that may be uniquely available through dispute resolution.
- 54. identifies the strategy and tactics to be used during dispute resolution.
- 55. prepares the client for the dispute resolution process.
- 56. documents the resolution of issues through dispute resolution.

**F. LITIGATION PROCESS****Initiating Litigation**

NA



Disclosure, Production, and Discovery

NA

Trial or Hearing Preparation

NA

Applications to Court, Judicial Reviews and Prerogative Remedies

57. prepares all the necessary documents for conduct of applications, judicial reviews and prerogative remedies (e.g., application for judicial review, application records, preparation of facta, order transcript).

Conduct of the Trial or Hearing

58. raises appropriate objections on the record.

Appeals

NA

Post-Disposition of Matter

59. provides final reports and accounting to clients.

Group 2-B

A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES

Ethics and Professionalism

1. markets and advertises ethically as per Law Society Rules (e.g., making services available, law firm name, letterhead, advertising, offering professional services).

B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW

Jurisdiction and Fundamentals

NA

Limitation Periods

NA

Evidence

2. demonstrates an understanding of different rules of evidence for various tribunals.

## Principles of Statutory Interpretation

NA

### Public Law

3. demonstrates knowledge of primary public law including the following statutes and related case law: Crown Liability and Proceedings Act, Proceedings Against the Crown Act, Public Authorities Protection Act.
4. demonstrates knowledge of primary public law including the following statutes and related case law: Federal Court Act.
5. demonstrates knowledge of primary public law including the following statutes and related case law: Human Rights Legislation.
6. demonstrates knowledge of primary public law including the following statutes and related case law: Judicial Review Procedures Act.
7. demonstrates knowledge of primary public law including the following statutes and related case law: Statutory Powers Procedure Act.
8. demonstrates knowledge of secondary public law including the statutes and related case law (e.g., Access to Information Act; Competition Act; Employment Standards Act 2000; Freedom of Information and Protection of Privacy Act; Immigration and Refugee Protection Act; Ombudsman Act; PIPEDA).
9. demonstrates an understanding of practice before administrative tribunals (e.g., advocacy before administrative tribunals).
10. demonstrates an understanding of the review of federal and provincial administrative action (e.g., jurisdiction, practice and procedure).
11. demonstrates an understanding of standing to sue or to apply for judicial review.
12. demonstrates an understanding of appeals, judicial review and standard of review.
13. demonstrates an understanding of civil procedure in Charter litigation including appropriate notices to the Attorneys General.
14. demonstrates an understanding of litigating Charter claims (i.e., legal, factual, evidentiary and procedural foundations).
15. demonstrates an understanding of Charter remedies (e.g., available remedies, tactical considerations).

### Criminal Procedure

16. demonstrates knowledge of primary criminal procedure including the following statutes and related case law: Controlled Drugs and Substances Act and Regulations.
17. demonstrates knowledge of secondary criminal procedure and provincial regulatory law including the statutes and related case law (e.g., Highway Traffic Act; Pardons Act; Provincial Offences Act, Safe Schools Act).
18. demonstrates an understanding of the interrelationship between criminal law consequences and other rights and privileges (e.g., family and immigration).
19. demonstrates an understanding of pretrial conferences.
20. demonstrates an understanding of the various Rules of Court.
21. demonstrates an understanding of diversion options.
22. demonstrates an understanding of the preliminary inquiry.
23. demonstrates an understanding of compelling witnesses.
24. demonstrates an understanding of pre-trial applications in criminal proceedings.
25. demonstrates an understanding of representing clients with psychiatric issues.
26. demonstrates an understanding of appeals and bail pending appeals (e.g., indictable appeals, the sentence hearing, summary conviction appeals).
27. demonstrates an understanding of aboriginal peoples and the criminal justice system (e.g., jurisdiction - on reserve and off reserve).

### Family Law

28. demonstrates knowledge of secondary family law including the statutes and related regulations and case law (e.g., Change of Name Act; Family Responsibility and Support Enforcement Act; Income Tax Act; Indian Act; Marriage Act; Pension Benefits Act; Pension Benefits Division Act; Succession Law Reform Act; The Partition Act).
29. demonstrates an understanding of the law relating to same-sex relationships and marriages.
30. demonstrates an understanding of domestic contracts.
31. demonstrates an understanding of representing clients who have been exposed to violence or are accused of perpetrating violence.
32. demonstrates an understanding of aboriginal law in a family context.
33. demonstrates an understanding of the role of The Children's Lawyer.
34. demonstrates knowledge of the interrelationship of family law consequences and other areas of the law (e.g., criminal, real estate).
35. demonstrates an understanding of appeals under the Family Law Rules.
36. demonstrates an understanding of the valuation of specific assets (e.g., pension, share options).

### Civil Litigation

37. demonstrates an understanding of the procedural issues relevant to estate and trust law litigation (e.g., capacity).
38. demonstrates an understanding of disposition without trial (e.g., summary judgment, determination of an issue before trial).
39. demonstrates an understanding of court-directed mediation.
40. demonstrates an understanding of pre-trial conferences and case management.
41. demonstrates an understanding of simplified procedure under Rule 76.
42. demonstrates an understanding of the enforcement of judgments (e.g., examination in aid of execution, writs of seizure and sale, garnishment).
43. demonstrates an understanding of the appeal process.

## C. ESTABLISHING AND MAINTAINING THE BARRISTER-CLIENT RELATIONSHIP

### Identifying the Client

NA

### Conflicts of Interest

NA

### Interviewing Principles

NA

### The Retainer

44. confirms changes to the retainer as appropriate (e.g., new client instructions, method/channels for making changes).

### Client Communications

45. explains to clients the risk of communicating the details of the case by means of electronic media (e.g., cell phones, e-mail).

#### D. PROBLEM/ISSUE IDENTIFICATION, ANALYSIS, AND ASSESSMENT

Information Gathering, Case Analysis and Planning

NA

Notice to Affected Parties

NA

Theory of the Case

NA

Litigation Strategy

NA

#### E. ALTERNATIVE DISPUTE RESOLUTION

Negotiation

NA

Mediation and Dispute Resolution

46. considers appropriate dispute resolution options (e.g., mediation, arbitration).

#### F. LITIGATION PROCESS

Initiating Litigation

47. considers decision-maker (e.g., judge or jury).

Disclosure, Production, and Discovery

NA

Trial or Hearing Preparation

48. identifies the order of the evidence to be called.

49. demonstrates an understanding of any notice and delivery requirements for specific documentary evidence (e.g., business records, medical and other expert reports).

50. demonstrates an understanding of the purpose and proper form of re-examination (e.g., rehabilitate the credibility of the witness, clarify evidence).

51. explains to witnesses the purpose of re-examination.

52. anticipates and prepares objections and possible motions.

Applications to Court, Judicial Reviews and Prerogative Remedies

53.	considers if applications, judicial reviews and prerogative remedies are warranted.
54.	reviews the merits of applications, judicial reviews and prerogative remedies with the client.
55.	makes oral submissions concerning applications, judicial reviews and prerogative remedies.
Conduct of the Trial or Hearing	
56.	deals with any preliminary matters (e.g., jurisdictional, pretrial motion, exclusion of witnesses and publication bans, jury selection).
57.	adduces admissions (e.g., introduces excerpts of transcripts where applicable, presents agreed statements of fact).
Appeals	
58.	demonstrates awareness of the availability of settlement conferences and the ongoing availability of dispute resolution in appeals.
Post-Disposition of Matter	
59.	conducts a final review of the file prior to closing the file.

## APPENDIX G

Bibliography

The following sources were either referenced directly or otherwise consulted in the development of the Law Society of Upper Canada Barrister Licensure Examination Blueprint Document.

American Educational Research Association, American Psychological Association, National Council on Measurement in Education (1999). Standards for educational and psychological testing. Washington, D.C.: American Educational Research Association.

Angoff, W.H. (1971). Norms, scales, and equivalent scores. In R.L. Thorndike (Ed.), Educational measurement (2nd Ed.). Washington, D.C.: American Council on Education.

Biddle, R.E. (1993). How to set cutoff scores for knowledge tests used in promotion, training, certification, and licensing. Public Personnel Management, 22(1), 63-79.

Bloom, B.S. (1956). Taxonomy of educational objectives, handbook 1: The cognitive domain. New York: McKay.

Browning, A.H., Bugbee, Jr., A.C., & Mullins, M.A. (1996). Certification: A NOCA handbook. Washington, D.C.: National Organization for Competency Assurance.

Canadian Psychological Association (1985). Guidelines for educational and psychological testing. Ottawa, Ontario: Canadian Psychological Association.

Council on Licensure, Enforcement and Regulation (1993). Development, administration, scoring and reporting of credentialing examinations: Recommendations for board members. Lexington, Kentucky: CLEAR.

Crocker, L. & Algina, J. (1986). Introduction to classical & modern test theory. New York: Holt, Rinehart and Winston.

Haladyna, T.M. (1994). Developing and validating multiple choice test items. Hillside, New Jersey: Lawrence Erlbaum.

Harvey, (1991). Job analysis. In M.D. Dunnette and L.M. Hough (Eds.) The handbook of industrial/organizational psychology: Second edition volume 2, pp. 71 – 164. Palo Alto, CA: Consulting Psychologists Press.

Thomas , S. & Scheuneman, J. (1998). Developing and maintaining a high quality certification program. NCME Workshop.

Williams, M.C. & Braham, J.K. (2000). Blueprint Development Overview and Working Document. Ottawa, Ontario: Performance Assessment Group Inc.

Williams, M.C. & Braham, J.K. (2003). Report to Convocation on Establishing a Standardized, Reliable, Valid, Fair and Defensible Licensure Program. Ottawa, Ontario: Performance Assessment Group Inc.

## TAB 2

### BLUEPRINT DOCUMENT FOR THE SOLICITOR LICENSURE EXAMINATION

Prepared for the

LAW SOCIETY OF UPPER CANADA

Prepared by the

PERFORMANCE ASSESSMENT GROUP INC.

July 2004

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### Blueprint Development Overview

The foundation of the Solicitor Licensure Examination (hereafter referred to as the “Examination”) begins with the Solicitor Licensure Examination Blueprint document (hereafter referred to as the “Blueprint”). The Blueprint provides a summary of the development processes followed, the content to be assessed (i.e., what is tested), the structure of the Examination (the method by which the content is to be tested), the representative contexts presented within the Examination (the situations within which the content is to be tested) and the scoring of the Examination. The Blueprint is essentially the recipe that outlines all the ingredients for the Examination and the relative proportions of each so what is being assessed, along with the experience for the candidates, is always replicated as closely as possible.

### Background to the Assessment Process

In December 2003, Convocation approved the implementation of a competency-based licensure process for admission to the Bar in Ontario. Traditionally, candidates have taken a series of substantive law courses in addition to skills training provided by the Law Society of Upper Canada (hereafter referred to as the “Law Society”) over a four month period and were required to pass examinations and skills assessments as part of the requirements to be admitted to the Bar. Starting in 2006, candidates will attend a mandatory skills training program and assessments and will be required to write two newly developed competency-based licensure examinations. One examination will focus on the competencies expected of entry-level lawyers performing in the capacity of a Solicitor, while the other

will focus on the competencies expected of entry-level lawyers performing in the capacity of a Barrister. All candidates will be required to pass both examinations and the skills assessments.

#### Solicitor Licensure Examination Blueprint Purposes

The Blueprint serves the following purposes:

- ensures the relevance of the Examination by indicating links to the competency profile for entry-level Solicitors;
- maximizes the functional equivalence of alternative forms of the Examination;
- provides direction for content developers when writing new items for the Examination; and
- facilitates evaluations of the appropriateness and effectiveness of the Examination by content experts and other stakeholders.

The competency-based Blueprint advances the above purposes by definitively stating what is assessed, for what purpose, to what extent, with what types of items, in what contexts, to what standards, and provides documentation of the processes leading to each of these decisions.

The PERFORMANCE ASSESSMENT GROUP has developed a comprehensive Blueprint system that identifies five types of key assessment information including the process, content, structure, context and scoring of the Examination. In summary:

#### Process

- A clear statement of the purpose of the Examination;
- A definition of the candidate target population;
- The methodology employed for all key Blueprint activities; &
- A list of the content experts involved in the Blueprint development process.

#### Content

- Competencies related to the purpose of the Examination;
- Entry-level Solicitor competency weightings;
- Entry-level Solicitor competency categories; &
- Cognitive domain weightings of the Examination.

#### Structure

- Item format of the Examination;
- Item presentation (e.g., individual, case, multiple response) of the Examination;
- Response format (e.g., selected, constructed, written, computerized answer sheets) of the Examination;
- The Examination length, duration and breaks;
- Assessment aids permitted for writing the Examination;
- Percentage of “new” content to appear on new versions of the Examination;
- The number of experimental items to be assessed on each administration of the Examination; &
- Number of forms of the Examination.

#### Context

- Client type (e.g., individual, family, population, community) specified in the Examination;
- Client age & gender specified in the Examination;
- Client legal situation specified in the Examination;
- Client culture included in the Examination; &
- Occupational environment (e.g., health care setting) specified in the Examination.

#### Scoring

- Standard setting method(s) employed for the Examination;



- An overview of the scoring procedures of the Examination; &
- The acceptable statistical item characteristics.

### The Blueprint Process

Process information provides important documentation of the methodology used to develop the contents of the Blueprint. Despite its global focus, process information is a key component for establishing the content validity of the Examination

The Blueprint was developed based on the input of a Blueprint Development Working Group (hereafter the “Working Group”). The Working Group consisted of six (6), experienced and respected Solicitors. For the names of the Working Group members, please refer to the Acknowledgements section in Appendix B.

The current Blueprint was developed by the Working Group of exemplar lawyers representing different practice types, sizes, and professional and personal demographics to reflect all the testing specifications they believe are necessary for the future success of the Examination. These specifications were derived from group processes and not based on the content of the current examinations.

What follows is an overview of the process followed to develop this Blueprint; however, additional process information is included within every section of the Blueprint.

#### 1. The Purpose of the Solicitor Licensure Examination

The Examination is designed to assess competency in non-litigation areas including primarily real estate; wills, trust and estate planning and administration; tax; corporate and commercial law; and related ethics and professional responsibility issues. Competence will be assessed on a pass/fail basis.

The Examination is one criterion used in making the decision to license an entry-level lawyer. Licensure can be defined as the official recognition by the Law Society that an individual has met all the qualifications specified by the Law Society and is, therefore, approved to practice as a lawyer in Ontario. Successful completion of the Examination is a necessary, but not the only, prerequisite for a lawyer to be licensed to practice law. The ultimate goal of the Examination is to protect the public.

#### 2. The Candidates for the Solicitor Licensure Examination

The academic prerequisite to be eligible to write the Licensing examinations as a student-at-law is either:

- a) Graduation from a common law program, approved by the Law Society, in a university in Canada; or
- b) Certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Committee of Canadian Law Deans.

#### 3. Blueprint Methodology

A Working Group participated in the development of the Blueprint. The Working Group was composed of experienced lawyers who identified their practice as being representative of the work performed primarily by “Solicitors”.

The Working Group and the PERFORMANCE ASSESSMENT GROUP facilitators systematically defined the specifications of the Blueprint through consultation with a number of resources and group discussions. Core resources used by the facilitators included:

- *Standards for Educational and Psychological Testing* (APA, 1999)
- *Certification: A NOCA Handbook* (NOCA, 1996)
- *Blueprint Development Overview and Working Document* (PERFORMANCE ASSESSMENT GROUP INC., 2000)

The PERFORMANCE ASSESSMENT GROUP'S *Blueprint Development Overview and Working Document* (2000) served as a guide for developing the five major components of the Blueprint. For each issue involving a Working Group decision, the PERFORMANCE ASSESSMENT GROUP facilitators presented an overview of the importance of the decision and the potential consequences of various courses of action. When determining a particular Blueprint specification, relevant archival information was consulted followed by considerable discussion among the Working Group members. In some cases, representatives of the Law Society were called upon to provide clarification, historical context or other information collected by the Law Society to assist the Working Group members in arriving at a decision. The Working Group members achieved unanimous agreement in relation to all Blueprint decisions.

A brief biographical data form was distributed to all Working Group members. This data has been retained to demonstrate to stakeholders the individuals providing content direction for the program are experienced and accomplished professionals who are qualified, as a group, to participate in performing these important licensure program activities. The names of the Working Group appear in Acknowledgement section of the Blueprint (Appendix B).

It is the recommendation of the Working Group that the Blueprint parameters be revisited on a regular cycle (e.g., every 3 to 5 years) and/or when significant changes to the profession occur requiring modifications to the Examination described in this Blueprint.

#### Content Variables

Content variables involve the essential nature of what is being measured by the items comprising the Examination. They specify the competencies to be assessed and define how these competencies will be sampled and to what extent. Competency categories have also been identified and the cognitive domains to be addressed by the Examination content have been defined and weighted.

When content variables call for percentages of the Examination to be allocated to different variables, these have been expressed as ranges (e.g., 35 - 45%) to allow for the Examination to be compiled when numerous percentages must be met simultaneously.

#### 1. The Competencies to be Assessed

It is important the competencies assessed by the Examination are those that:

- a) have the most direct impact on public protection;
- b) influence effective and ethical practice; &
- c) can be measured reliably and validly by the assessment item format used by the Examination.

As a first step in the process of developing the competencies for the Examination, a team of eight (8) experienced and respected Solicitors convened for four days to create an initial draft of the competencies required of an entry-level Solicitor. A competency is defined as a "knowledge, skill, ability, attitude or judgement required for entry-level practice." A number of resources were consulted in the creation of this initial draft including the *BAC Skills Chart* (LSUC, 2003); *The Competency Profile: BC Admission Program* (2001); *Competency Profile: Western Provinces* (Canadian Centre for Professional Legal Education; 2003); and the *Law Society Rules of Professional Conduct* (LSCU, 2003). Following the initial development of the entry-level Solicitor competency profile, a series

of four focus groups were conducted across Ontario providing an opportunity for Solicitors to review the competencies and suggest additions, deletions, and modifications to the wording of the competency statements. Following the focus groups, an experienced team of Solicitors reviewed and approved the focus group comments and suggestions and the competency profile was prepared for final validation through a provincial membership survey.

The validation survey was sent to 2000 Solicitors across Ontario through a random selection process. One hundred ninety seven Solicitors responded to the survey. Analysis of the sample provided support that those lawyers who participated in the survey adequately represented all regions of Ontario, areas of practice, and size and type of practices. A summary of the demographic analysis is provided in Appendix C.

## 2. Competency Weightings

Competencies have been weighted to determine the extent to which they will be represented on the Examination. Every competency will not necessarily be included on a particular version of the Examination; however, competency weightings ensure the competencies that are the most important to the purpose of licensure are assessed more thoroughly.

The following ratings scales were used to determine each competency's relevance, criticality and frequency for the purpose of assisting in the process of weighting the Examination:

Is this competency RELEVANT/APPROPRIATE for ENTRY-LEVEL SOLICITORS?

1. Yes
2. No

How CRITICAL is it if ENTRY-LEVEL SOLICITORS FAIL to perform this competency appropriately?

1. Not important (causes no harm or consequences to a Solicitor's practice or to the client).
2. Minimally important (causes an inconvenience to a Solicitor's practice or to the client).
3. Moderately important (may negatively affect a Solicitor's practice or the client's interest).
4. Critically important (creates a situation that jeopardizes a Solicitor's practice or the client's interests).

How OFTEN, on average, do ENTRY-LEVEL SOLICITORS perform this competency?

1. Rarely (once or less per month).
2. Weekly (about once per week).
3. Daily (about once per day).
4. Ongoing (throughout a working day).

As a preliminary step, the Working Group reviewed the data for competency relevance. Upon reviewing the statistical summary for each competency, 64 competencies were deleted from the final profile resulting in 188 competencies to be assessed using the Examination. Of the 64 competencies deleted, 32 were removed from the profile to be assessed through the skills assessment program. The remaining 32 competencies were deleted due to their low relevance or because they were deemed to be sufficiently measured through other existing competencies.

Based on this information, a four-variable classification system was adopted (a fully factorial design crossing criticality with frequency). The four-variable classification system is illustrated below:

A) More Frequently Performed      B) Less Frequently Performed

1-A	1-B
-----	-----

- 1) More Critical  
2) Less Critical

2-A	2-B
-----	-----

In order to maximize control over the weighting of the competencies for the Examination, the Working Group attempted to allocate equal numbers of competencies to each applicable competency-weighting category. By having equal numbers of competencies in each rating category, the categories can be weighted optimally to ensure the most critical/frequently performed competencies are represented by more Examination items than competencies of lesser criticality/frequency.

#### ENTRY-LEVEL SOLICITOR COMPETENCY RATING RESULTS

	A) More Frequently Performed	B) Less Frequently Performed
1) More Critical	47 competencies (35-45% of the Examination)	47 competencies (25-35% of the Examination)
2) Less Critical	47 competencies (15-25% of the Examination)	47 competencies (5-15% of the Examination)

The table that follows outlines the competencies falling into each criticality/frequency category, the weighting of each of the four categories, the average number of items that will be reflected on the Examination by category and the average number of Examination items per competency in each category (based on a 250 item Examination). A complete list of the entry-level Solicitor competencies by Competency Category and criticality/frequency ratings is provided in Appendix D and E respectively.

#### COMPETENCY WEIGHTING FOR THE EXAMINATION

Critical/ Freq	Number of Competencies	Percent of Total Competencies	Weighting for the Examination	Average items per Examination	Average Items per Competency
1-A	47	25%	35-45%	100	2.13
1-B	47	25%	25-35%	75	1.60
2-A	47	25%	15-25%	50	1.06
2-B	47	25%	5-15%	25	0.53
overall	188	100%	100%	250	1.33

### 3. Competency Categories

The categorizing framework that is used to organize the competencies is important whenever candidates are to be provided with performance feedback organized by each competency category. In order for such feedback to be meaningful, the competencies representing each category must be assessed by a sufficiently high number of Examination items to provide reliable results. This can be accomplished in one of two ways. Either there must be a large number of competencies in each category, or the competencies within the category must be measured by a large number of Examination items.

The tables that follow outline the competency categories and the number of competencies in each, plus the average number of questions that would be anticipated to represent each category based on a 250 item Examination.

SOLICITOR COMPETENCY CATEGORIES	Average # of Examination items per category
1. Ethical and Professional Responsibilities (24 competencies: 13 x 1-A, 5 x 1-B, 4 x 2-A, 2 x 2-B)	41
2. Knowledge of the Law (105 competencies: 14 x 1-A, 23 x 1-B, 24 x 2-A, 44 x 2-B)	115
3. Establishing and Maintaining the Solicitor-Client Relationship (26 competencies: 9 x 1-A, 7 x 1-B, 10 x 2-A, 0 x 2-B)	41
4. Fulfilling the Retainer (33 competencies: 11 x 1-A, 12 x 1-B, 9 x 2-A, 1 x 2-B)	53
TOTAL AVERAGE EXAMINATION ITEMS	250

In general, “subscales” containing fewer than approximately 25 items will not yield results with a degree of reliability that would support meaningful feedback for failing candidates. As can be seen from the above table, it may be possible to provide failing candidates with meaningful feedback for all four (4) categories of Solicitor competencies: Ethical and Professional Responsibilities, Knowledge of the Law, Establishing and Maintaining the Solicitor-Client Relationship, and Fulfilling the Retainer.

#### 4. Cognitive Domain Weightings

To ensure that competencies are measured at different levels of cognitive ability, each question on the Examination will be written to reflect the following cognitive taxonomy (an adaptation of a taxonomy originally developed by Bloom in 1956).

Knowledge/Comprehension (KC): The ability to recall facts, policies, procedures, standards, research findings, etc. (e.g., citing ethical guidelines when asked to do so).

Application (AP): The ability to apply knowledge/comprehension in a straightforward applied situation (e.g., recognizing the appropriate procedure to employ when faced with a routine (uncomplicated) situation).

Critical Thinking (CT): The ability to apply knowledge/comprehension in complex applied situations. Requires analytical problem solving in addition to knowledge/comprehension and application (e.g., selecting and prioritizing appropriate courses of action when faced with complex situations; recognizing the relative importance of conflicting pieces of information and arriving at a conclusion requiring sound judgment).

COGNITIVE DOMAINS	% OF EXAMINATION
Knowledge/Comprehension:	25-35%
Application:	35-45%
Critical Thinking:	25-35%
TOTAL	100%

#### Structural Variables

Structural variables include those characteristics determining the general design and appearance of the Examination. They define the format and presentation of the Examination items, the length and duration of the Examination, and special functions of Examination items (e.g., anchor items for the purpose of equating pass marks). As with content

variables, when structural variables require percentages to be allocated, these are also expressed as ranges (e.g., 40 - 50%).

### 1. Item/Tool Type

The Examination will be comprised of four-option multiple-choice items.

### 2. Item Presentation

The multiple-choice items are presented as “independent” items (the text provided is used to answer one item) and in “cases” typical of general legal practice where 4 - 10 items are linked to each case. A range of 65 - 75% of the items will be independent and 25 – 35% of the items will be case-based.

The Examination will originally be presented and responded to in a pencil-and-paper format.

### 3. Examination Length

The length of the Examination is typically driven by the purpose of the Examination, the number of competencies to be assessed, and practicality concerns (e.g., resource availability and demands placed on participants). To ensure reliable results for the total score and adequate coverage of the defined competency domain, the Examination will consist of 200 to 300 items.

### 4. Examination Duration, Books & Breaks

The duration of the Examination depends on the length of the Examination to be administered. Unless performance under time pressure is integral to the competencies being measured, candidates’ performance should not be confounded by lack of time. Assessments measuring candidates’ performance unconstrained by time are referred to as “power” assessments; whereas, assessments differentiating candidates based on the number of correct responses provided in a “time limited” situation are referred to as “speed” assessments. Typically, when time limits are placed on assessments of competence, these limits are intended to be reasonable for the vast majority of candidates to be able to complete all items (i.e., a power assessment strategy). A rule of thumb for multiple-choice items is to allow approximately 70 seconds per independent item and about 90 seconds per case-based item. Therefore, based on the number of items presented above, the assessment length will be seven (7) hours in duration. Time limits and break duration will be finalized following pilot testing for both the English and French versions of the Examination.

When the assessment process approaches three and one half hours in duration, candidates will be permitted a break. To ensure consistency, the Examination will be divided into two “booklets”. A booklet is a partial form of the assessment administered within its own time limitation, at the completion of which a break of 30 - 60 minutes will be provided.

### 5. Assessment Aids Permitted

The types of assessment aids candidates will be permitted to bring to the Examination is contingent upon the content being assessed on any given version of the Examination. Each item will be referenced to a specific source where the correct answer can be found and a determination will be made regarding which specific items merit the use of candidate aids (resources). These resources will be compiled with the Examination and provided to each candidate by the Law Society. After considerable discussion, the Working Group recommended the Law Society provide candidates with all the permitted written materials prior to the Examination. Candidates will be permitted to mark these materials prior to the Examination, however, immediately upon completion of the Examination, each candidate will be required to return ALL these materials to the Law Society for Examination security purposes.

## 6. Percentage of New Content for New Versions of the Examination

When new versions of the Examination are planned (i.e., three administrations per year with the primary administration in July) there is a need to have the content of these versions vary to protect the integrity of the licensure program. When candidates become familiar with assessment content, their resulting scores may be contaminated by this knowledge and are no longer a pure assessment of their individual competence/performance. In order to ensure consistency across various forms of the Examination, a core percentage of items are selected to remain constant from one version to the next (typically those with superior item characteristics). Additional items are added that did not appear as operational on the previous administration of the Examination. The Working Group determined the range of “new” items to appear on subsequent administrations of the Examination will be 25% - 50%.

## 7. Experimental Items

Closely tied to the percentage of “new” content on subsequent versions of the Examination is the issue of experimental items. Experimental items are included on versions of the Examination for the purpose of gathering statistical information, but are NOT used in calculating candidates’ scores. The Working Group determined experimental items will constitute approximately 5 – 10% of each version of the Examination.

## 8. Forms of the Examination

Most assessment programs specify a minimum of two forms of the assessment tool (English and French). Larger assessment programs may specify more than one English form of the assessment tool that generally differ only in the experimental items included. When multiple forms of the Examination are used, it is possible to assess many more experimental items each year for inclusion on subsequent versions of the Examination. The number of forms of the Examination will depend upon the number of candidates writing the Examination. In general, a new form will be created for every 200 candidates writing the Examination. Each form will contain the same operational questions. The only difference will be the experimental questions.

STRUCTURAL VARIABLES	EXAMINATION SUMMARY
Administration Time:	7 hours
Break Time:	1 hour
Independent Items	65-75%
Case-based Items	25-35%
Total Number of Questions	200-300
“New” Content	25-50%
Experimental Items	5-10%
Number of Forms	1 for every 200 candidates
Examination Booklets:	2
Examination Aids:	To be Determined

## Contextual Variables

Context variables qualify the content domain by specifying the legal contexts in which the assessment questions will be set (e.g., client type, client culture, client situation and occupational environment). As with content and structure variables, when contextual variables call for percentages of the Examination to be allocated to different variables, these are expressed as ranges (e.g., 15 - 25%).

### 1. Client Type

By specifying the types of clients that will appear in the Examination, one step has been taken toward ensuring the Examination reflects a realistic representation of the entry-level Solicitor's day-to-day practice. While not all items in the Examination will introduce a client, it is beneficial to set guidelines for items where the presentation of one or more clients is required to assess the competencies.

In order to develop an Examination representative of the types of clients entry-level Solicitors will typically encounter, the Working Group consulted a number of resources including the data obtained from the survey respondents. From this information, the following breakdown of client types was developed:

TYPES OF CLIENTS	% OF EXAMINATION
Individuals	50 - 65%
Corporations	15 - 25%
Governments (federal, provincial, municipal)	5 - 15%
Partnerships and Unincorporated Associations	5 - 10%
Statutory Bodies	0 - 5%
Charities and Not For Profit Organizations	0 - 5%
TOTAL	100%

### 2. Client Situation

Specifying the various legal "contexts" adds realism to the Examination while at the same time, ensures a particular context is not over-emphasized. It is important to realize that some competencies will not need to be assessed using a legal context (e.g., knowledge questions) however, where necessary, it is important to create a context that candidates perceive is realistic. Specific client legal situations were discussed and weighted by the Working Group as representative of a typical entry-level Solicitor's practice. The following breakdown was developed:

LEGAL CONTEXT	% OF EXAMINATION
Corporate/Commercial Law	35 - 45%
Real Estate Law	25 - 35%
Wills, Estates, Trusts Law	25 - 35%
TOTAL	100%

### 3. Legal Environment

Specifying the various legal "environments" adds realism to the Examination while ensuring a particular environment is not over-emphasized. Such issues as sole proprietor, legal clinic, or government office are all examples of different legal environments in which an entry-level Solicitor might work. It is important to realize that some competencies will not need to be assessed using a legal environment (e.g., some general knowledge/comprehension questions) however, where necessary, it is important to create a context that candidates perceive as realistic.

Specific legal environments were discussed and weighted by the Working Group as representative of a typical entry-level Solicitor's practice. The following breakdown was developed:

LEGAL ENVIRONMENT	% OF EXAMINATION
Law Firm	35 - 50%
Sole Practitioner	20 - 30%



In-House Counsel (Private)	15 - 25%
Government	5 - 15%
Legal Clinic	0 - 5%
TOTAL	100%

#### 4. Client Culture

While the Examination will not test candidates' knowledge of specific values, beliefs and practices linked to individual cultures, it will require candidates to demonstrate awareness, sensitivity, and respect for cultural values, beliefs, and practices. When information related to client culture is presented in Examination items, this will be done without introducing biases or stereotypes.

### Scoring the Examination

#### 1. Standard and Pass Mark Setting Method Employed

Because the Examination will be designed to assess a candidate's competence with a focus on safe, effective, and ethical practice, setting a standard is not strictly a question of how well a participant is performing relative to her/his peers (i.e., normative standards), but rather how effectively the candidate is providing effective, and ethical services in the public interest from an absolute perspective. In theory, the average performance of a sample of the profession does not guarantee acceptable levels of performance. This is particularly true when one considers that the normative data will originally be based on a smaller administration of the Examination. If, by chance, this sample turns out to be particularly weak (or strong) performers, the feedback provided to subsequent participants may be overstating (or understating) their competence.

The procedure used to set the standard for the Examination must be one that provides an indication of whether or not participants have achieved a sufficient level of mastery of their content domain (i.e., absolute standards). Furthermore, various levels of performance need to be set within each of the diagnostic categories in order to provide a meaningful diagnostic profile to the participants. Given that an extensive body of research supports the use of the Angoff method in setting standards for professional assessments, a version of this process will be used to set the standard for the Examination.

The standard for the Examination will be based on an understanding of "minimal competence", defined as the level of competence that separates those who should receive a license to practice law from those who should not. A panel of content experts will be charged with developing the definition of minimal competence by discussing the differences between different levels of competence (mastery, incompetence and minimal competence). Through extensive discussions, the expert panel will agree upon a definition of what would be expected of an individual who is "at the borderline" of competence to practice law in the capacity of a Solicitor. The expert panel will also discuss the potential consequences of setting the standard either too high or too low in terms of the impact this would have on candidates, the public, the Law Society and the legal profession. Using this carefully derived "working standard," the content experts will then proceed to the second step in the process, identifying the pass mark for a specific version of the Examination.

Identifying the pass mark for the Examination requires each item (i.e., multiple-choice) be rated by content experts in terms of the percentage of minimally competent candidates who "will" answer the item correctly. Ratings may vary from 0 – 100% and are recorded in increments of 5% (e.g., 60%, 65%, 70%, etc.). The content expert ratings for each item are then tabulated to arrive at a mean (arithmetic average) item rating. The pass mark for the Examination is based on the grand mean (overall average) of all the items that will count towards the scores of candidates.

The Angoff method is fair because it is based on a standard derived from the ability level required of the minimally competent candidate. When Examination items are more difficult, the required pass mark will be lower; when Examination items are less difficult, the required pass mark will be higher. Both adjustments keep the underlying

required standard constant. As items change, the pass marks will change to precisely reflect any items that are removed as well as those that are added.

It is important to note that the pass mark for the overall Examination and each of its diagnostic categories will be developed to provide guidance to candidates in the identification of their relative strengths and weaknesses. Finally, it should be noted that the working standard will become increasingly refined over time as content experts expand upon their previous work and new content experts are brought into the process with fresh perspectives.

## 2. An Overview of the Scoring Procedures

The Examination response sheets will be scanned and scored using computer software. Each correctly answered multiple-choice item will contribute one (1) point to a candidate's score. Candidates' final scores will be converted to a percentage and compared to the percentage pass mark for the Examination. Only one outcome will result from scoring the Examination, overall pass/fail.

## 3. Statistical Analyses

A number of statistics will be used to assess the effectiveness of the Examination, diagnostic categories, and individual items. These statistics include: Cronbach's Alpha, p values, Point Biserial Correlations, and distractor analyses. Candidate feedback is also obtained following each administration of the Examination to further assess its subjective validity and effectiveness from the perspective of candidates. Candidate feedback will include ratings of the adequacy of time limits, item clarity, relevance to practice and the perceived fairness of the assessment.

## APPENDIX A

### Solicitor Licensure Examination Blueprint Summary Sheet

<i>STRUCTURE</i>			
All Items: Medium	Paper & pencil	Duration (time):	7.0 Hours
All Responses: Medium	Paper & pencil	Booklets (#):	2
M-C Individual Items:	65 - 75%	Breaks (#/time):	1 / 60 minutes
M-C Case Items	25 - 35%	New content (%):	25 - 50%
M-C Response Presentation:	Four-option	Experimental Items (%):	5 - 10%
M-C Length (#):	200 - 300 Items	Forms (#):	1 Per 200 Candidates
Assessment Aids:	To Be Determined		

<i>CONTENT</i>			
1-A Weighting:	40 - 50%	2-A Weighting:	15 - 25%
1-B Weighting:	25 - 35%	2-B Weighting:	5 - 15%
Knowledge/Comprehension:	25 - 35%	Critical Thinking:	25 - 35%
Application:	35 - 45%		
1	2	3	4
Ethical and Professional Responsibilities	Knowledge of the Law	Establishing and Maintaining the Solicitor-Client Relationship	Fulfilling the Retainer
<i>Not weighted</i>	<i>Not weighted</i>	<i>Not weighted</i>	<i>Not weighted</i>

<i>C O N T E X T</i>				
Client Types:	Individual Clients	50 - 65%	Corporations	15 - 25%
	Governments	5 - 15%	Partnerships and Unincorporated Associations	5 - 10%
	Statutory Bodies	0 - 5%	Charities and Not For Profit Organizations	0 - 5%
Legal Context:	Corporate/Commercial Law	35 - 45%	Wills, Estates, Trusts Law	25 - 35%
	Real Estate Law	25 - 35%		
Legal Environment:	Law Firm	35 - 50%	Sole Practitioner	20 - 30%
	In-House Counsel	15 - 25%	Government	5 - 15%
	Legal Clinic	0 - 5%		
Client Culture	The assessment program reflects awareness, sensitivity, and respect for cultural values, beliefs, and practices. Cultural issues are integrated within the Examination without introducing cultural stereotypes or biases.			

## APPENDIX B

Acknowledgements

The following individuals participated in the creation of the Law Society Entry-Level Solicitor Competency Profile:

· Jordan Atin	· Raymond Leclair	· Donald Thomson
· Donald Burke	· Gregory Mulligan	· Reginald Watson
· Caterina Galati	· Kevin O'Hara	

The following individuals participated in the focus group review of the Law Society Entry-Level Solicitor Competency Profile:

· Steve Altwerger	· Todd Greenbloom	· Lou Radomsky
· Heather Austin-Skaret	· Grant Inglis	· Laird Rasmussen
· Sally Burks	· Raymond Leclair	· Stephanie Ross
· Thomas Chalmers	· James Little	· Donald Rycroft
· Gregory Clark	· Robin Macknight	· Jana Steele
· Jeremy Farr	· Michele Mannering-Hynes	· Donald Thomson
· Jim Ferguson	· Lynn LeMesurier	· Christopher White
· Caterina Galati	· Catherine McKendry	

The following individuals participated in the Law Society Solicitor Blueprint Development Meeting:

· Margaret Best	· Bruce MacNaughton	· Wendy O'Neill
· Raymond Leclair	· Catherine McKendry	· Reginald Watson

## APPENDIX C

Summary of the Demographic Characteristics of Those Responding to the Survey of  
the Competencies for Entry-Level Solicitors

1. What is your gender?

(see graph in Report)

2. How many lawyers are in your practice?

(see graph in Report)

3. How many individuals (including lawyers, non-lawyer employees and partners) are in your practice?

(see graph in Report)

4. How many years have you been practising law?

(see graph in Report)

5. What was your year of call to the bar?

(see graph in Report)

Respondents were originally asked to provide the exact year of call; however, for ease of interpretation this data has been recoded to reflect call to bar for each of five decades ranging from the 1950's to the 2000's.

(see graph in Report)

6. Are you engaged in the private practice of law?

6a. If you ARE engaged in the private practice of law what are your main areas of practice?

Respondents were asked to select ANY areas of private practice they considered to reflect their "main areas of practice" from the following list:

· ADR/Mediation services	· Corporate/Commercial Law	· Family/Matrimonial Law
· Administrative Law	· Criminal/Quasi Criminal Law	· Wills, Estates, Trusts Law
· Civil litigation	· Employment/Labour Law	· Real Estate Law

To determine the percentage of respondents considering each area to be a "main area of practice" the total number of valid responses to question #6 (N=197) was used as a baseline for comparison; however, due to multiple responses, the totals across practice areas do not sum to 100%. As a result, the summary table provides only the frequency and percentage of respondents endorsing each area of private practice (valid and cumulative percentages cannot be calculated). The summary statistics for questions 6a-i appear on the next page.

Response Provided		Freq	Valid total N	Percent	Response Provided		Freq	Valid total N	Percent
A	ADR/Mediation services	4	190	2%	F	Employment/Labour Law	9	190	5%
B	Administrative Law	9	190	5%	G	Family/Matrimonial Law	12	190	6%
C	Civil litigation	25	190	13%	H	Wills, Estates, Trusts Law	85	190	45%

D	Corporate/Commercial Law	113	190	60%	I	Real Estate Law	74	190	39%
E	Criminal/Quasi Criminal Law	4	190	2%					

(see graph in Report)

- 6a) If you ARE engaged in the private practice of law what are your main areas of practice?  
(select all that apply). OTHER:

Although an “OTHER” category was NOT provided on the survey, a couple of respondents wrote in an “OTHER” area of private practice they considered to be among their “main areas of practice”. These responses are summarized below along with the number of respondents providing each one (frequency):

#	Response Provided	Frequency
1	GOVERNMENT MEDIATOR	1
2	CORPORATION	1
3	LEGAL AID	2
4	COUNSEL REGULATORY BODY	1
5	LABOUR ARBITRATION	1
6	UNEMPLOYED	1
7	COUNSEL	1

- 6b. If you are NOT engaged in the private practice of law please select the ONE (1) category that best represents, through your employment or engagement, your primary activity in law.

(see graph in Report)

7. Where do you practice law?

(see graph in Report)

An “OTHER” category WAS provided on the survey for respondents who did not find their practice location among the options provided. These responses are summarized below along with the number of respondents providing each one (frequency):

#	Response Provided	Frequency
1	CENTRAL ONTARIO	1
2	TORONTO	1
3	MUSKOKA	2
4	BRITISH COLUMBIA	1
5	NIAGARA	2

8. Do you consider yourself to be a member of an equality seeking community (Please select all that apply?)

(see graph in Report)

## APPENDIX D

ENTRY-LEVEL SOLICITOR COMPETENCIES BY CATEGORY**A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES****Ethics and Professionalism**

1. declines to act or seeks appropriate assistance when the matter is beyond own abilities.
2. accepts only retainers that are reasonable and capable of performance under law.
3. completes all contractual obligations under the retainer.
4. avoids or manages conflicts of interest (e.g., clarifies joint retainers, acting against a client, dealing with self-represented persons, doing business with a client [e.g., borrowing from a client], acting for family members).
5. charges fair and reasonable fees and disbursements (e.g., division of fees and referral fees, full disclosure of fees, appropriation of funds).
6. recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege).
7. obtains all necessary consents at the time of the retainer, respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation).
8. ensures staff understands and adheres to relevant Rules of Professional Conduct (e.g., confidentiality, solicitor-client privilege, justified disclosure, integrity, dishonesty or fraud by the client, title insurance rule).
9. delegates and supervises appropriately (e.g., provides opportunities for others to learn, enhances cost efficiencies for the client, does not delegate where inappropriate such as the ultimate review of a title search report).
10. withdraws from representation in compliance with the rules of the Law Society, the court or tribunal (e.g., optional withdrawal, mandatory withdrawal, client request for withdrawal).
11. understands the obligation to keep the client informed.
12. fulfils all undertakings and does not give an undertaking that cannot be fulfilled.
13. avoids engaging in sharp practice.
14. recognizes and fulfils fiduciary obligations.
15. recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice, dealing with the media, public statements, lawyer as a witness).
16. recognizes issues involving the Law Society books and records bylaws (e.g., preserves the clients' property).
17. avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, evidence, fraud).
18. recognizes any other issues involving the Law Society Rules of Professional Conduct (e.g., dishonesty or fraud by the client, administration of justice, reporting other lawyers' conduct where appropriate, obligations to the court).
19. demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the Law Society, responsibility to other lawyers).
20. demonstrates an understanding of the obligation to represent the client within the limits of the law (e.g., takes appropriate steps to ensure that the lawyer maintains professional distance from the client).
21. demonstrates awareness of issues involving electronic registration (e.g., not sharing diskettes, privacy issues, understanding technology).
22. markets and advertises ethically as per Law Society Rules (e.g., making services available, law firm name, letterhead, advertising, offering professional services).
23. approaches ethical issues in accordance with the Law Society model (e.g., follow the law, look to the rules, seek guidance from senior lawyers or practice advisory, exercise caution when in "gray areas").
24. maintains appropriate professional relationships with lawyers, students, employees and others (e.g., treats others with courtesy and respect, avoids sexual harassment and human rights violations, respects multi-cultural issues, respects the relationship of opposing counsel and their client).

## B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW POLICY, PROCEDURES AND FORMS

### Knowledge of General Statutes, Common Law, Policy, Procedures and Forms

- 25. demonstrates knowledge of statutes of general application and principles of statutory interpretation.
- 26. demonstrates knowledge of fundamental common law (e.g., law of contracts, agency law, trust law, torts law, law of property).
- 27. demonstrates knowledge of purposes, procedures and forms related to substantive law.
- 28. demonstrates a general awareness of specialty areas (e.g., environmental law, employment and labour law).

### Real Estate

- 29. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law:
  - a. Commercial Tenancies Act.
  - b. Condominium Act, 1998.
  - c. Construction Lien Act.
  - d. Conveyancing and Law of Property Act.
  - e. Estate Administration Act.
  - f. Family Law Act.
  - g. Land Registration Reform Act.
  - h. Land Titles Act.
  - i. Land Transfer Tax Act.
  - j. Real Properties Limitations Act.
  - k. Mortgages Act.
  - l. Ontario New Home Warranties Plan Act.
  - m. Planning Act (except Section 50)
  - n. Registry Act.
  - o. Tenant Protection Act, 1997.
  - p. Vendor and Purchasers Act.
  - q. Succession Law Reform Act.
  - r. Execution Act
- 30. demonstrates knowledge of secondary real estate statutes and related regulations and case law (e.g., Beds of Navigable Water Act; Building Code Act, 1992; Business Corporations Act [Ontario and Federal]; Certification of Titles Act; Section 347 of the Criminal Code; Conservation Authorities Act; Fire Marshall's Act; Income Tax Act [Federal and Provincial]; Indian Act; Interest Act; Municipal Act, 2001; Municipal Tax Sales Act; Personal Property Security Act; Power Corporation Act; Public Utilities Act; Road Access Act; Technical Standards and Safety Act; Statute of Frauds; Surveys Act; Tax Sales Confirmation Act).
- 31. demonstrates an understanding of agreements of purchase and sale (e.g., new and used residential, condominiums, commercial and vacant land).
- 32. demonstrates an understanding of conveyancing (e.g., estate, rural, agricultural, waterfront, new and used residential, condominiums, commercial and vacant land).
- 33. demonstrates an understanding of property insurance instructions.
- 34. demonstrates an understanding of the land registration systems in Ontario.
- 35. demonstrates an understanding of title searching (i.e., in an electronic and non automated system).
- 36. demonstrates an understanding of off-title due diligence.
- 37. demonstrates an understanding of subdivision control: Section 50 of the Planning Act.
- 38. demonstrates an understanding of plans and surveys.
- 39. demonstrates an understanding of requisitions on title and off-title matters.

40. demonstrates an understanding of the standard mortgage/charge transaction.
41. demonstrates an understanding of enforcement of mortgage/charge security.
42. demonstrates an understanding of preparation for closing, closing and post-closing procedures.
43. demonstrates an understanding of special concerns for residential rental properties (e.g., single unit and multiple unit).
44. demonstrates an understanding of remedies (e.g., vendors and purchasers applications, conditions, repudiation, rescission, specific performance, damages, rectification).
45. demonstrates an understanding of title insurance (e.g., advantages, conditions, limitations).
46. demonstrates an understanding of GST and real estate.
47. demonstrates an understanding of commercial transactions.
48. demonstrates an understanding of electronic registration.
49. demonstrates an awareness of aboriginal property issues.
50. demonstrates an understanding of the use of trusts and related liability issues.
51. demonstrates an understanding of commercial leasing (e.g., priority issues and non disturbance agreements).
52. demonstrates an understanding of leasehold interests including life leases.
53. demonstrates an understanding of priority of claims.
54. demonstrates an understanding of municipal law applications (e.g., zoning, minor variances).

#### Wills, Trusts, and Estate Administration and Planning

55. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law:
  - a. Accumulations Act.
  - b. Estates Act.
  - c. Estates Administration Act.
  - d. Family Law Act.
  - e. Health Care Consent Act, 1996.
  - f. Income Tax Acts.
  - g. Perpetuities Act.
  - h. Rules of Civil Procedure (Rules 74 & 75).
  - i. Substitute Decisions Act, 1992.
  - j. Succession Law Reform Act.
  - k. Trustee Act.
56. demonstrates knowledge of secondary wills, trusts, and estate statutes and related regulations and case law (e.g., Child and Family Services Act; Children's Law Reform Act; Crown Administration of Estates Act; Estate Administration Tax Act, 1998; Indian Act; Insurance Act; Mental Health Act; Powers of Attorney Act; Trillium Gift of Life Network Act [formerly Human Tissue Gift Act], Variation of Trusts Act).
57. demonstrates an understanding of trusts and estate planning.
58. demonstrates an understanding of will, trust, and power of attorney drafting and execution (e.g., multiple wills, alter-ego trusts, inter vivos trusts, Henson trusts, powers of attorney for property, and powers of attorney for personal care).
59. demonstrates an understanding of capacity law (e.g., wills, powers of attorney, guardianship applications, mental health law).
60. demonstrates an understanding of taxation at death and of trusts.
61. demonstrates an understanding of the impact of the Family Law Act on estate planning, administration and litigation (e.g., property and support issues related to same-sex, married and common law spouses).
62. demonstrates an understanding of administration of estates (e.g., testate and intestate estates, estate trustee duties, asset administration, income tax, estate administration tax, accounting).



- 63. demonstrates an understanding of estate litigation (e.g., will challenges, interpretation applications, variation of trusts, dependent support, and claims against an estate, equalization applications).
- 64. demonstrates an understanding of fiduciary law (e.g., executors and attorneys powers and duties).
- 65. demonstrates an awareness of cross-border issues (e.g., income and other tax issues, conflicts of law, forced heirship).

#### Business Law

- 66. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law:
  - a. Assignments and Preferences Act.
  - b. Bankruptcy and Insolvency Act.
  - c. Bulk Sales Act.
  - d. Business Corporations Act (Ontario)/Canada Business Corporations Act.
  - e. Business Names Act.
  - f. Corporations Information Act.
  - g. Creditors Relief Act.
  - h. Fraudulent Conveyances Act.
  - i. Income Tax Acts.
  - j. Limitations Act.
  - k. Limited Partnerships Act.
  - l. Partnerships Act.
  - m. Personal Property Security Act.
  - n. Securities Act.
- 67. demonstrates knowledge of secondary business law statutes and related regulations and case law (e.g., Arthur Wishart Act; Bank Act; Canada Corporations Act; Companies' Creditors Arrangement Act; Competition Act; Corporations Act [Ontario]; Criminal Code; Employment Standards Act; Excise Tax Act; Extra Provincial Corporations Act; Franchise Act; Investment Canada Act; Interest Act; Personal Information Protection and Electronic Documents Act; Retail Sales Tax Act).
- 68. demonstrates an understanding of the different methods of carrying on business (e.g., the advantages and disadvantages of sole proprietorships, partnerships, corporations, co-ownerships, joint ventures).
- 69. demonstrates an understanding of partnership agreements.
- 70. demonstrates an understanding of taxation of corporations and their shareholders.
- 71. demonstrates an understanding of the advantages and disadvantages of incorporating in other jurisdictions.
- 72. demonstrates an understanding of the impact of employment and labour law on transactions.
- 73. demonstrates an understanding of the creation and maintenance of the corporation (e.g., incorporation procedure, organization, amendments).
- 74. demonstrates an understanding of the roles of directors, officers, and shareholders of a corporation (e.g., fiduciary duty, standard of care, election, rights and powers, meetings, shareholder remedies).
- 75. demonstrates an understanding of shareholder agreements.
- 76. demonstrates an understanding of the corporate capital structure: share capitalization (e.g., paid up capital; rights, conditions and restrictions on shares).
- 77. demonstrates an understanding of effecting corporate changes (e.g., Section 85 rollover, Section 86 reorganization; amalgamations, arrangements and reorganizations, windup, dissolution).
- 78. demonstrates an understanding of securities law implications for private companies.
- 79. demonstrates an understanding of due diligence in corporate and commercial transactions (e.g., appropriate searches, inquiries and investigations).
- 80. demonstrates an understanding of debt financing and secured transactions.
- 81. demonstrates an understanding of debtor and creditor's rights and remedies (e.g., secured and unsecured).
- 82. demonstrates an awareness of aboriginal issues in business transactions.
- 83. demonstrates an understanding of the purchase and sale of the business (i.e., shares or assets).

- 84. demonstrates an understanding of GST and RST on commercial transactions.
- 85. demonstrates an understanding of charities and not-for-profit law.
- 86. demonstrates an understanding of franchising and licensing.
- 87. demonstrates an awareness of cross-border issues (e.g., International Sale of Goods Act; Sale of Goods Act, income tax, business immigration).
- 88. demonstrates an understanding of intellectual property issues (e.g., patents, copyrights, trade marks).
- 89. demonstrates an understanding of the impact of the Personal Information Protection and Electronic Documents Act (PIPEDA) on business transactions.

## C. ESTABLISHING AND MAINTAINING THE SOLICITOR-CLIENT RELATIONSHIP

### Identifying the Client

- 90. takes appropriate steps to determine the client and the client's role (e.g., multiple parties, spouses/family members, business partners, trustee vs. beneficiary, officers/directors/shareholders vs. corporation, authority to bind).
- 91. takes appropriate steps to avoid problems associated with phantom clients.
- 92. obtains identification from the client where appropriate (e.g., follows the Proceeds of Crime [Money Laundering] and Terrorist Financing Act, takes steps to identify fraudulent transactions, mortgage/charge financing).

### Conflicts of Interest

- 93. uses a conflict of interest checking system and monitors for conflicts of interest on an ongoing basis.
- 94. identifies potential conflicts of interest before acquiring confidential information (e.g., multiple parties).
- 95. takes appropriate action in situations where a potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish firewall procedures where appropriate, advises the client of the consequences in the event the potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified, properly withdraws).

### Interviewing Principles

- 96. determines the client's goals, objectives and expectations.
- 97. makes an initial assessment of whether or not the client's goals, objectives, and expectations can be met through legal processes and ethical solutions.
- 98. determines whether or not the client is capable of giving instructions (e.g., mental capacity, authority, duress, undue influence).
- 99. determines issues that might affect the resolution of the problem.

### The Retainer

- 100. establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions).
- 101. identifies the instructing client.
- 102. confirms the actions to be taken by the parties in the retainer.
- 103. sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, rates for various personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements).
- 104. outlines the delegation of responsibilities in the retainer (e.g., within the firm, external consultants, client).
- 105. confirms the acceptable forms of client communication in the retainer (e.g., medium and timeframes).

- 106. addresses solicitor-client privilege and privacy issues in the retainer (e.g., distribution of e-mails, sharing information with other advisors).
- 107. addresses conflict of interest issues in the retainer (e.g., termination, confidentiality, consent).
- 108. addresses termination issues in the retainer (e.g., non-payment of fees, no instructions, loss of confidence, conflicts of interest).
- 109. confirms the retainer and any limitations in writing.
- 110. obtains a monetary retainer where appropriate.
- 111. confirms changes to the retainer as appropriate (e.g., new client instructions, method/channels for making changes).

#### Client Communications

- 112. communicates with clients in a timely and effective manner (e.g., formal reporting, returns phone calls in a timely manner, copies the client on correspondence as appropriate, advises on developments).
- 113. manages and updates the client's expectations with respect to timeframes, results, and costs.
- 114. recognizes, and is sensitive to, clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language [need for interpreters], gender, disability, socioeconomic status, demeanour).
- 115. explains to clients the risk of communicating the details of the case by means of electronic media (e.g., cell phones, e-mail).

### D. FULFILLING THE RETAINER

#### File Administration

- 116. maintains an electronic and written record for each matter for which the lawyer is retained.

#### Information Gathering and File Analysis

- 117. obtains and reviews relevant facts and documents.
- 118. recognizes urgency and takes emergency steps where necessary (e.g., registers a caution on title, construction liens).
- 119. ascertains the completeness of the documentation provided by the client.
- 120. identifies the factual and legal issues.
- 121. identifies and obtains additional information and/or resources as needed (e.g., experts, legal research, specialized counsel).
- 122. conducts or delegates research and investigations related to the matter as appropriate.
- 123. complies with all privacy legislation.

#### Developing the Action Plan

- 124. generates options and recommendations and presents them to the client.
- 125. identifies the risks and costs of various options.
- 126. confirms client instructions with respect to options and recommendations.

#### Executing the Action Plan

- 127. conducts due diligence as appropriate for the client.
- 128. prepares and/or reviews documentation, searches, and plans as appropriate for the transaction.
- 129. communicates with the other parties in a timely manner (e.g., other lawyers, title insurers).
- 130. utilizes and revises checklists where appropriate.
- 131. determines and satisfies third party requirements (e.g., property insurance, title insurance, lender requirements, appropriate consents and clearances, environmental evaluations).

- 132. identifies problems, solutions/options and obtains client instructions (e.g., conflicts, title search issues).
- 133. conducts negotiations related to the matter as appropriate.

#### Closing the Transaction

- 134. prepares a closing agenda as appropriate.
- 135. provides interim reports on a timely basis as required (e.g., to the lender, title insurance).
- 136. reviews documentation with the client and obtains signatures as appropriate.
- 137. updates searches and certificates and obtains necessary preclosing clearances and consents as appropriate.
- 138. supervises staff or others involved in the closing.
- 139. arranges closing logistics (e.g., transfer of funds, execution page delivery and third party consents).
- 140. arranges for appropriate undertakings (e.g., to discharge mortgages/charges).
- 141. conducts a final review of the checklist.
- 142. takes appropriate steps when the transaction fails to close (e.g., tender).
- 143. completes the transaction in a timely and appropriate manner (e.g., exchange of deliverables [e.g., documents, property], complete registrations).

#### Post-Closing Actions

- 144. ensures appropriate undertakings, both given and received, are completed (e.g., discharges mortgages/charges).
- 145. advises all necessary parties of the closing.
- 146. obtains documents to complete the file (e.g., title insurance policies).
- 147. provides final reports and accounting to clients and third parties.
- 148. conducts a final review of the file prior to making the file inactive.

## APPENDIX E

### ENTRY-LEVEL SOLICITOR COMPETENCIES BY CRITICALITY/FREQUENCY CLASSIFICATION

#### Group 1-A

#### A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES

##### Ethics & Professionalism

- 1. declines to act or seeks appropriate assistance when the matter is beyond own abilities.
- 2. completes all contractual obligations under the retainer.
- 3. avoids or manages conflicts of interest (e.g., clarifies joint retainers, acting against a client, dealing with self-represented persons, doing business with a client [e.g., borrowing from a client], acting for family members).
- 4. recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege).
- 5. ensures staff understands and adheres to relevant Rules of Professional Conduct (e.g., confidentiality, solicitor-client privilege, justified disclosure, integrity, dishonesty or fraud by the client, title insurance rule).
- 6. understands the obligation to keep the client informed.
- 7. fulfils all undertakings and does not give an undertaking that cannot be fulfilled.
- 8. recognizes and fulfils fiduciary obligations.

9. recognizes issues involving the Law Society books and records bylaws (e.g., preserves the clients' property).
10. demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the Law Society, responsibility to other lawyers).
11. demonstrates an understanding of the obligation to represent the client within the limits of the law (e.g., takes appropriate steps to ensure that the lawyer maintains professional distance from the client).
12. approaches ethical issues in accordance with the Law Society model (e.g., follow the law, look to the rules, seek guidance from senior Solicitors or practice advisory, exercise caution when in "gray areas").
13. maintains appropriate professional relationships with lawyers, students, employees and others (e.g., treats others with courtesy and respect, avoids sexual harassment and human rights violations, respects multi-cultural issues, respects the relationship of opposing counsel and their client).

#### B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW, POLICY, PROCEDURES AND FORMS

##### Knowledge of General Statutes, Common Law, Policy, Procedures and Forms

14. demonstrates knowledge of statutes of general application and principles of statutory interpretation.
15. demonstrates knowledge of fundamental common law (e.g., law of contracts, agency law, trust law, torts law, law of property).

##### Real Estate

16. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Construction Lien Act.
17. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Family Law Act.
18. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Execution Act.
19. demonstrates an understanding of subdivision control: Section 50 of the Planning Act.
20. demonstrates an understanding of electronic registration.

##### Wills, Trusts, and Estate Administration and Planning

21. demonstrates an understanding of will, trust, and power of attorney drafting and execution (e.g., multiple wills, alter-ego trusts, inter vivos trusts, Henson trusts, powers of attorney for property, and powers of attorney for personal care).
22. demonstrates an understanding of capacity law (e.g., wills, powers of attorney, guardianship applications, mental health law).
23. demonstrates an understanding of the impact of the Family Law Act on estate planning, administration and litigation (e.g., property and support issues related to same-sex, married and common law spouses).
24. demonstrates an understanding of fiduciary law (e.g., executors and attorneys powers and duties).

##### Business Law

25. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Business Corporations Act (Ontario)/Canada Business Corporations Act.
26. demonstrates an understanding of the different methods of carrying on business (e.g., the advantages and disadvantages of sole proprietorships, partnerships, corporations, co-ownerships, joint ventures).
27. demonstrates an understanding of due diligence in corporate and commercial transactions (e.g., appropriate searches, inquiries and investigations).

**C. ESTABLISHING AND MAINTAINING THE SOLICITOR-CLIENT RELATIONSHIP****Identifying the Client**

28. takes appropriate steps to determine the client and the client's role (e.g., multiple parties, spouses/family members, business partners, trustee vs. beneficiary, officers/directors/shareholders vs. corporation, authority to bind).

**Conflicts of Interest**

29. uses a conflict of interest checking system and monitors for conflicts of interest on an ongoing basis.

**Interviewing Principles**

30. determines the client's goals, objectives and expectations.  
31. makes an initial assessment of whether or not the client's goals, objectives, and expectations can be met through legal processes and ethical solutions.  
32. determines whether or not the client is capable of giving instructions (e.g., mental capacity, authority, duress, undue influence).

**The Retainer**

33. establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions).  
34. confirms the actions to be taken by the parties in the retainer.

**Client Communications**

35. communicates with clients in a timely and effective manner (e.g., formal reporting, returns phone calls in a timely manner, copies the client on correspondence as appropriate, advises on developments).  
36. manages and updates the client's expectations with respect to timeframes, results, and costs.

**D. FULFILLING THE RETAINER****File Administration**

37. maintains an electronic and written record for each matter for which the Solicitor is retained.

**Information Gathering and File Analysis**

38. obtains and reviews relevant facts and documents.  
39. recognizes urgency and takes emergency steps where necessary (e.g., registers a caution on title, construction liens).  
40. identifies the factual and legal issues.  
41. identifies and obtains additional information and/or resources as needed (e.g., experts, legal research, specialized counsel).  
42. conducts or delegates research and investigations related to the matter as appropriate.

**Developing the Action Plan**

43. generates options and recommendations and presents them to the client.

Executing the Action Plan

44. conducts due diligence as appropriate for the client.
45. utilizes and revises checklists where appropriate.
46. identifies problems, solutions/options and obtains client instructions (e.g., conflicts, title search issues).

Closing the Transaction

47. updates searches and certificates and obtains necessary preclosing clearances and consents as appropriate.

Post-Closing Actions

NA

Group 1-B

A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES

Ethics & Professionalism

1. accepts only retainers that are reasonable and capable of performance under law.
2. charges fair and reasonable fees and disbursements (e.g., division of fees and referral fees, full disclosure of fees, appropriation of funds).
3. withdraws from representation in compliance with the rules of the Law Society, the court or tribunal (e.g., optional withdrawal, mandatory withdrawal, client request for withdrawal).
4. avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, evidence, fraud).
5. recognizes any other issues involving the Law Society Rules of Professional Conduct (e.g., dishonesty or fraud by the client, administration of justice, reporting other lawyers' conduct where appropriate, obligations to the court).

B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW, POLICY, PROCEDURES AND FORMS

Knowledge of General Statutes, Common Law, Policy, Procedures and Forms

NA

Real Estate

6. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Planning Act (except Section 50).
7. demonstrates an understanding of agreements of purchase and sale (e.g., new and used residential, condominiums, commercial and vacant land).
8. demonstrates an understanding of conveyancing (e.g., estate, rural, agricultural, waterfront, new and used residential, condominiums, commercial and vacant land).
9. demonstrates an understanding of the land registration systems in Ontario.
10. demonstrates an understanding of title searching (i.e., in an electronic and non automated system).
11. demonstrates an understanding of off-title due diligence.
12. demonstrates an understanding of requisitions on title and off-title matters.
13. demonstrates an understanding of the standard mortgage/charge transaction.
14. demonstrates an understanding of preparation for closing, closing and post-closing procedures.

15. demonstrates an understanding of title insurance (e.g., advantages, conditions, limitations).
16. demonstrates an understanding of commercial transactions.

#### Wills, Trusts, and Estate Administration and Planning

17. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Family Law Act.

#### Business Law

18. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Bankruptcy and Insolvency Act.
19. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Income Tax Acts.
20. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Personal Property Security Act.
21. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Securities Act.
22. demonstrates an understanding of the impact of employment and labour law on transactions.
23. demonstrates an understanding of the creation and maintenance of the corporation (e.g., incorporation procedure, organization, amendments).
24. demonstrates an understanding of the roles of directors, officers, and shareholders of a corporation (e.g., fiduciary duty, standard of care, election, rights and powers, meetings, shareholder remedies).
25. demonstrates an understanding of effecting corporate changes (e.g., Section 85 rollover, Section 86 reorganization; amalgamations, arrangements and reorganizations, windup, dissolution).
26. demonstrates an understanding of securities law implications for private companies.
27. demonstrates an understanding of the purchase and sale of the business (i.e., shares or assets).
28. demonstrates an understanding of the impact of the Personal Information Protection and Electronic Documents Act (PIPEDA) on business transactions.

### C. ESTABLISHING AND MAINTAINING THE SOLICITOR-CLIENT RELATIONSHIP

#### Identifying the Client

29. takes appropriate steps to avoid problems associated with phantom clients.
30. obtains identification from the client where appropriate (e.g., follows the Proceeds of Crime [Money Laundering] and Terrorist Financing Act, takes steps to identify fraudulent transactions, mortgage/charge financing).

#### Conflicts of Interest

31. identifies potential conflicts of interest before acquiring confidential information (e.g., multiple parties).
32. takes appropriate action in situations where a potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish firewall procedures where appropriate, advises the client of the consequences in the event the potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified, properly withdraws).

#### Interviewing Principles

33. determines issues that might affect the resolution of the problem.



#### The Retainer

34. confirms the retainer and any limitations in writing.

#### Client Communications

35. recognizes, and is sensitive to, clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language [need for interpreters], gender, disability, socioeconomic status, demeanour).

### D. FULFILLING THE RETAINER

#### File Administration

NA

#### Information Gathering and File Analysis

NA

#### Developing the Action Plan

NA

#### Executing the Action Plan

NA

#### Closing the Transaction

- 36. prepares a closing agenda as appropriate.
- 37. reviews documentation with the client and obtains signatures as appropriate.
- 38. arranges closing logistics (e.g., transfer of funds, execution page delivery and third party consents).
- 39. arranges for appropriate undertakings (e.g., to discharge mortgages/charges).
- 40. conducts a final review of the checklist.
- 41. takes appropriate steps when the transaction fails to close (e.g., tender).
- 42. completes the transaction in a timely and appropriate manner (e.g., exchange of deliverables [e.g., documents, property], complete registrations).

#### Post-Closing Actions

- 43. ensures appropriate undertakings, both given and received, are completed (e.g., discharges mortgages/charges).
- 44. advises all necessary parties of the closing.
- 45. obtains documents to complete the file (e.g., title insurance policies).
- 46. provides final reports and accounting to clients and third parties.
- 47. conducts a final review of the file prior to making the file inactive.

Group 2-A**A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES****Ethics & Professionalism**

1. obtains all necessary consents at the time of the retainer, respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation).
2. delegates and supervises appropriately (e.g., provides opportunities for others to learn, enhances cost efficiencies for the client, does not delegate where inappropriate such as the ultimate review of a title search report).
3. avoids engaging in sharp practice.
4. demonstrates awareness of issues involving electronic registration (e.g., not sharing diskettes, privacy issues, understanding technology).

**B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW, POLICY, PROCEDURES AND FORMS****Knowledge of General Statutes, Common Law, Policy, Procedures and Forms**

5. demonstrates knowledge of purposes, procedures and forms related to substantive law
6. demonstrates a general awareness of specialty areas (e.g., environmental law, employment and labour law).

**Real Estate**

7. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Condominium Act, 1998.
8. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Land Registration Reform Act.
9. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Land Titles Act.
10. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Land Transfer Tax Act.
11. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Registry Act.
12. demonstrates an understanding of property insurance instructions.
13. demonstrates an understanding of plans and surveys.
14. demonstrates an understanding of special concerns for residential rental properties (e.g., single unit and multiple unit).
15. demonstrates an understanding of GST and real estate.
16. demonstrates an understanding of priority of claims.

**Wills, Trusts, and Estate Administration and Planning**

17. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Health Care Consent Act, 1996.
18. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Income Tax Acts.
19. demonstrates an understanding of trusts and estate planning.
20. demonstrates an understanding of administration of estates (e.g., testate and intestate estates, estate trustee duties, asset administration, income tax, estate administration tax, accounting).

## Business Law

21. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Limitations Act.
22. demonstrates an understanding of partnership agreements.
23. demonstrates an understanding of taxation of corporations and their shareholders.
24. demonstrates an understanding of shareholder agreements.
25. demonstrates an understanding of the corporate capital structure: share capitalization (e.g., paid up capital; rights, conditions and restrictions on shares).
26. demonstrates an understanding of debtor and creditor's rights and remedies (e.g., secured and unsecured).
27. demonstrates an understanding of GST and RST on commercial transactions.
28. demonstrates an understanding of intellectual property issues (e.g., patents, copyrights, trade marks).

## C. ESTABLISHING AND MAINTAINING THE SOLICITOR-CLIENT RELATIONSHIP

### Identifying the Client

NA

### Conflicts of Interest

NA

### Interviewing Principles

NA

### The Retainer

29. identifies the instructing client.
30. sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, rates for various personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements).
31. outlines the delegation of responsibilities in the retainer (e.g., within the firm, external consultants, client).
32. confirms the acceptable forms of client communication in the retainer (e.g., medium and timeframes).
33. addresses solicitor-client privilege and privacy issues in the retainer (e.g., distribution of e-mails, sharing information with other advisors).
34. addresses conflict of interest issues in the retainer (e.g., termination, confidentiality, consent).
35. addresses termination issues in the retainer (e.g., non-payment of fees, no instructions, loss of confidence, conflicts of interest).
36. obtains a monetary retainer where appropriate.
37. confirms changes to the retainer as appropriate (e.g., new client instructions, method/channels for making changes).

### Client Communications

38. manages and updates the client's expectations with respect to timeframes, results, and costs.

## 4. FULFILLING THE RETAINER

### File Administration

NA

#### Information Gathering and File Analysis

39. complies with all privacy legislation.
40. ascertains the completeness of the documentation provided by the client.

#### Developing the Action Plan

41. identifies the risks and costs of various options.
42. confirms client instructions with respect to options and recommendations.

#### Executing the Action Plan

43. prepares and/or reviews documentation, searches, and plans as appropriate for the transaction.
44. communicates with the other parties in a timely manner (e.g., other solicitors, title insurers).
45. determines and satisfies third party requirements (e.g., property insurance, title insurance, lender requirements, appropriate consents and clearances, environmental evaluations).
46. conducts negotiations related to the matter as appropriate.

#### Closing the Transaction

47. supervises staff or others involved in the closing.

#### Post-Closing Actions

NA

### Group 2-B

#### A. ETHICAL AND PROFESSIONAL RESPONSIBILITIES

##### Ethics & Professionalism

1. recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice, dealing with the media, public statements, lawyer as a witness).
2. markets and advertises ethically as per Law Society Rules (e.g., making services available, law firm name, letterhead, advertising, offering professional services).

#### B. KNOWLEDGE OF THE LAW: ONTARIO AND FEDERAL LEGISLATION AND CASE LAW, POLICY, PROCEDURES AND FORMS

##### Knowledge of General Statutes, Common Law, Policy, Procedures and Forms

NA

##### Real Estate

3. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Commercial Tenancies Act.

4. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Conveyancing and Law of Property Act.
5. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Estate Administration Act.
6. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Real Properties Limitations Act.
7. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Mortgages Act.
8. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Ontario New Home Warranties Plan Act.
9. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Tenant Protection Act, 1997.
10. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Vendor and Purchasers Act.
11. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law: Succession Law Reform Act.
12. demonstrates knowledge of secondary real estate statutes and related regulations and case law (e.g., Beds of Navigable Water Act; Building Code Act, 1992; Business Corporations Act [Ontario and Federal]; Certification of Titles Act; Section 347 of the Criminal Code; Conservation Authorities Act; Execution Act; Fire Marshall's Act; Income Tax Act [Federal and Provincial]; Indian Act; Interest Act; Municipal Act, 2001; Municipal Tax Sales Act; Personal Property Security Act; Power Corporation Act; Public Utilities Act; Road Access Act; Technical Standards and Safety Act; Statute of Frauds; Surveys Act; Tax Sales Confirmation Act).
13. demonstrates an understanding of enforcement of mortgage/charge security.
14. demonstrates an understanding of remedies (e.g., vendors and purchasers applications, conditions, repudiation, rescission, specific performance, damages, rectification).
15. demonstrates an awareness of aboriginal property issues.
16. demonstrates an understanding of the use of trusts and related liability issues.
17. demonstrates an understanding of commercial leasing (e.g., priority issues and non disturbance agreements).
18. demonstrates an understanding of leasehold interests including life leases.
19. demonstrates an understanding of municipal law applications (e.g., zoning, minor variances).

#### Wills, Trusts, and Estate Administration and Planning

20. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Accumulations Act.
21. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Estates Act.
22. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Estates Administration Act.
23. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Perpetuities Act.
24. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Rules of Civil Procedure (Rules 74 & 75).
25. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Substitute Decisions Act, 1992.
26. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Succession Law Reform Act.
27. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law: Trustee Act.

28. demonstrates knowledge of secondary wills, trusts, and estate statutes and related regulations and case law (e.g., Child and Family Services Act; Children's Law Reform Act; Crown Administration of Estates Act; Estate Administration Tax Act, 1998; Indian Act; Insurance Act; Mental Health Act; Powers of Attorney Act; Trillium Gift of Life Network Act [formerly Human Tissue Gift Act], Variation of Trusts Act).
29. demonstrates an understanding of taxation at death and of trusts.
30. demonstrates an understanding of estate litigation (e.g., will challenges, interpretation applications, variation of trusts, dependent support, and claims against an estate, equalization applications).
31. demonstrates an awareness of cross-border issues (e.g., income and other tax issues, conflicts of law, forced heirship).

#### Business Law

32. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Assignments and Preferences Act.
33. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Bulk Sales Act.
34. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Business Names Act.
35. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Corporations Information Act.
36. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Creditors Relief Act.
37. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Fraudulent Conveyances Act.
38. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Limited Partnerships Act.
39. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law: Partnerships Act.
40. demonstrates knowledge of secondary business law statutes and related regulations and case law (e.g., Arthur Wishart Act; Bank Act; Canada Corporations Act; Companies' Creditors Arrangement Act; Competition Act; Corporations Act [Ontario]; Criminal Code; Employment Standards Act; Excise Tax Act; Extra Provincial Corporations Act; Franchise Act; Investment Canada Act; Interest Act; Personal Information Protection and Electronic Documents Act; Retail Sales Tax Act).
41. demonstrates an understanding of the advantages and disadvantages of incorporating in other jurisdictions.
42. demonstrates an understanding of debt financing and secured transactions.
43. demonstrates an awareness of aboriginal business issues in business transactions.
44. demonstrates an understanding of charities and not-for-profit law.
45. demonstrates an understanding of franchising and licensing.
46. demonstrates an awareness of cross-border issues (e.g., International Sale of Goods Act; Sale of Goods Act, income tax, business immigration).

#### C. ESTABLISHING AND MAINTAINING THE SOLICITOR-CLIENT RELATIONSHIP

##### Identifying the Client

NA

##### Conflicts of Interest

NA

Interviewing Principles
NA
The Retainer
NA
Client Communications
NA
D. FULFILLING THE RETAINER
File Administration
NA
Information Gathering and File Analysis
NA
Developing the Action Plan
NA
Executing the Action Plan
NA
Closing the Transaction
47. provides interim reports on a timely basis as required (e.g., to the lender, title insurance).
Post-Closing Actions
NA

## APPENDIX F

Bibliography

The following sources were either referenced directly or otherwise consulted in the development of the Law Society of Upper Canada Solicitor Licensure Examination Blueprint Document.

American Educational Research Association, American Psychological Association, National Council on Measurement in Education (1999). Standards for educational and psychological testing. Washington, D.C.: American Educational Research Association.

Angoff, W.H. (1971). Norms, scales, and equivalent scores. In R.L. Thorndike (Ed.), Educational measurement (2nd Ed.). Washington, D.C.: American Council on Education.

Biddle, R.E. (1993). How to set cutoff scores for knowledge tests used in promotion, training, certification, and licensing. Public Personnel Management, 22(1), 63-79.

Bloom, B.S. (1956). Taxonomy of educational objectives, handbook 1: The cognitive domain. New York: McKay.

Browning, A.H., Bugbee, Jr., A.C., & Mullins, M.A. (1996). Certification: A NOCA handbook. Washington, D.C.: National Organization for Competency Assurance.

Canadian Psychological Association (1985). Guidelines for educational and psychological testing. Ottawa, Ontario: Canadian Psychological Association.

Council on Licensure, Enforcement and Regulation (1993). Development, administration, scoring and reporting of credentialing examinations: Recommendations for board members. Lexington, Kentucky: CLEAR.

Crocker, L. & Algina, J. (1986). Introduction to classical & modern test theory. New York: Holt, Rinehart and Winston.

Haladyna, T.M. (1994). Developing and validating multiple choice test items. Hillsdale, New Jersey: Lawrence Erlbaum.

Harvey, (1991). Job analysis. In M.D. Dunnette and L.M. Hough (Eds.) The handbook of industrial/organizational psychology: Second edition volume 2. pp. 71 – 164. Palo Alto, CA: Consulting Psychologists Press.

Thomas, S. & Scheuneman, J. (1998). Developing and maintaining a high quality certification program. NCME Workshop.

Williams, M.C. & Braham, J.K. (2000). Blueprint Development Overview and Working Document. Ottawa, Ontario: Performance Assessment Group Inc.

Williams, M.C. & Braham, J.K. (2003). Report to Convocation on Establishing a Standardized, Reliable, Valid, Fair and Defensible Licensure Program. Ottawa, Ontario: Performance Assessment Group Inc.

TAB 3

#### Competency Development Participant Demographics\*

Gender	Practice Area	Location	Firm Size	Equality Seeking Communities
Men = 88 Women = 72	Aboriginal Law = 2 Administrative = 11 Bankruptcy = 3 Business = 18 Civil Litigation = 41 Construction = 1 Criminal = 16 Employment/Labour = 8 Environmental = 2 Family Law = 23 General Practice = 15 Immigration = 2 Intellectual Property = 2 Mediation = 4 Public Law = 6 Real Estate = 20 Securities = 2	GTA = 11 Kingston = 3 London = 17 Ottawa = 33 Thunder Bay/ Sudbury/North Bay = 16 Toronto = 64 Windsor = 6 Other* = 10  *Includes, for example: Nepean, Niagara Falls, Owen Sound, Goderich, Port Colborne,	Sole = 28 Small (2 to 5) = 29 Medium (6 to 29) = 29 Large (30 plus) = 39 Non-private practice* = 35  *Includes: judiciary, academy, in-house counsel, legal clinic lawyers,	Aboriginal = 5 African-Canadian = 8 Arab/West Asian = 1 Chinese Canadian = 2 Disability = 1 Francophone = 14 Latin American = 1 Sexual Orientation = 1 South Asian = 2  *one participant placed in two categories - Chinese Canadian/Francophone



	Tax = 2 Wills/Estates = 10 Other* = 11  *Includes judiciary, academy, professional development	Guelph, Stittville	government lawyers	
<i>160 participants</i>	<i>20 practice areas</i>	<i>6 city centres plus several smaller communities</i>	<i>4 firm sizes plus several non- private practice scenarios</i>	<i>34 participants from equality seeking communities</i>

\*Does not include survey participants

## APPENDIX 2

QUARTERLY BENCHMARK REPORT  
PROFESSIONAL DEVELOPMENT & COMPETENCE DEPARTMENT  
(2nd Quarter 2004 Statistics)

FOR INFORMATION ONLY

Prepared by:

Diana Miles  
Director, Professional Development & Competence  
(416) 947-3328  
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September 2004

## BENCHMARKS AND KEY INDICATORS REPORT

Practice Management Guidelines

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

Guideline	November & December 2002	2003	January to June 2004
Executive Summary Page	741	5,085	898
Client Service & Communication	71	1,488	3,638
File Management	108	930	1,475
Financial Management	93	553	296
Technology	71	597	1,036
Professional Management	43	584	449
Time Management	83	924	966
Personal Management	33	423	640
Closing Down Your Practice	32	558	263
Total	1,275	11,142	9,661

Self-assessment Tool

The Best Practices Self-assessment Tool was introduced on Friday, June 25, 2004. As at June 30, 2004, there were 188 registered users of the Tool.

Specialist Certification

The Specialist Certification Program redesign was effective January 2004.

	2001	2002	2003	June 2004
Number of Specialists	617	611	609	655
Specialists in Toronto Area	349	344	341	365
Specialists outside Toronto	268	267	268	291
Number of Specialty	10	10	10	13

Areas				
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### Continuing Legal Education

	2001	2002	2003	January to June 2004
Number of CLE programs (all formats)	67	63	71	41
Attendance at CLE programs	8,539	11,788	18,269	10,898
Average attendance per program	127	187	262	266
Number of programs on ILN	-	-	35	27
Attendance at ILN locations	-	-	4,014	2,109
Average attendance at ILN locations per program	-	-	115	78
Number of Teleseminars	-	-	5	5
Attendance at Teleseminars	-	-	2,468	2,513
Average attendance at Teleseminars	-	-	494	503
Number of synchronous (live) webcast programs through BAR-eX	N/A	N/A	12	16
Attendance at synchronous webcast programs through BAR-eX	N/A	N/A	213	375
Average attendance at synchronous webcast programs through BAR-eX	N/A	NA	18	23
Bursaries provided	140	151	444	139
Units/publications sold (paper, CD and PDF)	8,249	11,424	11,028	6,248

### e-Transactions Site

Web traffic report for CLE portion of e-Transactions site

	2003	January to June 2004
Number of visits on CLE page	38,954	35,282

Web purchase report for CLE portion of e-Transactions site

Product	2003	January to June 2004
Book purchases	524	630
Program registrations	1,103	806
ILN program registrations	503	328
Teleseminar registrations	321	363
Video streams	27	20
Registrations for asynchronous (archived) webcasts through BAR-eX	120	34
PDF purchases	36	28
CD-ROM purchases	9	42

### BAC Materials Online

	2003 (November & December)	January to June 2004
Number of Members who have purchased the BAC Materials Online (\$0)	1,070	2,963

### Practice Advisory

	2001	2002	2003	January to June 2004
Total member calls for advice	5,435	5,715	5,303	3,004

### Breakdown of Callers

	2001	2002	2003	January to June 2004
Sole practitioners	2,363	2,465	2,399	1,275
Other members	2,150	2,354	2,372	1,275
Non-members*	922	896	532	554

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

### Practice Advisory Mentor Program

	2001	2002	2003	January to June 2004
Number of new mentors	N/A	N/A	6	11
Number of matches	N/A	30	91	55

### Spot Audit

## Number of Audits Conducted

	2001	2002	2003	January to June 2004
Books and records audits	718	506	529	268
Complex audits	319	401	528	286
Total audits	1,037	907	1,057	554
Audits referred to Investigations/undertakings obtained	42	70	56	21

Practice Review

	2001 (first year of new process)	2002	2003	January to June 2004
Number of authorizations into program	16	20	19	33
Number of authorizations through internal referrals	3	8	11	9
Total	19	28	30	42
Total Practice Reviews Conducted*	18	50	45	16

\* A portion represents follow-up practice reviews for members that volunteered into the program prior to mandatory reviews being enacted in 1999. As a result, more reviews are being shown as conducted than authorized. A significant number of reviews in 2002 & 2003 fall within this category.

Bar Admission Course

	2001	2002	2003	January to June 2004
Enrolment	1,247	1,312	1,317	1,465
Average attendance skills phase	80%	72%	74%	70%
Average attendance substantive phase	48%	42%	48%	N/A
Tuition Fees	\$4,400	\$4,400	\$4,400	\$4,400
National Mobility Agreement transfer candidates	-	-	41	44
Non-National Mobility Agreement transfer candidates	-	-	26	1

Total Transfer candidates	61	93	67	45
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### BAC e-Learning Site

Web traffic report for BAC e-Learning Site

	2003	January to June 2004
Number of visits	55,660	32,908

### Articling and Placement Services

	2001	2002	2003	January to June 2004
International Articles	29	16	11	6
National Articles		14	16	7
Part time Articles		5	8	4
Joint Articles		0	2	3
Biographic paragraphs posted	53	62	99	48
Job postings	163	129	104	49
New Articling Mentors	N/A	N/A	N/A	0
New Articling Mentees	N/A	N/A	n/a	28

### Articling Placement

	2001	2002	2003	2004
Students actively seeking placement as at August of each year*	N/A	N/A	299	368
Number of BAC students	N/A	N/A	1,257	1,332

\*Please find attached the July 2004 Articling Placement Report.

### Education Support Services

	2001	2002	2003	January to June 2004
Distance education - number of locations	15	29	71	28
Distance education - number of students	28	46	103	115
Number of students who have received	11	29	127	144

Accommodation*				
Number of students who have been assisted with a special needs accommodation**	47	33	56	106
Number of students who have received tutoring	60	72	45	26
OSAP-number of applicants	333	258	342	365
Repayable Allowance Program approvals	47	57	37	51
Repayable Allowance Program amount awarded	\$170,700	\$213,395	\$117,167	\$196,973

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

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

#### Great Library

	2001	2002	2003	January to June 2004
Materials catalogued and classified	1,806	2,005	2,179	646*
Number of visits on the Great Library Web site	N/A	651,826	608,781	318,424
Catalogue searches on Web site	N/A	132,923	199,191	83,517
Number of information requests	71,000	47,000	48,800	23,840
Pages copied in custom copy service	68,437	56,159	43,815	21,623
Pages copied on self-copiers	481,473	397,957	337,313	152,798
Seminars held	4	6	12	6
Attendance at seminars	N/A	N/A	43	88
Attendance at Orientation tours and general instruction	413	350	360	249
Corporate Records and Archives new entries into	N/A	2,157	5,199	3,496

records database				
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\* Low number due to processing the migrating records into the new electronic catalogue

PLACEMENT REPORT 2003/2004  
Of Students Enrolled in the 46th BAC 2003

Education Support Services  
Law Society of Upper Canada  
July 2004

Report Highlights

- 95.5% of the all the students who entered the 46th Bar Admission Course in 2003 and who were actively looking for an articling position were placed within six months of the usual start of articling. By June 2004, the end of the articling term, 96.8% of all 2003 BAC students had secured an articling placement. This is comparable to the 2002 BAC placement rate and remains stable despite an increase in the number of students entering the legal profession in Ontario on an annual basis.
- This year's BAC class showed an increase of 4.8% of students who self-identified as being from an equality seeking community (Aboriginal, Disability, Francophone, Gay/Lesbian, Mature, Visible Minority). The articling placement rate for this group remained steady at 90%, as was similarly demonstrated last year, despite the increased number of students.
- A variety of options offer students a high degree of flexibility in completing the Bar Admission Course and the Articling Phase in particular. Education Support Services continues to emphasize the availability of non-conventional placements such as International Articles, National Articles, Joint Articles, Part-time Articles and Split Articles. Students may also apply to reduce (abridge), and in some cases waive, the articling requirement for those BAC students who have practiced law in other jurisdictions or who have demonstrated sufficient previous legal experience.
- This year 66.4% of students indicated that they had secured employment at the time of their call to the bar. This is an increase from 62.5 % at this time last year. The hire-back rate of students returning to the firm they articulated with remains steady at 49.7%.



## Placement Report 2003/2004

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### I. Introduction

1. The annual Placement Report summarizes the activities and initiatives that were undertaken by Education Support Services (ESS) throughout 2003 and into the first half of 2004. This year's report also provides statistical data that relates to articling and post-call employment for students who entered the 46th BAC in May 2003 and were called to the Bar in July 2004.

### II. Articling Placement Data

2. The statistics for students' articling placement information for May to August 2003 are based on information provided by the student on the BAC application that asks whether or not they have secured an articling placement. Students typically commence articles at the beginning of September after completing the Bar Admission Course.
3. When Articles of Clerkship are filed by a student, 10 days after the commencement of articles, our records are updated to reflect the student's current articling status. As such, the unplaced student numbers during the Bar Admission Course (May to August) and into early September often appear high and do not accurately represent the number of students who have secured articles. This is due to the fact that students have not yet notified the Law Society or filed Articles of Clerkship.
4. The BAC application also asks students to voluntarily disclose their membership in one or more of six groups that continue to strive for equity within the legal profession. The groups identified on the 46th BAC application were: Aboriginal, Francophone, Gay/Lesbian, Mature, Person with a disability, and Visible Minority. The membership of students to these groups represents 38.3% of the total BAC class (see Table 1 below) compared to 33.5% of the total BAC class in 2002.
5. Table 1: Percentage of the 46th BAC class that voluntarily identified as members of six equality seeking communities.

Student Group	Percentage of class
Aboriginal	1.2
Francophone	6.13
Gay/Lesbian	1.35

Mature	9.95
Students with disabilities	1.2
Visible Minority	18.54
Total	38.3

6. Table 2, below, reports on the success of the 46th BAC class members who have secured articling placements at various points throughout the year. The statistics begin in May 2003, when the students begin the Skills Phase of the BAC, and continue until the following June 2004, when most of the class will be completing articles. The total number of students who have not found placements is reported, as are the statistics for students in each of the equity seeking groups. As some students identified as being from more than one equality seeking community (ie, mature/francophone) the number of students in each group exceeds the total number of unplaced equity students. Students who did not voluntarily self identify as being from an equality seeking community are represented in the Non-identified group.
7. At various times through out the year, Education Support Services attempts to reach all students who have not filed articling documentation to confirm whether or not they have secured an articling placement. Students who replied to our communication were asked if they had secured an articling placement or were actively seeking an articling placement. Students who answered that they were seeking a placement were asked if they would like to participate in one of the various LSUC placement initiatives (see page 6). Students who pursued further education or obtained employment in another field were categorized as 'not actively seeking articles'. Students who did not respond at all to communications from ESS were deemed to be 'status unknown'. The breakdown of students was then divided into three categories: students actively seeking articles, students not actively seeking and status unknown, as provided in Table 3 below.
8. Table 2: Students of the 46th BAC and their Articling Status from May 2003 to June 2004

46 <sup>th</sup> BAC Student Groups	May '03 (Skills)	July '03 (SPP)	Sept. '03	Nov. '03	Feb. '04	June '04
Total Students	1271	1257	1255	1258	1252	1219
Unplaced Students <sup>3</sup>	332	299	279	153	78	57
Unplaced Non-identified students <sup>4</sup>	179	157	145	72	9	20
Aboriginal Students	18	18	18	18	18	18
Unplaced Aboriginal Students	7	7	6	2	2	2
Students w/Disabilities	16	16	16	16	16	16
Unplaced Students with Disabilities	7	5	5	3	3	2
Francophone Students	72	72	72	72	72	70
Unplaced Francophone Students	30	30	29	19	17	8
Gay/Lesbian Students	15	15	15	15	15	15
Unplaced Gay/Lesbian Students	5	4	4	3	3	2

<sup>3</sup> This represents the number of students registered who have not actually filed Articles of Clerkship with the Society. See Table 3 for a breakdown of the number of students who are actively seeking articles.

<sup>4</sup> Statistical data is obtained from students' 2003 BAC application. Students who did not voluntarily identify as being from an equality seeking community are represented in the Non-identified group. Equality seeking groups are not mutually exclusive so the total may not equal the sum of the categories.

Mature Students	126	123	122	123	121	112
Unplaced Mature Students	47	43	39	22	19	10
Visible Minority Students	238	233	232	232	231	223
Unplaced Visible Minority Students	93	84	79	52	45	23

9. Table 3: Students Actively Seeking Articles

46 <sup>th</sup> BAC 2003	Feb 2004	March 2004	April 2004	June 2004
Class Size	1252	1252	1231	1219
Total number of Unplaced Students	78	72	68	57
Students Actively Seeking Articles	56	52	46	39
Students Not Actively Seeking	10	10	10	8
Status Unknown	12	12	12	10

10. Of 1219 students in the 2003 BAC course, 57 have not articulated as of June 2004. However, as a result of our telephone survey, in Table 3, only 39 students were actively seeking articling placements. This represents approximately 3% of the total class and demonstrates a 96.8% placement rate for the BAC class of 2003.
11. The placement rates for students from equality seeking communities (Aboriginal, Francophone, Gay/Lesbian, Mature, Students with disabilities, Visible Minority) were higher than the rate for the non-identified students at the usual articling start date. Of 279 students seeking articles in September 2003, 145 represented students from a non-identified group versus 134 students from equality seeking communities. By the usual articling end date however, the equity student group showed 37 non-articled students versus 20 students from the non-identified group. We were not able to determine from our telephone survey how many students from each group were in fact 'actively seeking articles'. Nevertheless, students from this year's equality seeking communities sustained a placement rate of approximately 90%, as was similarly demonstrated last year, despite the increase in numbers of students from this group.
12. We continue to offer students a high degree of flexibility in completing the Bar Admission Course, and the Articling Phase in particular. Education Support Services continues to emphasize the availability of non-conventional placements such as International Articles, National Articles, Joint Articles, Part-time Articles, Split Articles and BAC Rescheduling (an option that allowed students to complete the course in an alternative sequence).
13. Further we continue to offer those BAC students who have practiced law in other jurisdictions or who have demonstrated sufficient previous legal experience, an abridgement (reduction), and in some cases a full waiver, of the articling requirement.

### III. Placement Initiatives

14. *Web Site Information:* The introduction of the ESS web pages has allowed for greater access to articling and placement information available to students and the public. In fact, the site has been developed to allow staff to make additions and/or updates to the information more quickly than could be achieved previously. All current policies, forms, and information are available from the web site with respect to articling and placement. In addition, Special Needs and Accommodation and Financial Assistance information is now available online. Web traffic data indicates that the web site is used heavily by both students and principals.

15. *Online articling position postings:* Throughout 2003 Education Support Services continued to post articling vacancies on the Law Society's web pages. The job postings web page continues to be extremely popular among both students and employers.
16. Only firms who have an approved articling principal may use the free posting service. The form necessary for submitting a posting (Placement Service Request form) is available on the web site itself (<http://education.lsuc.on.ca>). 104 articling positions were posted on the site in 2003.
17. *Biographical Summaries:* As in previous years, students who had not yet secured an articling placement were sent Biography Submission information. This program requires students to write and submit a short biography that succinctly describes their experience, interests and qualifications. ESS provides this list, in whole or in part, to potential employers. The list can be customized for employers according to geographical region, specific areas of law, etc. 99 students submitted biographical paragraphs in 2003. The feedback from both students and employers continues to be positive. This initiative has assisted employers who may not want to post an advertisement for an articling position while at the same time allowing them to contact prospective students-at-law and arrange for an interview on their own time.
18. *Letter to In house/Corporate Counsel:* In October 2003, the Associate Registrar sent a letter to 3000 members encouraging them to consider creating an articling position in their workplace. As a direct result of this mailing, numerous requests for student biographical summaries were received from lawyers and in-house counsel across the province expressing an interest in creating an articling program with their office.
19. *Mentor program:* The Articling Mentor Program (Mentor Program) was promoted to the general membership as one of three ways to become a volunteer mentor through the Law Society's mentor program. The Articling Mentor Program pairs students seeking articles with a member of the profession for the purpose of receiving advice, support and encouragement in the search for an articling position.
20. Mentors communicate with their assigned student periodically to discuss the student's concerns and to provide advice or strategies that the student might employ in their job search. The mentor's role is to encourage the student to maintain a positive, constructive attitude and approach to securing an articling position. In 2003, 47 BAC students were matched with lawyers for career mentoring. In the first half of 2004, 23 students were matched with lawyer mentors for career mentoring.
21. *Job search skills workshop and counseling – Articling:* For the past few years an external, professional career planning consultant has conducted job search
22. skills workshops for our students. These workshops are designed to assist students with research, cover letter and resume writing, networking and interviewing skills. The program was continued in 2003 with a workshop being presented in Toronto (June and July) for students seeking articling positions. The workshops were video taped and placed on the website for viewing. Materials were created to accompany the workshop/video and were also posted on the website.
23. All students who attended the workshops or viewed the video(s) were eligible for individual follow-up sessions with the workshop counselor to discuss their job search skills and strategies and have their resume reviewed. Some students were counselled in person and other meetings were conducted over the phone.
24. *Other Support:* 'Office hours' are set aside each week during which students may book appointments with the Associate Registrar to discuss articling, special needs and equity issues as well as articling placement and job search strategies.
25. *Law School Visits:* In 2003, the Registrar and Associate Registrar visited six Ontario law faculties to speak with students about the BAC, articling recruitment issues and placement initiatives offered by the Law Society. The Aboriginal Issues Equity Co-ordinator also accompanied them on their visits and addressed the students on matters pertaining to equity issues.

26. *NALP*: In April 2003, the Associate Registrar attended the National Association of Law Placement Annual Conference. This conference, based out of the United States, was nevertheless very well attended by student recruiters from Ontario and across Canada as well and Career Development Officers from many Canadian Law Schools. Over four days, issues relating to Ontario's student placement statistics, availability of articling positions and the overall timing of the Law Society's recruitment procedures were discussed among the Canadian contingent.
27. *Outreach*: The Associate Registrar was invited to speak about the Bar Admission Course and articling at the following conferences:
- "Principal's Orientation", November 17, 2003, Ministry of the Attorney General, Criminal Law Division.
  - "Annual Meeting of Toronto Law Firms & Canadian Law School Career Development Professionals", June 6, 2003, Canadian Legal Career Development Network.
  - "On Campus Interview-Demystified", July 17th 2003, Ontario Bar Association, University of Windsor, Faculty of Law.
  - "Aboriginal Law Student Professional Development Symposium", March 19, 2004, Law Society of Upper Canada.
28. *Other*: Other actions undertaken by Education Support Services in 2003 which may assist students seeking articles included:
- Granting 54 abridgments and 7 full waivers of the articling requirement, based on previous legal experience,
  - Approval of 400 new Principal applications;
  - Publishing notices about the availability of articling students in the Ontario Reports, on the Law Society's web site and in the Law Times;
  - Preparation of an online testimonial from a mature aboriginal student aimed at assisting other students with their articling and job search experiences;

#### IV. Post-Call Employment

29. While there is a Call to the Bar ceremony in Toronto each month that Convocation meets, the large ceremonial calls take place in Toronto, London and Ottawa in July of each year. At the signing of the rolls, students are asked to complete a voluntary survey of their employment status. This year out of 967 students who were called to the Bar 595 responded to our survey, indicating a response rate of 61.5%. Table 4 provides data dating back to 1995 regarding students' post-call employment status.
30. Table 4: Rate of Employment following the Call to the Bar (1995-2004)

Date of Call	Response to survey - % of class <sup>5</sup>	% of respondents hired back by articling firm	% of respondents employed elsewhere <sup>6</sup>	% of respondents employed at time of Call
July 2004	61.5	49.7	16.7	66.4
July 2003	60.3	49.6	12.9	62.5
Sept. 2002	26.1	39.4	25.1	64.5
Feb. 2002	48.5	52.5	25.4	77.9
Feb. 2001	63.3	51.3	26.9	78.2
Feb. 2000	59.9	46.7	23.1	69.7
Feb. 1999	55.5	44.5	19.4	63.9

<sup>5</sup> Since Feb. 2000, students have been asked to voluntarily complete an employment survey in London, Ottawa and Toronto when signing the rolls for Call to the Bar.

<sup>6</sup> 'employed elsewhere' includes those who have accepted an offer from an employer other than their articling employer, those who are starting their own practice and those who will be working outside the practice of law.

Feb. 1998	56.5	38.7	28.4	67.2
Feb. 1997	60.1	37.5	26.3	63.7
Feb. 1996	77.0	35.3	30.7	66.0
Feb. 1995	54.6	38.4	28.8	67.2

31. The above tables illustrate that the percentage of students employed at the time of signing the rolls for the Call to the Bar in July 2004 was 66.4%. This is an increase of approximately 4% from last year's employment rate. The hire-back rate of students returning to the firm they articulated with remains steady at 49.7%.

V. Conclusion

32. The post-call employment rate, of students surveyed, has seen an increase from last year. This year 66.4% of students indicated that they had secured employment at the time of their call to the bar. The hire-back rate of students returning to the firm they articulated with remains steady at 49.7%.
33. The placement rate for students from an equality seeking community (Aboriginal, Francophone, Gay/Lesbian, Mature, Person with a disability and Visible Minority) remained steady at approximately 90%, despite an increase of 4.8% in the number of students who self-identified as belonging to one of these communities in this year's BAC class.
34. By June 2004, the end of the articling term, 96.8% of all 2003 BAC students had secured an articling placement. This compares favorably to the 2002 BAC placement rate and demonstrates stability despite the general increase of student enrollment, on an annual basis, in Ontario's licensing process.

CONVOCATION ROSE AT 12:30 P.M.

Thursday, 23<sup>rd</sup> September, 2004  
3:30 p.m.

CALL TO THE BAR (Roy Thomson Hall)

The Treasurer and benchers proceeded to Roy Thomson Hall for the Call to the Bar ceremony of the 124 graduates of the Bar Admission Course, 11 transfer candidates, 18 mobility candidates and two academic candidates.

CONVOCATION WAS CALLED TO ORDER AT 3:30 P.M.

A quorum of Convocation was present.

The body of the auditorium was occupied by the candidates and their guests.

The Treasurer asked all present to stand for the National Anthem sung by Gail Angela Morgan.

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CONFERRING OF AN HONORARY DEGREE

Mr. Neil Finkelstein, a representative of the Professional Development, Competence and Admissions Committee introduced the Doctoral candidate, The Honourable Irwin Cotler, Minister of Justice and Attorney General of Canada, and read the following citation:

“Treasurer, may I present to you and this Convocation, The Honourable Irwin Cotler, Minister of Justice and Attorney General of Canada and ask that you confer upon him the degree of Doctor of Laws *honoris causa*.

Possessing a sharp intellect and a strong sense of justice, Irwin Cotler has dedicated his life to the law and to the goal of attaining equal access to that law for all people.

As a professor and a noted author, he has helped to create an awareness of human rights issues and has promoted the use of the law as an effective and peaceful tool to end social injustices.

As an international human rights lawyer he has acted as counsel for political prisoners in many countries. He has argued before the Supreme Courts of both Canada and Israel and he has testified before parliamentary committees in Canada and abroad.

As a Member of Parliament and the Minister of Justice and Attorney General of Canada he has tirelessly continued his efforts to promote access to justice for all people.

In recognition of his commitment to the advancement of human rights, he was appointed Officer of the Order of Canada, received the first Justice Walter Tarnopolsky Memorial Award, became the first academic to receive The Medal of the Bar of Montreal and was the first recipient of the Martin Luther King Jr. Humanitarian Award.

The Honourable Irwin Cotler is deserving of the highest honour this Society can give and I request you, Sir, to confer upon him the degree of Doctor of Laws, *honoris causa*.”

The Treasurer admitted The Honourable Irwin Cotler to the degree of Doctor of Laws, *honoris causa*.

Mr. Cotler then addressed the candidates and their guests.

*The following address was transcribed from a video recording.*

“I’m very moved by this honour and by the privilege of addressing you today as a fellow graduate and candidate for admission to the Bar.

Indeed, this is an important moment, as Treasurer Frank Marrocco said in his opening remarks - and I want to thank both you, Mr. Treasurer, and Neil Finkelstein for your undeserving, but appreciated, warm remarks.

As you mentioned, this is an important moment of reflection and remembrance for each of us here and for myself, and I just might add parenthetically this is the fortieth anniversary of my graduation from McGill Law School and the thirty-fifth anniversary of my first teaching appointment at Osgoode Law School, and I am struck by how different life and the life in the law is today from the times when I was a law student or even subsequently as a law professor. For we are living through a series of transformative events, indeed revolution in law and learning that were not even on the radar screen, not even a blip on the radar screen at the time that I was a student or subsequently as an academic, including the constitutional revolution, the Charter of Rights as its centerpiece, where we have moved from being a parliamentary democracy to a constitutional democracy, from judges being the arbiters of legal precedent, which they still are, to judges being the guarantors of human rights in the Charter as we, parliament, authorize them to do, from individuals being the objects of processes to individuals being the subjects of rights, rights-holders, rights claimants.

Secondly, the international human rights revolution, the humanization of international law and the internationalization of human rights.

Thirdly, the globalization phenomenon where globalization is not just an economic phenomenon but has its juridical counterparts, including, in particular, the globalization of injustice today - war crimes, crimes against humanity, genocide - the need, therefore for globalizing justice antidote, as in the International Criminal Court, the most dramatic development in international criminal and humanitarian law in the past fifty-five years; the Aboriginal rights revolution, involving recognition, redress, title, identity, and the like; the litigation explosion, a dramatic increase in the volume and complexity of cases; the judicialization of public policy, mass tort actions, class actions, environmental actions - indeed, high-impact litigation; and where, for example, the Department of Justice at this point has some 50,000 civil litigation cases a year and 180,000 criminal prosecution files in our inventory.

As a law professor, whenever we would teach a case or a student would study a case we would say “X” and the Attorney General of Canada. Well, now I have to tell you I take these things personally, and since we are mostly a defendant in these civil litigation cases we need to take these things seriously.

Finally, and increasingly, a diverse legal community. When I graduated, we had amongst our class regrettably no Aboriginal students, no representatives of visible minorities, and only one woman in the graduating class. You can see here the transformative nature in terms of the diversity of the legal community.

It was against this changing, transformative backdrop that I received a call on December 11<sup>th</sup> from the Prime Minister designate at the time, Paul Martin, and the conversation was brief, if I may recall with you as follows.

The Prime Minister said, “Irwin, what do you do with somebody who has bizarre ideas about human rights in relation to justice?”

I answered, “Well, Prime Minister, I always thought that human rights meant justice.”

The reply came: “Congratulations, Irwin. You’re the new Minister of Justice and Attorney General of Canada.”

That was the whole of the conversation.

The next day I was sworn in, and we were ushered out into the proverbial media scrum, but before any of the media could put a question to me I decided it was important then, and I will reaffirm with you now, to set forth what would be my overriding philosophy as Minister of Justice. I stated then that I would be guided, and reaffirm today, that I will be guided by one overarching principle, the principle of justice: “Justice shall you pursue” and within that, the promotion and protection of equality - equality, not just however important a principle in the Canadian Charter of Rights and Freedoms, but equality as an organizing principle for the establishment of a just society and the promotion and protection of human dignity, of human dignity as the cornerstone not only of a just but a humane and compassionate society.

Shortly after that, I went across the country to dialogue with Canadians, particularly younger Canadians, with law students, with stakeholders, and including, where it occurred, meeting with victims of human rights violations and the like, to ask them what do you think the justice agenda should be? If you were the Minister of Justice how would you identify the priorities on the justice agenda? One of the things I came away with from that dialogue was the pursuit of justice - and this was something my father taught me; he was almost my first law teacher, you might say - that the pursuit of justice must involve having a sense of injustice; you have to feel the injustice in order to effectively pursue justice.

May I now with that reference identify to you the priorities, the challenges that I distilled from those conversations. Indeed, it is an on-going discussion and conversation, and so I invite each of you here to join with me in articulating and implementing a justice agenda.



Number One: The relationship between “security” and “rights”. The basic principle is that there should not be any contradiction between the protection of human security and the protection of human rights.

In other words, transnational terrorism involves an assault on the security of democracy and on the fundamental rights of its inhabitants, the right to life, liberty, and security of the person. In fact, anti-terrorism law and policy is in the pursuit and protection of human security and human rights.

But there is another human rights dimension that we need to bear in mind, and that is that in the enforcement and application of our anti-terrorism law and policy we have to ensure that it always conforms with the imperatives of the rule of law; that no one in our society is singled out for differential and discriminatory treatment in the course of the enforcement and application of the law. The protection of human rights involved in anti-terrorism law and policy must be undertaken also in accordance with the protection of the rule of law.

Priority and Challenge Number Two: The protection of the most vulnerable amongst us. The test of a just and humane society is how it treats the most vulnerable in that society: children, women, refugees, minorities, gays and lesbians. The test of that society is how we will treat the most vulnerable.

And here if I may take one example, and that is with regard to children’s rights. And I’m happy here to cite my daughter with respect to this, who, when she was 15 years old, now 24 and now herself a law student, taught me one of the most profound understandings about human rights in relation to children’s rights. She said as follows: “Daddy, if you want to know the real test of human rights always ask yourself at any time, in any situation, in any part of the world: Is it good for children? Is what is happening good for children? That’s the real test of human rights, daddy.”

Which brings me to the third priority: combating racism, hate, discrimination, and all forms of intolerance.

Regrettably, we have been witnessing, and particularly in 2004, a growing incidence if not intensity of hate crimes against identifiable groups. What is needed now is a common front against hate, the mobilization of a constituency of conscience, of solidarity with the victim, where Jews speak up on behalf of Muslims when Muslims are attacked, where Muslims speak up on behalf of Jews when Jews are attacked, where Jews and Muslims together in concert with others speak up no matter who is the identifiable group or minority that is under attack, for the message that we have to send out as a government and as a society has to be clear and unequivocal, that in this country there will be no sanctuary for hate and no refuge for bigotry.

The fourth and final principle and priority is the combating of impunity and mass atrocity, which would involve preventing the mass atrocities to begin with. It is as trite as it is profound that the best protection against mass atrocity is preventing it to begin with, and as a Carnegie study showed, regrettably we spend eight times as much to reconstitute a country after the conflict than we do to prevent the conflict to begin with. And if prevention is unavailable and if we have entered upon killing fields, mass atrocities, war crimes, crimes against humanity, or the unthinkable and unspeakable, genocide, then there is an international duty to protect. And so if we have a situation like Darfur, there is a responsibility on the part of the international community to protect, to protect those who are the victims of these international atrocities.

And finally, accountability, the importance of bringing war criminals to justice.

If the twentieth century was the age of atrocity, it was also the age of impunity. Few of the perpetrators were brought to justice. We have to ensure that in the twenty-first century those who perpetrate these atrocities will be brought to justice.

In conclusion, these are some of the transformative events and the compelling challenges that are faced by our country, that are faced by the community of nations, that are faced by all engaged in the pursuit of justice. But there is also a more personal dimension, a moral responsibility, a personal responsibility of each of us with respect to the pursuit of justice.

If I can sum up my vision today and indeed my challenge on-going to myself as I shared with you, it is this: A call to action, a call to action to all of us who have been blessed with a unique legal education and training, who have chosen law as our vocation and can see it as our calling, to be at the forefront, to be at the forefront for the struggle of the public good, to be part of a growing pro bono movement in this country. Each one of us - each one of us - can play an indispensable role in the struggle for justice; each one of us can be, as it were, private attorneys general who can make a difference; each one of us has the capacity to do something every day on the part of some victim of discrimination and disadvantage somewhere.

We need not only dream of building a just and humane society. We, as lawyers, can help build it. This would be the best expression of the great public trust that has been bestowed upon us.”

### PRIZEWINNERS

Awarded The Osgoode Society for Canadian Legal History Prize for the twenty-five students attaining the highest grades in the Bar Admission Course; a share of The Vera L. Parsons Prize, and The Joseph Sedgwick, Q.C. Prize for Criminal Law for the student attaining the highest grade in Criminal Law; and a share of The S. J. Birnbaum Q.C. Scholarship Third Prize for the student attaining the third highest grade in Estate Planning

*Melanie Deborah Szweras*

Awarded The Osgoode Society for Canadian Legal History Prize for the twenty-five students attaining the highest grades in the Bar Admission Course; and a share of The Vera L. Parsons Prize, and The Joseph Sedgwick, Q.C. Prize for Criminal Law for the student attaining the highest grade in Criminal Law

*Christopher John Tanzola*

Awarded a share of The Vera L. Parsons Prize, and The Joseph Sedgwick, Q.C. Prize for Criminal Law for the student attaining the highest grade in Criminal Law

*Christopher Mark Hogan*

Awarded a share of The William Belmont Common, Q.C. Prize for Criminal Law for the student attaining the second highest grade in Criminal Law

*Sarah Jane Atkinson  
Noelle Denise Hamersley  
Gosha G. S. Sekhon*

### CALL TO THE BAR

Mr. Gavin MacKenzie, Ms. Judith Potter, Ms. Joanne St. Lewis and Mr. Gerald Swaye presented to the Treasurer 155 candidates for the Call to the Bar as follows:

#### BAR ADMISSION COURSE

#### 155 CANDIDATES FOR CALL TO THE BAR

(Enclosed in Convocation file is a list of the candidates for Call to the Bar)

The Treasurer conferred upon the candidates the degree of Barrister-at-law and called them to the Bar of Ontario.

CONVOCATION ADJOURNED

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Following Convocation a Special Sitting of the Court of Appeal for Ontario and the Superior Court of Justice convened, with The Honourable Mr. Justice Archie G. Campbell, Judge of the Superior Court of Justice, presiding.

The candidates were presented to Justice Campbell before whom they took the Oath of Allegiance, the Barristers Oath and the Solicitors Oath and acknowledged their signatures on the Rolls in the presence of the Court.

Justice Campbell then addressed the new Barristers and Solicitors.

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At the conclusion of the formal proceedings the Treasurer, benchers and their guests returned for a reception at Osgoode Hall.

Confirmed in Convocation this 28<sup>th</sup> day of October, 2004

Treasurer