



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

## **Bicentennial Implementation Status Report and Strategy**

**Bicentennial Report Working Group  
January 22, 2004**

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### **Report to Convocation**

**Please bring this copy with you to Convocation on January 22, 2004.**

**Purpose of Report: Information**

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

## TABLE OF CONTENTS

<b>Background</b> .....	<b>4</b>
<b>Executive Summary</b> .....	<b>6</b>
<b>Highlights</b> .....	<b>14</b>
<b>Recommendation 1: Policy Development</b> .....	<b>30</b>
Initiatives Adopted by the Law Society .....	30
Proposed Strategy .....	33
<b>Recommendation 2: Study and Research</b> .....	<b>35</b>
Initiatives Adopted by the Law Society .....	35
Proposed Strategy .....	40
<b>Recommendation 3: Equity and Diversity Audit of the Law Society Programs and Services</b> .....	<b>43</b>
Initiatives Adopted by the Law Society .....	43
Proposed Strategy .....	44
<b>Recommendation 4: Monitoring and Evaluation of Equity and Diversity Initiatives</b> .....	<b>45</b>
Initiatives Adopted by the Law Society .....	45
Proposed Strategy .....	47
<b>Recommendation 5: Resource for the Profession</b> .....	<b>48</b>
Initiatives Adopted by the Law Society .....	48
Proposed Strategy .....	55
<b>Recommendation 6: Institutional Resources</b> .....	<b>56</b>
Initiatives Adopted by the Law Society .....	56
Proposed Strategy .....	58
<b>Recommendation 7: Participation in the Governance of the Profession</b> .....	<b>60</b>
Initiatives Adopted by the Law Society .....	60
Proposed Strategy .....	61
<b>Recommendation 8: Bar Admissions</b> .....	<b>64</b>
Initiatives Adopted by the Law Society .....	64
Proposed Strategy .....	69
<b>Recommendation 9: Articling</b> .....	<b>71</b>
Initiatives Adopted by the Law Society .....	71
Proposed Strategy .....	73
<b>Recommendation 10: Continuing Legal Education</b> .....	<b>75</b>
Initiatives Adopted by the Law Society .....	75
Proposed Strategy .....	76
<b>Recommendation 11: Rules of Professional Conduct</b> .....	<b>78</b>
Initiatives Adopted by the Law Society .....	78
Proposed Strategy .....	80
<b>Recommendation 12: Accreditation of Foreign-Trained Lawyers</b> .....	<b>82</b>
Initiatives Adopted by the Law Society .....	82
Proposed Strategy .....	86
<b>Recommendation 13: Requalification</b> .....	<b>88</b>
Initiatives Adopted by the Law Society .....	88

Proposed Strategy .....	90
<b>Recommendation 14: Fees.....</b>	<b>91</b>
Initiatives Adopted by the Law Society .....	91
Proposed Strategy .....	94
<b>Recommendation 15: Law Society as Employer.....</b>	<b>95</b>
Initiatives Adopted by the Law Society .....	95
Proposed Strategy .....	99
<b>Recommendation 16: Law Society as a Contractor for Legal Services.....</b>	<b>100</b>
Initiatives Adopted by the Law Society .....	100
Proposed Strategy .....	100

**Appendix 1: *Bicentennial Report* (May, 1997)**

**Appendix 2: EAG, Rotiio<sup>7</sup> taties and AJEFO submissions**

**Appendix 3: Handidactis Report**

## IMPLEMENTATION OF BICENTENNIAL REPORT

### *Background*

1. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report*, Appendix 1).<sup>1</sup> The *Bicentennial Report* reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays and lesbians and persons with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The Report made sixteen recommendations that have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.
2. On July 31, 2003, Convocation established the Bicentennial Report Working Group (the Working Group) to review and report on the implementation status of the recommendations contained in the *Bicentennial Report*. Members of the Working Group are: Joanne St. Lewis (Chair), Andrea Alexander, Constance Backhouse, Thomas G. Heintzman, W.A. Derry Millar and Beth Symes.
3. Senior staff of the Law Society prepared a status report on the implementation of each of the recommendations in the *Bicentennial Report*. The Working Group wishes to thank the staff of the Law Society for providing answers to its many questions.
4. The Working Group also consulted with Professor Fiona Kay of Queen's University, the author of a longitudinal study of women and men called to the Bar in Ontario from 1976 to 1990. The Working Group reviewed the limited number of studies and research on the status of Aboriginal and racialized lawyers as well as lawyers with disabilities.
5. Although the time limitations were very tight, the Working Group sought and received the views of the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG), the

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<sup>1</sup> *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997).

Association des juristes d'expression française de l'Ontario (AJEFO)<sup>2</sup> and Rotiio>taties Aboriginal Advisory Group (Rotiio>taties)<sup>3</sup> (letters of invitation and submissions – Appendix 2) regarding their view on the following questions:

- a. What recommendations has the Law Society not implemented?
  - b. What Law Society policies and initiatives have had a positive or negative impact on the legal profession and why?
  - c. What can the Law Society do to enhance the recommendations of the Bicentennial Report and equality in general?
6. This report details the programs, services and policies created by the Law Society as a result of the recommendations of the *Bicentennial Report*, analyzes the implementation status of each recommendation and proposes strategies to be examined and further implemented.
7. The Working Group presents this report to Convocation for information. It has referred this report to the Equity and Aboriginal Issues Committee for its consideration, as it is the standing committee of Convocation mandated to develop policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to members of equality-seeking, Aboriginal and Francophone communities.<sup>4</sup>

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<sup>2</sup> Founded in 1980, the Association of French Speaking Jurists of Ontario (AJEFO) speaks for lawyers, judges, personnel of the administration of justice, law professors, law students and others who work at the promotion of access to justice in French and English, the official languages of the courts of Ontario. The Legislative Assembly of Ontario adopts all public statutes in both official languages, and both versions are equally valid. The AJEFO wishes to ensure equal access to justice, without penalty, delay, obstruction or hesitation to the use of either official languages by the judiciary, members of the Bar and the citizens of Ontario.

<sup>3</sup> Rotiio>taties is an Aboriginal non-profit volunteer organization comprised of Aboriginal lawyers, legal academics, law students and community members advising various bodies in Ontario on Aboriginal issues as they arise in law and the legal profession. The main table of Rotiio>taties meets bi-monthly. There are four working subcommittees that report to the main table, and meet as needed: education, residential school issues, access to justice and fundraising.

<sup>4</sup> Section 16.1 of By-law 9 - Committees.

### *Executive Summary*

8. The *Bicentennial Report* was adopted to recognize the Law Society's commitment to the promotion of equity and diversity and its responsibility to regulate and provide services to an increasingly diverse legal profession and population. In 1997, members of equality-seeking, Francophone and Aboriginal communities identified a range of issues affecting their ability to perform to their maximum potential and barriers in entering and remaining in the profession.
  
9. It is not surprising, with the membership of the legal profession growing at a rate of approximately 1,200 annually, that the profession is different and more diverse than it was 7 years ago. Although more women, persons from racialized communities, Aboriginal peoples, gays, lesbians, bisexuals, transgender and transsexual persons, persons with disabilities and Francophones are entering the profession<sup>5</sup>, a significant number of members from these communities are also leaving the legal profession. This phenomenon appears to be occurring at all stages of the career path, from the Bar Admission Course where a number of students from Aboriginal and racialized communities choose not to enter the legal profession<sup>6</sup>, to the more advanced stages of a legal career. Studies have shown, for example, that women often leave the legal profession before becoming partners. The Working Group urges the Law Society to undertake studies to identify factors that may constitute barriers to entering, remaining in and re-entering the profession for members from equality-seeking, Francophone and Aboriginal communities.
  
10. The Working Group was not mandated to critically review the recommendations of the *Bicentennial Report*, but to present a report card on the implementation status of the recommendations, and to propose areas upon which the Law Society might wish to build. During its deliberations, the Working Group considered the new challenges faced by the

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<sup>5</sup> In 2003, 53% of students who entered the Bar Admission Course (BAC) were women and 16.0% of students self-identified as racialized, 5.6% as Francophone, 1.6% as Aboriginal, 1.4% as gay or lesbian and 1.9% as students with disabilities. See *Placement Report 2002/2003 of Students Enrolled in the 45<sup>th</sup> BAC 2002* (Toronto: Law Society of Upper Canada, July 2003).

<sup>6</sup> Rotiio<sup>7</sup> taties noted, for example, that "there is a disproportionate representation of Aboriginal people who choose to either not enter practice or to leave practice after only a few years of entering the profession." See Appendix 2.

legal profession and by the Law Society, as regulator of the profession in the interest of the public.

**11. The Working Group has chosen to highlight the following areas that merit particular attention:**

- a. **Accountability of the Law Society**
- b. **Career paths**
- c. **New and pressing areas of research**
- d. **Financial barriers**
- e. **Contract compliance**

***a. Accountability of the Law Society***

12. Advancing equality requires effective tools of measurement and analysis. The Law Society has an impressive array of initiatives but no coherent standards by which to measure their effectiveness and mark their progress. It is for this reason that the Working Group has highlighted the need for an **equity template** that would include definitions of the terms “equity” and “diversity”. Staff, bench committee and Convocation would use the template to analyze the impact of policies on persons from equality-seeking, Aboriginal and Francophone communities. An equity template is also needed to perform audits of Law Society programs and services, as stipulated under **Recommendation 3 – Equity and Diversity Audit of the Law Society Programs and Services**, and to develop and effectively implement **Recommendation 4 - Monitoring and Evaluation of Equity and Diversity Initiatives**. The Working Group is of the view that the Law Society made substantial efforts to implement these recommendations. However, there are no criteria in place that enable the Law Society to judge the success of its equity initiatives.

13. The integration of equity and diversity must also reach the level of governance. The success of the implementation of **Recommendation 7 – Participation in the Governance of the Profession** may be a matter of controversy. Ultimately, equitable representation or diversity at Convocation is the greatest safeguard of the public interest and the Law Society recognizes the importance and value of representation of equality-seeking, Francophone

and Aboriginal members in the governance of the profession. The Working Group believes that a significant step to increasing the participation of these communities in the governance of the profession is to amend Law Society by-laws so that the Equity Advisory Group, AJEFO and Rotiio<sup>7</sup> tates each have a voting representative on the Equity and Aboriginal Issues Committee. Other strategies should be developed to increase the participation of non-benchers in the work of the Law Society.

### ***b. Career paths***

14. The profession is only as diverse as its participating members. The Working Group believes that barriers to entering and establishing a practice continue to exist for individuals from equality-seeking, Francophone and Aboriginal communities, that women continue to leave the profession in significant numbers at mid-career and that there continue to be barriers to re-entry.<sup>7</sup> These matters require particular attention. The Working Group suggests that the Law Society conduct research into those who leave the profession whether at the Bar Admission, articling or lawyering phase of their careers to determine the barriers faced by equity seekers, Aboriginals and Francophone (**Recommendation 2 – Study and Research**).

15. These issues are also relevant to the implementation of a number of recommendations of the *Bicentennial Report*. For example, the issue of access to the legal profession is addressed in **Recommendation 9 – Articling**. The Law Society has made progress in implementing this recommendation. It has increased its placement initiatives and support programs for articling students by doing outreach initiatives, developing a mentoring

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<sup>7</sup> Irene Taylor and Stephanie Willson, “Carpe Diem” (September, 2003) Lexpert 69.

Law schools have been graduating 50% to 60% women and that for the past 15 years the major law firms have been hiring 50% women. Yet women comprise only 15% to 20% of the equity partners at major law firms. The majority of women lawyers exit the partnership track. Many move into government and in-house positions.

Prof. Jean McKenzie Leiper presented a paper in October 2002 entitled “Work Time and Leisure Time: Dynamics and Convergence in Changing Contexts” in which she notes that women still hold out impossible ideals to women. In spite of the fact that their working hours are longer than average, the lawyers still shoulder the responsibility for their children’s lives. Scheduling extends into every corner of family time; when women are fatigued from work, they are still expected to attend soccer games and violin lessons or organize family celebrations. Until these pressures are removed, women like the ones in this study will continue their race against the clock.

program and offering education and career development programs. However, students from equality-seeking, Francophone and Aboriginal communities remain over represented in the group of students that have difficulty finding articles. The Law Society should seek information as to why students who have successfully completed their Bar Admission Course are no longer actively seeking articling positions. The current articling structure should be assessed to identify whether equality-seeking, Aboriginal and Francophone students face barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers.

*c. New and pressing areas of research*

16. **Recommendation 2** recognizes that **research** is an essential tool of policy-making. The Working Group is very impressed with the array of research that has been undertaken by the Law Society. However, there is very limited information about Aboriginal law students and lawyers, and law students and lawyers with disabilities in Ontario.<sup>8</sup> Rectifying this gap is important.

*d. Financial barriers to participation in the profession*

17. The Working Group acknowledges the inextricable connection between **financial capacity** and full participation in the legal profession. The most significant financial barriers faced by members of equality-seeking, Francophone and Aboriginal communities include:

- a. The increasing debt load of BAC students (from \$31,000 in 2000 to \$40,000 in 2003).
- b. The reduction in the number of applications for funding and the number of BAC students receiving funds under the Repayable Loans Program and the fact that the funds flowed in 2003 were just over 50 percent of the funds flowed in 2002. The

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<sup>8</sup> In 2001, the Law Society of British Columbia published a study entitled *Lawyers with Disabilities, Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001). The research project was undertaken to identify and discuss barriers to persons with disabilities entering and practising in the legal profession. The report reveals that lawyers with disabilities face discrimination, prejudice and access barriers that make it very difficult to practise law. Discriminatory practices prevent career advancements and produce such stress that a frequent result is overwork, burn out and failure in private firms and government. Lawyers with disabilities are often not kept on after articling and finding employment is very difficult. Employers believe that accommodating lawyers with disabilities is expensive, and if a disability appears to interfere with the economic bottom line, the lawyer is likely to be let go. Disclosure of disability may lead to discrimination and there is a tendency for lawyers to hide their disabilities.

Working Group encourages the Law Society to assess these programs and adopt strategies, if appropriate, to improve their effectiveness.

- c. Fees and LawPRO rates for members (**Recommendation 14: Fees**): The Working Group notes that some groups still face barriers due to the current fees and insurance structures.<sup>9</sup> The Working Group encourages the Law Society to consider strategies to establish a reduced fee structure for those who practice part-time and have a low income.
- d. The cost of CLE: The Working Group is of the view that the Law Society should expand the CLE bursary program and aggressively advertise it to those who cannot afford CLE.

#### ***e. Contract compliance***

18. The Law Society is both an employer and contractor for services. The Working Group believes that the Law Society should lead by example in the area of equality in the workplace. The Law Society has already taken significant steps to implement **Recommendation 15 – Law Society as Employer**, for example by adopting workplace policies that address equity and diversity issues, encouraging applications from persons from equality-seeking, Francophone and Aboriginal communities and offering training programs to promote equity and diversity in the workplace. The Working Group notes that the Law Society has been successful in hiring and promoting women. However, it requires statistical information about the demography of its workforce to assist in the development of programs that promote equality in the workplace.

19. The Working Group also notes that the Law Society has an underutilized opportunity to stimulate diversity initiatives within the profession through the implementation of an effective **Contract Compliance** program, as provided in **Recommendation 16 – Law**

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<sup>9</sup> For example, Rotiio<sup>7</sup> tates observed that fees continue to be a barrier for many Aboriginal lawyers in private practice. Studies undertaken by the Canadian Bar Association (CBA), such as *Touchstones for Change* (Ottawa: Canadian Bar Association, 1983), and Professor Kay (Fiona Kay, *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the Bar Between 1975 and 1990* (Toronto: Law Society of Upper Canada, 1991) and Fiona Kay, Nancy Dautovich and Chantelle Marlor, *Barriers and Opportunities within Law, Women in a Changing Legal Profession, 1990-1996* (Toronto: Law Society of Upper Canada, 1996) indicate that fees are a barrier for women lawyers, for example for those who wish to re-enter the practice of law on a part-time basis.

**Society as a Contractor for Legal Services.** The Working Group is of the view that the Law Society should take steps to implement a contract compliance program, before the end of 2004, for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession. The Working Group also proposes that law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession and that suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.

### ***Implementation status of other recommendations***

20. The Working Group was impressed by the wide-ranging initiatives the Law Society has undertaken to implement the *Bicentennial Report*. Many of the initiatives have made the Law Society the role model to be emulated by the profession. For example, the Working Group is of the view that the Law Society has made substantial progress in implementing the following recommendations:

- a. **Recommendation 2 – Study and Research:** The Working Group commends the Law Society for its research activities and studies to date concerning equity and diversity in the legal profession, including studies on the impact of gender in the legal profession<sup>10</sup> and the demographic analysis of the legal profession<sup>11</sup>. The Working Group proposes that the Law Society strengthen its leadership role in this area by developing a strategic research plan in cooperation with equality-seeking, Francophone and Aboriginal communities.
- b. **Recommendation 5 – Resource to the Profession:** The Law Society has provided tools to function as a resource to the profession and works in partnership with legal associations to develop programs based on the needs of the legal profession. The Working Group recognizes the value of such programs and encourages the Law Society to continue to lead by example.
- c. The Law Society has begun implementing **Recommendation 6 - Institutional Resources** by committing the appropriate human and financial resources to

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<sup>10</sup> See *Transitions* report, *ibid.* and *Barriers and Opportunities* report, *ibid.* Available in French and English.

<sup>11</sup> See Michael Ornstein, *Lawyers in Ontario: Evidence from the 1996 Census* (Toronto: Law Society of Upper Canada, 2001).

advance equality within the Law Society and the legal profession. The Working Group recognizes the pivotal role played by the Equity Initiatives Department in promoting equity and diversity and encourages the Law Society to maintain the department's leadership within the organization.

- d. **Recommendation 8 – Bar Admissions:** The Law Society has made substantial efforts to administer the BAC program so that its demands do not impact disproportionately on those from equality-seeking, Francophone and Aboriginal communities. The Working Group notes that the real challenge will be to integrate these efforts into the revised BAC model adopted by Convocation on December 5, 2003 (the new BAC). It encourages the Law Society to involve members from equality-seeking, Francophone and Aboriginal communities in the design and delivery of the new BAC. The Working Group also recommends that the new BAC continue to be offered in both official languages.
- e. **Recommendation 10 - Continuing Legal Education:** The Law Society is to be commended for making its programs affordable and more accessible to members of the profession, including members from equality-seeking, Aboriginal and Francophone communities. It has considerably increased its CLE programming in the area of equity and diversity, including the launch in 2004 of CLE programming in French, and has increased access to its CLE programs to members in remote areas. The Working Group encourages the Law Society to continue the exceptional work it has undertaken in this area, and to invite members of equality-seeking, Francophone and Aboriginal communities to participate as CLE faculty.
- f. **Recommendation 11 – Rules of Professional Conduct:** The recommendation requests the Law Society to effectively meet its responsibilities as a regulator in addressing discrimination and harassment in the legal profession. The Law Society has created an effective and confidential Discrimination and Harassment program to assist anyone who may have experienced discrimination or harassment by a lawyer or within a law firm. The Law Society also ensures that staff members with expertise handle complaints of harassment and discrimination. The

Working Group proposes that the Law Society determine the effectiveness of its existing programs and, if appropriate, develop strategies for improvement.

- g. **Recommendation 12 – Accreditation of Foreign-Trained Lawyers:** Foreign-trained lawyers often face formidable barriers in entering the Ontario legal profession. For example, although qualified to practise in other jurisdictions, foreign-trained lawyers typically have to return to law school to be educated in Canadian laws, they often feel alienated while in law school and they encounter appreciably more difficulty in securing articling positions. The Working Group is of the view that strategies should be developed to facilitate the participation of foreign-trained lawyers to the profession.
- h. **Recommendation 13 – Requalification:** The Law Society has substantially implemented recommendation 13 by adopting a self-study program for those who temporarily leave the practice of law. The Working Group notes, however, that women and members from equality-seeking, Francophone and Aboriginal communities still face barriers, often unrelated to requirements established by the Law Society, when re-entering the practice of law. The Working Group encourages the Law Society to study and develop strategies to promote equal opportunities for these groups when they return to the practice of law.

21. The following section provides highlights of the progress made by the Law Society in implementing the *Bicentennial Report* and the strategies proposed by the Working Group to the Equity and Aboriginal Issues Committee.

## *Highlights*

### *Recommendation 1 Policy Development*

**The Law Society should ensure that the policies it adopts:**

- a) Actively promote the achievement of equity and diversity within the profession; and**
- b) Do not have a discriminatory impact.**

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> <li>1. Policy-development process includes the preparation of a background paper outlining equity considerations.</li> <li>2. The Equity Advisor and/or the Equity and Aboriginal Issues Committee review proposed policies.</li> <li>3. The Equity Advisor participates in monthly Policy Secretariat briefings.</li> <li>4. Members of Francophone, Aboriginal and equality-seeking communities regularly participate in consultation processes.</li> <li>5. By-law 9-Committees provides that the Equity and Aboriginal Issues Committee will consult with the Equity Advisory Group (EAG), the Association des juristes d'expression française de l'Ontario (AJEFO) and Rotiio<sup>&gt;</sup> taties Aboriginal Advisory Group (Rotiio<sup>&gt;</sup> taties) in the development of policy options.</li> <li>6. Policies are regularly adopted to further the achievement of equity and diversity within the profession.</li> </ol>	<ol style="list-style-type: none"> <li>1. A definition of "equity and diversity" should be developed and an equity decision-making template formulated to guide the Law Society in its policy development activities.</li> <li>2. A process should be created by which all policy development activities undertaken by staff, committees (including working groups, task forces and sub-committees) and Convocation are judged against the equity template. Reports should contain a specific section to indicate how equity principles were considered.</li> <li>3. Guidelines should be developed to provide direction and a consultation framework to committees and staff on issues that require input from equality-seeking, Francophone and Aboriginal communities.</li> </ol>

## *Recommendation 2 Study and Research*

**To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, 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.**

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> <li>1. Studies on the impact of gender in the legal profession have been valuable to determine whether the status of women lawyers is improving.</li> <li>2. Demographic analysis of the legal profession based on Canada Census provides valuable information about the legal profession and representation of members based on race, ethnicity, language and gender.</li> <li>3. The Law Society regularly publishes reports of its equity initiatives and programs.</li> <li>4. The Law Society continues to promote and support research initiatives in the area of equity and diversity.</li> </ol>	<ol style="list-style-type: none"> <li>1. Guidelines should be developed to ensure that an equity analysis, including an intersectionality analysis that identifies heightened vulnerabilities to discrimination, is integrated within studies.</li> <li>2. A strategic research plan should be developed in consultation with EAG, AJEFO and Rotiio&gt;taties. The research plan should, on a biennial basis, identify issues facing members of equality-seeking, Aboriginal and Francophone communities. The Plan should recommend a budget for Convocation’s consideration.</li> <li>3. The following three research areas merit particular and urgent attention and should be identified as priorities:               <ol style="list-style-type: none"> <li>i. Studies on barriers faced by students and members with disabilities</li> <li>ii. Studies on barriers faced by Aboriginal students and members of the profession;</li> <li>iii. Studies to identify the factors that may constitute barriers to entering, remaining and re-entering the profession for members from equality-seeking, Francophone and Aboriginal communities.</li> </ol> </li> <li>4. The Equity Advisor should be responsible for monitoring the implementation of the research plan.</li> </ol>

***Recommendation 3 Equity and Diversity Audit of the Law Society Programs and Services***

**The Law Society should evaluate its programs and services on an ongoing basis to ensure that they operate so as to promote the achievement of equity and diversity within the legal profession.**

<b><i>Outline of Progress</i></b>	<b><i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i></b>
<ol style="list-style-type: none"> <li>1. The Law Society performed an equity and diversity audit of its programs and services through the development of equity and diversity action plans.</li> <li>2. In 2002, the Law Society recognized equity as one of the four strategic corporate areas: professional regulation, professional development and competence, policy development and equity initiatives/access to justice.</li> <li>3. One of the Law Society’s organizational goals is to integrate equity and diversity/access to justice initiatives within operational departments of the Law Society programs, products and services.</li> <li>4. The Law Society has implemented initiatives that increase access for persons with disabilities to the legal profession, legal services and the Law Society.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Equity and Aboriginal Issues Committee should report annually to Convocation on whether the Law Society’s programs and initiatives are promoting equity and diversity.</li> </ol>

***Recommendation 4 Monitoring and Evaluation of  
Equity and Diversity Initiatives***

**The Law Society should formally monitor and evaluate the effectiveness of current and future equity and diversity initiatives.**

<b><i>Outline of Progress</i></b>	<b><i>Proposed strategy for the Equity and Aboriginal Issues Committee</i></b>
<ol style="list-style-type: none"> <li>1. The Law Society monitors and evaluates the effectiveness of current and future equity and diversity initiatives on an ongoing basis.</li> <li>2. The CEO presents semi-annual operational reports to Convocation that include a review of corporate and departmental programs, services and policies in support of the Law Society’s mandate. The CEO’s Reports to Convocation outline equity and diversity initiatives undertaken by the Law Society and its departments.</li> <li>3. Senior Managers are responsible for evaluating their programs, including equity and diversity programs.</li> <li>4. Programs are evaluated by using formal evaluations, analysis of statistical information and impact on financial and human resources.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Equity and Aboriginal Issues Committee should report annually to Convocation on the effectiveness of its equity initiatives.</li> </ol>

### ***Recommendation 5 Resource for the Profession***

**In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.**

<b><i>Outline of Progress</i></b>	<b><i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i></b>
<ol style="list-style-type: none"> <li>1. The Equity Advisor and other staff members provide support and assistance to law firms and legal organizations to assess their programs.</li> <li>2. The Law Society provides custom-designed equity and diversity training programs to law firms.</li> <li>3. Information relating to Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the <i>Rules of Professional Conduct</i> is readily available to the profession.</li> <li>4. Equity and diversity CLE and public education programs are ongoing.</li> <li>5. The Law Society works in partnership with legal associations and communities to promote education and discussion on the challenges and opportunities for Aboriginal, Francophone and equality-seeking communities in the legal profession.</li> <li>6. Model programs and policies are developed on an ongoing basis and are widely circulated to the legal profession.</li> <li>7. A structured mentoring program is in place for high school and university students, students-at-law and recent calls to the bar.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Law Society should continue to effectively implement this recommendation.</li> </ol>

### ***Recommendation 6 Institutional Resources***

**In order to facilitate and further the advancement of equity and diversity goals, the Law Society must dedicate appropriate human and financial resources specifically to those goals.**

<b><i>Outline of Progress</i></b>	<b><i>Proposed strategy for the Equity and Aboriginal Issues Committee</i></b>
<ol style="list-style-type: none"> <li>1. Standing committees of Convocation address equity and diversity issues faced by the legal profession, including the Equity and Aboriginal Issues Committee.</li> <li>2. The Equity Advisor supports the Equity and Aboriginal Issues Committee.</li> <li>3. The Equity Advisory Group advises the Law Society. It is a group of volunteer lawyers with experience in areas of employment equity, access to the legal system, human rights, anti-racism, anti-oppression training, and social justice issues.</li> <li>4. The committee structure and the human and financial resources allocated to equity and diversity initiatives have ensured that actions that relate to equity and diversity are consistently taken.</li> <li>5. Permanent full-time equity and diversity positions are in place, including the Equity Advisor, the Aboriginal Issues Coordinator, the Equity Community and Policy Advisor, the Counsel, Equity Initiatives and the Equity Program Administrator</li> <li>6. Financial resources are in place to support the Equity Initiatives Department, the Discrimination and Harassment Counsel Program and equity and diversity initiatives.</li> </ol>	<ol style="list-style-type: none"> <li>1. The effectiveness of the current structure of the Equity Initiatives Department should be re-evaluated in December 2006. At a minimum, an effective equity initiatives unit should be maintained, and fully staffed, with the following elements:               <ol style="list-style-type: none"> <li>a. The Equity Advisor’s direct reporting relationship to the CEO;</li> <li>b. The Equity Advisor’s membership on the senior management team;</li> <li>c. Current staffing level and budget.</li> </ol> </li> <li>2. The Law Society services should be delivered to French and English speaking members and the public in a manner consistent with the intent of the <i>French Language Services Act</i>.</li> </ol>

***Recommendation 7 Participation in the Governance of the Profession***

**In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession:**

- (a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28 [now Rule 5.04]; and**
- (b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession.**

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> <li>1. EAG advises the Equity and Aboriginal Issues Committee, and other committees, on issues affecting Aboriginal peoples, Francophones and equality-seeking communities.</li> <li>2. The Equity and Aboriginal Issues Committee regularly invites representatives of EAG, AJEFO and Rotiio&gt; taties to attend and participate in the affairs of the committee. This increases the representation of members from equality-seeking, Aboriginal and Francophone communities as participants in the policy development process.</li> <li>3. Initiatives to encourage members from equality-seeking, Francophone and Aboriginal communities to run for election have been undertaken.</li> </ol>	<ol style="list-style-type: none"> <li>1. An equity analysis should be undertaken to determine whether there are any barriers within the current electoral process that limit the full participation and election of women and members from equality-seeking, Francophone and Aboriginal communities.</li> <li>2. A report and strategic plan should be presented to Convocation by June 2006 to address the following:               <ol style="list-style-type: none"> <li>a. the burden of committee time placed on benchers which may be a barrier to suitable candidates standing for bencher election; and</li> <li>b. non-bencher participation in bencher committees.</li> </ol> </li> <li>3. By-law 9, Committees, should be amended so that EAG, AJEFO and Rotiio&gt; taties each have a voting representative on the Equity and Aboriginal Issues Committee.</li> </ol>

### ***Recommendation 8 Bar Admissions***

**The Law Society should continue to ensure that Bar Admissions:**

- (a) Includes material designed to increase the profession’s understanding of diversity/equity issues;**
- (b) Encourages the participation of equality-seeking groups in its design, development, and presentation;**
- (c) Uses material that is gender neutral;**
- (d) Uses audio visual material that includes the faces and voices of equality-seeking groups;**
- (e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).**

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee and the Professional Development, Competence and Admission Committee and/or the Continuum of Legal Education Task Force</i>
<ol style="list-style-type: none"> <li>1. BAC materials include information designed to increase the profession’s understanding of diversity/equity issues.</li> <li>2. All instructors and BAC staff attend training sessions on equity and diversity implications to their work.</li> <li>3. The BAC program is offered in both official languages.</li> <li>4. The e-learning web site provides students with a flexible and accessible learning support system.</li> <li>5. The Education Support Services Centre offers students a range of supports, services and accommodation to students.</li> <li>6. The Mentoring Program is available to BAC students.</li> <li>7. The Elders’ Program provides Aboriginal and non-Aboriginal students in the BAC and Aboriginal members of the Bar with various teachings and counseling services.</li> <li>8. Financial assistance is available to those in the BAC who demonstrate need to meet their educational and living expenses during the course.</li> </ol>	<ol style="list-style-type: none"> <li>1. Members from equality-seeking, Francophone and Aboriginal communities should be involved in the design and delivery of the new BAC.</li> <li>2. BAC students should be informed of the role of the Discrimination and Harassment Counsel (DHC) and options available to students and lawyers who experience harassment and/or discrimination.</li> <li>3. The new BAC should continue to be offered in both official languages</li> <li>4. The effectiveness of the Repayable Allowance Program should be assessed and improved if required.</li> </ol>

### *Recommendation 9 Articling*

**The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).**

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee and by the Professional Development, Competence and Admission Committee and/or the Continuum of Legal Education Task Force</i>
<ol style="list-style-type: none"> <li>1. The Law Society promotes initiatives that allow students options and flexibility in completing all the necessary requirements of articling. For example, non-traditional articling placements and articling abridgments.</li> <li>2. The Associate Registrar coordinates the articling program and provides support to students</li> <li>3. The Aboriginal Issues Coordinator provides support to Aboriginal students in the BAC and during the articling process.</li> <li>4. Placement initiatives provide assistance to students-at-law by offering job search skills workshops and counselling services.</li> <li>5. Articling positions are posted on the Law Society's web site.</li> <li>6. The Mentoring Program is available to articling students.</li> <li>7. The Registrar and Associate Registrar attend annually at all law schools to provide students with information about the BAC and the articling program and opportunities.</li> </ol>	<ol style="list-style-type: none"> <li>1. The current articling structure should be assessed to determine whether equality-seeking, Aboriginal and Francophone students face systemic barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers.</li> <li>2. Research should be undertaken to determine why some students who have successfully completed the BAC do not seek or cease to seek articling positions. Strategies should be developed to address this issue.</li> <li>3. The CEO or delegate should provide annual reports to the Equity and Aboriginal Issues Committee about strategies and progress on addressing the needs of equality-seeking, Aboriginal and Francophone students for suitable articles.</li> <li>4. Services and learning supports to assist students and principals throughout the articling process should be maintained and enhanced based on needs.</li> </ol>

## *Recommendation 10 Continuing Legal Education*

The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:

- (a) Includes material designed to increase the profession’s understanding of diversity/equity issues;
- (b) Encourages the participation of equality-seeking groups in its design, development, presentation, and attendance;
- (c) Uses material that is gender neutral;
- (d) Uses audio visual material that includes the faces and voices of equality-seeking groups;
- (e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).

<i>Outline of Progress</i>	<i>Proposed strategy for the Professional Development, Competence and Admission Committee</i>
<ol style="list-style-type: none"> <li>1. The Law Society offers affordable, accessible and relevant continuing legal education programs through various initiatives that include its Public Education Program, Equity and Diversity Training Program and equity and diversity CLE programs.</li> <li>2. Public education events are usually open to the public and are free of charge.</li> <li>3. The Interactive Learning Network enables lawyers to attend live programs without incurring the costs associated with absence from the office and long distance travel.</li> </ol>	<ol style="list-style-type: none"> <li>1. The bursary program for CLE should be expanded and aggressively promoted to those who cannot afford CLE.</li> <li>2. Education programs should be tailored to meet the needs of:               <ol style="list-style-type: none"> <li>a. Foreign-trained lawyers.</li> <li>b. Members re-entering the profession.</li> <li>c. Members from equality-seeking, Aboriginal and Francophone communities.</li> </ol> </li> <li>3. There should be representation of members from equality-seeking, Aboriginal and Francophone communities within the CLE Faculty, including “core” CLE programs.</li> </ol>

## ***Recommendation 11 Rules of Professional Conduct***

**The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession.**

<b><i>Outline of Progress</i></b>	<b><i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i></b>
<ol style="list-style-type: none"> <li>1. Rule 5.03 of the <i>Rules of Professional Conduct</i> prohibits sexual harassment and Rule 5.04 prohibits discrimination.</li> <li>2. Rule 1 of the <i>Rules of Professional Conduct</i> includes a commentary that provides that “a lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter.”</li> <li>3. The Discrimination and Harassment Counsel Program (DHC) is a permanent program of the Law Society established to confidentially assist those who may have experienced discrimination or harassment by a lawyer or within a law firm.</li> <li>4. A process is in place to ensure that cases of harassment and discrimination are appropriately handled at all levels, including by the Client Service Centre, Investigations Unit and Discipline Unit.</li> <li>5. An education program is delivered to hearing panel benchers on topics such as harassment and discrimination, credibility of witnesses, the duty to accommodate and identifying bias and stereotypes.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Equity and Aboriginal Issues Committee should work with the CEO or delegate, and the Discrimination and Harassment Counsel where appropriate, to determine the effectiveness of programs aimed at eliminating harassment and discrimination within the legal profession and discuss strategies for improvement if appropriate.</li> </ol>

### ***Recommendation 12 Accreditation of Foreign-Trained Lawyers***

**The Law Society should facilitate the participation of minority groups in the legal profession by liaising with other groups to ensure that the accreditation requirements for foreign-trained lawyers or Quebec non-common law trained lawyers to practise in Ontario do not represent an unreasonable barrier.**

<b><i>Outline of Progress</i></b>	<b><i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i></b>
<ol style="list-style-type: none"> <li>1. A report of the system in place through the National Committee on Accreditation (NCA) for the accreditation of lawyers who have received their legal education and training outside Canada was presented to Convocation.</li> <li>2. Convocation adopted the report's recommendations and made recommendations to the Federation of Law Societies for improvements to the process.</li> <li>3. The Federation, the NCA and the Law Society have considered and addressed all issues raised in the report.</li> </ol>	<ol style="list-style-type: none"> <li>1. A joint initiative should be developed with the Professional Development, Competence and Admission Committee and the Access to Justice Committee to develop strategies to assist foreign-trained lawyers to qualify as lawyers in Ontario.</li> <li>2. Information should be gathered about the success rate of NCA candidates in the BAC and in articling placements and strategies should be developed to address unfair elements, if any.</li> <li>3. NCA students or recently called foreign-trained lawyers should be invited to provide input into the development and implementation process of the new BAC.</li> </ol>

### ***Recommendation 13 Requalification***

**In implementing its requalification policy the Law Society should continue to develop a process that is fair and equitable to all members of the profession.**

<b><i>Outline of Progress</i></b>	<b><i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i></b>
<ol style="list-style-type: none"> <li>1. The Law Society has replaced its requalification policy by a Private Practice Refresher Program that requires lawyers not in private practice for five years or more to undergo a refresher program prior to entering private practice. Members are not asked to requalify. Members complete a self-study program that reflects gaps in their experience.</li> </ol>	<ol style="list-style-type: none"> <li>1. The effectiveness of the Private Practice Refresher Program and its impact on members of equality-seeking, Francophone and Aboriginal communities should be examined after five years of implementation.</li> <li>2. Strategies should be developed to ensure truly equal opportunities for women returning to the practice of law and for members of equality-seeking, Francophone and Aboriginal communities.</li> </ol>

### *Recommendation 14 Fees*

**The Law Society should examine the impact of and the barriers presented by its current annual fee structure and consider options for revising its fee structure, if warranted.**

<i>Outline of Progress</i>	<i>Proposed strategy for the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> <li>1. The Law Society has examined and revised its fee structure to determine the impact on members from equality-seeking, Francophone and Aboriginal communities.</li> <li>2. Studies indicate that the current fee structure remains a barrier to some members of Aboriginal, Francophone and equality-seeking communities.</li> </ol>	<ol style="list-style-type: none"> <li>1. Convocation should establish a working group and/or task force composed of members of the Equity and Aboriginal Issues Committee, the Finance Committee and other members as determined by Convocation, to review the impact of the fee structure on members who practice part-time or have a low income, or who work in public interest areas.</li> </ol>

### *Recommendation 15 Law Society as Employer*

**The Law Society should continue to set and monitor equity standards for its own staff that will make it a model for the profession as an employer.**

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ol style="list-style-type: none"> <li>1. The Law Society adopted processes and policies that promote equity and diversity within the workplace. For example, the Law Society's recruitment practices proactively encourage applications from individuals from equality-seeking, Aboriginal and Francophone communities.</li> <li>2. The Law Society revised all its internal policies and guidelines to ensure that they are not discriminatory and that they encourage an inclusive workplace environment.</li> <li>3. The Law Society developed a successful training program for its workforce, including workshops about addressing harassment and discrimination, the duty to accommodate and providing a positive workplace environment.</li> <li>4. The Law Society has been successful in hiring and promoting women.</li> </ol>	<ol style="list-style-type: none"> <li>1. The CEO should compile data on the diversity of the workforce of the Law Society and develop strategies to promote equality in the workplace.</li> <li>2. The CEO or designate should provide an in person annual report to the Equity and Aboriginal Issues Committee regarding the implementation status of equality in the workplace initiatives.</li> </ol>

## Recommendation 16 Law Society as a Contractor for Legal Services

The Law Society should:

- a) Develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession; and
- b) Examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.

<i>Outline of Progress</i>	<i>Proposed strategy for consideration by the Equity and Aboriginal Issues Committee</i>
<ul style="list-style-type: none"> <li>1. The Law Society’s Purchasing Policy includes an Equity Compliance Program to provide access to services to Francophone, Aboriginal and equality-seeking communities.</li> <li>2. The Law Society is committed to initiating supplier development activities leading to increased representation of Francophone, Aboriginal and equality-seeking communities as suppliers. This is to be done without sacrificing operational requirements, best value, prudence, and sound contracting management.</li> <li>3. The Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society cite as one of the conditions of retainer that all outside counsel retained by the Law Society pursuant to the guidelines “shall be in compliance with the Law Society’s contract compliance policy as in force from time to time.”</li> </ul>	<ul style="list-style-type: none"> <li>1. The CEO should report to Convocation by the end of 2004 with respect to:               <ul style="list-style-type: none"> <li>a. The implementation of a contract compliance program for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession.</li> <li>b. A provision by which law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession.</li> <li>c. A provision by which suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.</li> </ul> </li> </ul>

## *Core Areas*

The Working Group identified five core areas that merit particular attention by the Equity and Aboriginal Issues Committee:

<b>Core Areas</b>	<b>Recommendation</b>	<b>Proposed Strategy</b>
<b>Accountability of the Law Society</b>	1 – Policy development	A definition of “equity and diversity” should be developed and an equity decision-making template formulated to guide the Law Society in its policy development activities.
	3 – Equity and Diversity Audit of the Law Society Programs and Services	An annual report should be presented to Convocation on whether the Law Society’s programs and initiatives are promoting equity and diversity
	4 - Monitoring and Evaluation of Equity and Diversity Initiatives	An annual report should be presented to Convocation on the effectiveness of equity and diversity initiatives.
	6 - Institutional Resources	Human and financial resources for the advancement of equality and the leadership role played by the Equity Initiatives Department should be maintained.  The effectiveness of the Equity Initiatives Department’s new structure should be evaluated in December 2006.
	7 – Participation in the Governance of the Profession	Law Society by-laws should be amended so that the EAG, AJEFO and Rotiio <sup>7</sup> tities each have a voting representative on the Equity and Aboriginal Issues Committee.  A determination should be made as to whether there are barriers that limit the full participation of women and members from equality-seeking, Francophone and Aboriginal communities in the election process.
<b>Career paths</b>	2 – Study and Research	Research should be conducted into those who leave the profession whether at the Bar Admission, articling or lawyering phase of their careers.
	9 – Articling	The current articling structure should be assessed to identify whether equality-seeking, Aboriginal and Francophone students face barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers.
<b>New and pressing areas of research</b>	2 - Research	Research should be undertaken on the barriers faced by Aboriginal law students and lawyers, and law students and lawyers with disabilities in Ontario.

Core Areas	Recommendation	Proposed Strategy
<b>Financial barriers</b>	<p>The most significant financial barriers faced by members of equality-seeking, Francophone and Aboriginal communities include:</p> <ul style="list-style-type: none"> <li>• The increasing debt load of law students.</li> <li>• The reduction in the number of BAC students applying and receiving funds under the Repayable Loans Program and in the amount of funding provided to students.</li> <li>• Fees and LawPRO rates for members.</li> <li>• The cost of CLE.</li> </ul>	<p>A task force or working group should be established, composed of members of the Equity and Aboriginal Issues Committee, the Finance Committee and other members as determined by Convocation, to review the impact of the fee structure on members who practice part-time or have a low income, or who work in public interest areas.</p>
<b>Contract compliance</b>	15 – Law Society as Employer	Data should be compiled on the diversity of the workforce of the Law Society and strategies should be developed to promote equality in the workplace.
	16 – Law Society as a Contractor for Legal Services	<p>The CEO should report to Convocation, by the by the end of 2004, with respect to:</p> <ul style="list-style-type: none"> <li>• The implementation of a contract compliance program for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession.</li> <li>• A provision by which law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession.</li> <li>• A provision by which suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.</li> </ul>

## *Recommendation 1: Policy Development*

**The Law Society should ensure that the policies it adopts:**

**(a) Actively promote the achievement of equity and diversity within the profession; and**

**(b) Do not have a discriminatory impact.**

### **Initiatives Adopted by the Law Society**

#### **Policy Development Process**

23. The measures undertaken to implement Recommendation 1 include the adoption of a policy development process. The Policy Secretariat, created in 1996, coordinates and supports the work of Convocation and its committees and task forces and ensures consistency of approaches. Policy development involves a number of steps. Prior to a full discussion of an issue by a committee, a policy advisor prepares a background paper for the committee's consideration. The paper typically includes the history of the issue, financial consideration, equity and diversity considerations, impact on staff and other resources, relevance to other committees and experience with the issue in other jurisdictions. Proposed policies that raise issues of equity and diversity are reviewed by the Equity Advisor and/or the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Equity and Aboriginal Issues Committee), a standing committee of Convocation. The Equity and Aboriginal Issues Committee may seek the advice of the Equity Advisory Group (mandate described below) and other stakeholders.
24. The Equity Advisor participates in monthly Policy Secretariat briefings with other Law Society policy staff to ensure that principles of equity and diversity are integrated in policy development.
25. Convocation, task forces, committees and working groups carry out consultations when such process is deemed appropriate and consultation processes are tailored to the policy matter. Members of equality-seeking, Francophone and Aboriginal communities are often invited to participate in consultation processes.<sup>12</sup>

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<sup>12</sup> For example, the Law Society invited groups such as the EAG, Rotio<sup>7</sup> taties and AJEFO to provide submissions on the report of the Task Force on the Continuum of Legal Education, the proposed para-legal framework and the Private Practice Refresher Program modules, to name a few.

## **Equity and Aboriginal Issues Committees**

26. The Law Society has a standing committee of Convocation mandated to address equity issues in policy development, and an equity advisory group to provide expert advice to standing committees on such issues.
  
27. The **Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones** is mandated to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to members of the equality-seeking, Aboriginal and Francophone communities, and to consult with the EAG, Rotiio> taties, AJEFO, women and equality-seeking communities in the development of such policy options.<sup>13</sup>
  
28. The Law Society also established the **Equity Advisory Group/Groupe consultatif en matière d'équité (EAG)**, a group of 15 to 19 members from across Ontario, with direct experience or commitment to equity and diversity. Members of EAG have experience in areas of employment equity, access to the legal system, human rights, anti-racism, anti-oppression and social justice issues. The mandate of EAG is to assist the Equity and Aboriginal Issues Committee in the development of policy options for the promotion of equity and diversity in the legal profession.
  
29. By-law 9-Committees, provides that the Equity and Aboriginal Issues Committee will consult with EAG, AJEFO and Rotiio> taties in the development of policy options, and these groups have played a significant role in advising the Law Society.
  
30. Other standing committees of Convocation are mandated to address equity and diversity related issues. For example, the **Access to Justice Committee** develops, for Convocation's approval, policy options for promoting access to justice throughout Ontario, and the **Emerging Issues Committee** monitors emerging policy issues affecting the Society and the legal profession, undertakes and directs research into such policy issues and develops strategic plans relating to such policy issues. Issues of equity and diversity are also an

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<sup>13</sup> Section 16.1 of By-law 9 - Committees.

integral component of the work of committees such as the **Professional Regulation Committee**<sup>14</sup> and the **Professional Development, Competence and Admission**<sup>15</sup>.

31. Equity and diversity policy initiatives, and other policy options developed by committees, are identified through various sources, including Law Society staff members, EAG, benchers and stakeholders.

### **Adopted Policies**

32. The Law Society has adopted a series of policies that further the achievement of equity and diversity within the profession, and the work in that area is ongoing.<sup>16</sup> Policies are made readily available to members and the public, through the Law Society and the Discrimination & Harassment Counsel web sites and are available in hard copies. They are also provided to law firms on demand and are used as resource materials for equity and diversity training and education programs. Model policies are available in French and English.

33. Adopted policies include:

- a. *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements (Model Policy on Accommodations)*<sup>17</sup>.

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<sup>14</sup> The mandate of the Professional Regulation Committee is to develop for Convocation's approval, (a) policy options on all matters relating to regulation of the profession in the areas of professional conduct and fitness to practise; and

(b) policies and guidelines for the prosecution of unauthorized practice.

<sup>15</sup> The mandate of the Professional Development, Competence and Admissions Committee is to develop for Convocation's approval,

(a) policy options on all matters relating to the professional competence of members;

(b) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;

(c) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;

(d) policies to govern the transfer to the Society of persons qualified to practise law in any province or territory of Canada; and

(e) policies respecting the Bar Admission Course.

<sup>16</sup> For example, the Law Society is drafting a model policy on same-sex benefits.

<sup>17</sup> *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, March 2001) available on Law Society web site at: <http://www.lsuc.on.ca/equity/publications.jsp>. Available in French and English.

- b. *Preventing and Responding to Harassment and Discrimination in the Workplace: A Guide to Developing a Policy for Law Firms (Model Policy on Harassment and Discrimination)*<sup>18</sup>.
- c. *Guide to Developing a Policy Regarding Workplace Equity in Law Firms (Model Policy on Workplace Equity)*<sup>19</sup>.
- d. *Guide to Developing a Policy Regarding Flexible Work Arrangements (Model Policy on Flexible Work)*<sup>20</sup>.
- e. Rule 5.03 of the *Rules of Professional Conduct*<sup>21</sup> prohibits sexual harassment and Rule 5.04 prohibits harassment based on the grounds other than sex and discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, same-sex partnership status, age, record of offences, marital status, family status and/or disability.
- f. Rule 1 of the *Rules of Professional Conduct*<sup>22</sup> includes a commentary that “a lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter”.

### **Proposed Strategy**

- 34. The Law Society has begun to implement Recommendation 1 but the process is by no means complete.
- 35. The Law Society has adopted a policy development process that identifies equity issues, analyzes the impact of policies on equality and integrates equity considerations into background papers. The Equity Initiatives Department and the Equity and Aboriginal Issues Committee are included in this process.

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<sup>18</sup> *Preventing and Responding to Harassment and Discrimination in the Workplace: A Guide to Developing a Policy for Law Firms* (Toronto: Law Society of Upper Canada, March 2002), available on Law Society web site, *ibid*. Available in French and English.

<sup>19</sup> *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, March 2003), available on Law Society web site, *supra* note 17. Available in French and English.

<sup>20</sup> *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, March 2003), available on Law Society web site, *supra* note 17. Available in French and English.

<sup>21</sup> *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, November 2000), available on LSUC web site : [www.lsuc.on.ca](http://www.lsuc.on.ca). Available in French and English.

<sup>22</sup> *Ibid*.

36. A consistent equity and diversity analysis would make the decision-making process of the Law Society more effective. The terms “equity and diversity” have not been defined, nor have the criteria to analyze the impact of policies on equality-seeking, Aboriginal and Francophone communities and members been developed. Both should be agreed upon so that staff members, bench committees and Convocation engage in consistent analyses of the equity implications in their work and therefore promote diversity.
37. In an ideal world, Convocation should always be representative of the diversity of the profession. Elected bodies cannot guarantee that they exactly duplicate the elements of their constituency, and should make efforts to include within their consultative process the society they represent. Accordingly, the Law Society should formalize its consultation with organizations representing equality-seeking, Aboriginal and Francophone communities to assist in the review of proposed policies and programs and an overview of the impact of their implementation.
38. The Working Group recognizes the progress that the Law Society has made in developing policies that promote the achievement of equity and diversity within the legal profession.
39. **The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:**
- a. **A definition of “equity and diversity” should be developed and an equity decision-making template formulated to guide the Law Society in its policy development activities.**
  - b. **A process should be created by which all policy development activities undertaken by staff, committees (including working groups, task forces and sub-committees) and Convocation are judged against the equity template. Reports should contain a specific section to indicate how equity principles were considered.**
  - c. **Guidelines should be developed to provide direction and a consultation framework to committees and staff on issues that require input from equality-seeking, Francophone and Aboriginal communities.**

## *Recommendation 2: Study and Research*

**To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, 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.**

### **Initiatives Adopted by the Law Society**

#### **Institutional Resources**

40. The Law Society allocates financial and human resources to the conduct of research on the legal profession, and research activities are ongoing.<sup>23</sup>

#### **Research Undertaken Prior to the Bicentennial Report**

41. The *Bicentennial Report* refers to research activities undertaken prior to 1997 relating to women and equality-seeking communities, Aboriginal peoples and Francophones in the legal profession, including:
- a. In 1989, the Law Society examined the employment experience and demographic makeup of its membership.<sup>24</sup> The examination revealed differences between the career experiences of women and men in the legal profession, but provided only limited explanations for the differences.
  - b. In 1990, the Law Society published *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the Bar Between 1975 and 1990* (the *Transitions Report*)<sup>25</sup>, that 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.
  - c. 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

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<sup>23</sup> Each department is responsible for undertaking research activities relevant to its operations. The following departments have allocated human and financial resources to undertake 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: Policy Secretariat including Equity Initiatives, Communications Department, Professional Development and Competence Department, Professional Regulation, Human Resources and Client Services Centre.

<sup>24</sup> *Bicentennial Report*, *supra* note 1 at 6.

<sup>25</sup> *Transitions report*, *supra* note 9.

follow-up study entitled *Barriers and Opportunities within Law, Women in a Changing Legal Profession, 1990-1996*<sup>26</sup>. The report shows that new issues were emerging, such as issues of managing dual careers, family responsibilities and workplace commitments.

- d. In 1992, the Law Society sponsored the *Survey of Black Law Students, Black Articling Students, and Recently Called Black Lawyers, July – August 1992*<sup>27</sup> that presents information about the experience and perceptions of African-Canadians who have pursued a career in the Ontario legal profession.

### **Research Activities since the Bicentennial Report**

42. The Law Society has, since the adoption of the *Bicentennial Report*, continued to allocate human and financial resources to research on the demographics of the legal profession. The following studies were undertaken by the Law Society:

- a. The *Report on Equity Initiatives and Resources in the Legal Profession*<sup>28</sup> outlines equity and diversity initiatives undertaken by legal organizations and identifies measures to be undertaken by organizations to foster access to the legal profession.<sup>29</sup>

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<sup>26</sup> *Barriers and Opportunities* report, *supra* note 9. Available in French and English.

<sup>27</sup> Felix N. Weekes and A. Elliot Spears, *Survey of Black Law Students, Black Articling Students, and Recently Called Black Lawyers* (Toronto: Law Society of Upper Canada, July-August 1992).

<sup>28</sup> *Report on Equity Initiatives and Resources in the Legal Profession* (Toronto: Law Society of Upper Canada with the financial contribution of the Department of Canadian Heritage, January 2003). Available in French and English on the Law Society web site at [www.lsuc.on.ca](http://www.lsuc.on.ca).

<sup>29</sup> Prepared with the financial support of the Department of Canadian Heritage. The following organizations participated in the consultation process: Aboriginal Legal Services of Toronto; Akitsiraq Law School Program – a Partnership between the Akitsiraq Law School Society, University of Victoria Faculty of Law and Nunavut Arctic College; ARCH: A Legal Resource Center for Persons with Disabilities; Association des juristes d’expression française de l’Ontario; Association des juristes d’expression française du Nouveau-Brunswick; Association of Chinese Canadian Lawyers of Ontario; Barreau du Québec; Black Law Students’ Association of Canada; Canadian Association of Provincial Court Judges; Canadian Bar Association; Carleton University; Chambre des Notaires du Québec; Council of Canadian Law Deans; Department of Justice Canada / Ministère de la justice Canada; Indigenous Bar Association; Indigenous Black and Mi’kmaq Programme, Dalhousie University; Law Society of Alberta; Law Society of British Columbia; Law Society of Manitoba; Law Society of New Brunswick; Law Society of Saskatchewan; Law Society of Upper Canada; Law Society of Upper Canada - Discrimination and Harassment Counsel Program; Ministry of the Attorney General, Ontario / Ministère du Procureur général; National Association of Women and the Law / Association nationale de la femme et du droit; National Judicial Institute / Institut national de la magistrature; Native Law Center of Canada; New Brunswick Human Rights Commission; Newfoundland Human Rights Commission; Nova Scotia Barristers’ Society; Nova Scotia Human Rights Commission; Ontario Bar Association; Ontario Human Rights Commission; Queen’s University Faculty of Law Education Equity Program; Rotiio<sup>7</sup> taties; University of Ottawa, Faculty of Law, Common Law Section / Section de common law; Urban Alliance on Race Relations; Women’s Law Association of Ontario; Women’s Legal Education and Action Fund.

- b. The *Lawyers in Ontario: Evidence from the 1996 Census (the Ornstein Report)*<sup>30</sup> report analyses the 1996 Canadian Census and determines the representation, work situations and income of lawyers in Ontario. The report focuses on Aboriginal peoples, racialized persons, Francophones and women and includes comparisons of the legal profession to the population and to other professions.
- c. *Achieving Equity for Women in Law Firms: A Report on Policies and Practices for Change*<sup>31</sup> provides tools, ideas, and sources for law firms trying to advance equality for women in the legal profession in Ontario.
- d. *Equity and Diversity for Law Firms: A Literature Review and Bibliographical Essay*<sup>32</sup> is a literature review of written and audio-visual documentation on the issues of diversity and equality in law firms.
- e. *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices*<sup>33</sup> provides an overview of legal developments and best practices on the duty to accommodate religious beliefs and practices, gender related practices and disabilities.
- f. The *Discrimination and Harassment Counsel (DHC) Semi-Annual Reports*<sup>34</sup> provide an overview of frequency and method of contact with the DHC program, the types of inquiries and complaints, and statistics relating to the complainants and respondents.
- g. *A Response to the Canadian Bar Association's Report and Recommendations on Racial Equality in the Legal Profession*<sup>35</sup> contains the Law Society's response to

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<sup>30</sup> Michael Ornstein, *Lawyers in Ontario*, *supra* note 11.

<sup>31</sup> Jane Allan and Laura Heller, *Achieving Equity for Women in Law Firms: A Report on Policies and Practices for Change* (Toronto: March 2002) prepared for the Law Society of Upper Canada.

<sup>32</sup> Laura Heller, *Equity and Diversity for Law Firms: A Literature Review and Bibliographical Essay* (Toronto: March 2001). Prepared for the Law Society of Upper Canada.

<sup>33</sup> *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities, Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001).

<sup>34</sup> *Discrimination and Harassment Counsel Semi-Annual Reports* (Toronto: Law Society of Upper Canada). The first semi-annual report was published for the period beginning in September 1999 and ending in December 1999. Reports are available semi-annually following the first report.

<sup>35</sup> *A Response to the Canadian Bar Association's Report and Recommendations on Racial Equality in the Legal Profession* (Toronto: Law Society of Upper Canada, 2000).

the Canadian Bar Association's report on racial equality in the Canadian legal profession and identifies developments within the legal profession.<sup>36</sup>

43. The Law Society also regularly publishes reports of its initiatives and programs, including the following:

- a. The *Articling Placement Reports*<sup>37</sup>, published annually, provide placement statistics for students enrolled in the Bar Admission Course (BAC), describes programs and initiatives in place to assist students with their articling job search and includes placement rates for self-identified students (Aboriginal, Francophone, gay, lesbian, mature and racialized students and students with disabilities).
- b. The *Articling Interview Survey Report*<sup>38</sup> evaluated the frequency with which firms asked inappropriate questions during recruitment for the 2001-2002 articling term. The Law Society publishes twice a year, in the Ontario Reports, a bilingual summary of Student Hiring Practice Guidelines.
- c. The BAC maintains information about students enrolled in the distance learning option to complete the BAC and students enrolled in the BAC course, including information about students who voluntarily self-identify. The BAC also maintains information about requests for accommodations made by students.
- d. The *Professional Regulation Division Quarterly Reports* include file management and statistical information on complaints resolution, complaints review, investigations, and discipline and trustee services. The reports outline statistical information on case types, including sexual misconduct, harassment and/or discrimination.<sup>39</sup>

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<sup>36</sup> Convocation approved a number of recommendations regarding the CBA report and has implemented all its recommendations. See Working Group on Racial Equality in the Legal Profession, *The Challenges of Racial Equality: Putting Principles into Practice* (Ottawa: Canadian Bar Association, 1999).

<sup>37</sup> The Law Society publishes the *Articling Placement Report* annually and maintains ongoing statistical information about articling placements. The *Articling Placement Report 200*, *supra* note 5, is available on the Law Society Web Site at [www.lsuc.on.ca](http://www.lsuc.on.ca).

<sup>38</sup> *Articling Interview Survey Report* (Toronto: Law Society of Upper Canada, 2001), available on the Law Society Web Site at [www.lsuc.on.ca](http://www.lsuc.on.ca).

<sup>39</sup> *Professional Regulation Division Quarterly Report* (Toronto: Law Society of Upper Canada, March 2003) presented to Convocation for information on April 25, 2003.

- e. The Law Society maintains a database on members in the legal profession. The information, collected through the Member's Annual Report, assists in identifying trends in the legal profession, such as the percentage of women and men, year of call, type of practice and practice area, languages spoken, age and ability to represent clients in the French language.

### **Ongoing Initiatives**

44. As mentioned above, the Law Society continues to promote and support research initiatives in the area of equity and diversity. Research currently underway includes:

- a. Professor Kay's follow-up study to the *Transitions Report*<sup>40</sup> and the *Barriers and Opportunities Report*<sup>41</sup> will determine changes in legal practices for men and women, including promotions, income, areas and types of practice and departures and re-entries to practice.
- b. Professor Kay's study of contemporary law practices focuses on the content of legal work and changing dimensions of law practice. The study also looks into legal training and early career development of lawyers from equality-seeking, Francophone and Aboriginal communities.
- c. The Small Firm and Sole Practitioner Task Force of the Law Society will examine the ongoing survival of small law firms and sole practices. The Task Force will study means to assure access to legal services in small communities and to address the financial viability of small firms and sole practices. It will also include specific attention to the experience of lawyers from equality-seeking, Francophone and Aboriginal communities practicing in small firms.
- d. Professor Ornstein's analysis of the 2001 Canada Census data will provide a demographic analysis of the legal profession based on gender and race.
- e. In 2003, the Law Society adopted guidelines for lawyers acting in Aboriginal residential school litigation cases and is developing resources related to the guidelines.
- f. In 2003, Convocation approved a \$100,000 contribution to a study being conducted by law schools in Ontario (with the exception of the University of

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<sup>40</sup> *Supra* note 9.

<sup>41</sup> *Supra* note 9.

Toronto) on the effects of rising tuition fees on the accessibility of legal education.

## **Proposed Strategy**

45. The Law Society has made significant progress in implementing Recommendation 2. The Working Group commends the Law Society for the research activities and studies undertaken to date. Such research facilitates the development of policies, programs, and services that further the achievement of equity and diversity within the profession.
46. Studies on the impact of gender in the legal profession, such as *Transitions and Barriers and Opportunities* have been valuable in helping the Law Society identify issues women face in the profession. Demographic analysis of the legal profession based on the Canada Census data has also provided valuable information about the legal profession and representation of members based on race, language and gender.<sup>42</sup> Such qualitative and quantitative studies should continue to be commissioned by the Law Society on a regular basis.
47. The changing demographics of the legal profession mandates that future studies address the intersecting realities<sup>43</sup> of gender, race, culture and language, sexual identity, disability and Aboriginality on the lives of lawyers. Systemic barriers faced by racialized men and women and members of other equality-seeking communities in the legal profession have not been the subject of studies. The Law Society should undertake and maintain such research initiatives.
48. The Law Society has not undertaken any research on barriers faced by law students and lawyers with disabilities within the legal profession. In 2001, the Law Society of British

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<sup>42</sup> EAG proposes that the Law Society collect information about its membership. For example, members could be asked to self-identify on the Member's Annual Report (See Appendix 2).

<sup>43</sup> The concept of intersectionality has been defined as intersectional oppression that arises out of the combination of various oppressions that, together, produce something unique and distinct from any one form or discrimination standing alone. An intersectional approach takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant grounds. See *An Intersectional Approach to Discrimination, Addressing Multiple Grounds in Human Rights Claims* (Toronto: Ontario Human Rights Commission, October 2001).

Columbia published a qualitative study.<sup>44</sup> We propose that in consultation with the disability community, research in Ontario be carried out that will build on this study to enable the Law Society to develop policies to address disability issues.

49. We also propose that, in consultation with Rotiio> taties, research on the barriers faced by Aboriginal students and lawyers be undertaken so that policies can be developed to address the issues identified.
50. Women, Aboriginal peoples, racialized persons and persons with disabilities often leave the profession after law school or the Bar Admission course, and within the first ten years of practice in numbers that far exceed non-equality seekers. We propose that the Law Society undertake research to determine what influences their decisions to leave, the barriers they encountered and what changes would be necessary to have enabled them to remain in or return to the profession.
51. **The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:**
  - a. **Guidelines should be developed to ensure that an equity analysis, including an intersectionality analysis that identifies heightened vulnerabilities to discrimination, is integrated within studies.**
  - b. **A strategic research plan<sup>45</sup> should be developed in consultation with EAG, AJEFO and Rotiio> taties. The research plan should, on a biennial basis, identify issues facing members of equality-seeking, Aboriginal and Francophone communities. The Plan should recommend a budget for Convocation's consideration.<sup>46</sup>**

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<sup>44</sup> *Lawyers with Disabilities*, *supra* note 8.

<sup>45</sup> The plan should include adequate resources for:

- The longitudinal study of the analysis of gender within the legal profession, to be repeated with the same cohort every six years.
- The analysis of Canadian Census data to be undertaken within a reasonable period of time following each release of the data by Statistics Canada.
- Studies on the barriers faced by members with disabilities and members of the public with disabilities in accessing legal services.
- Studies on the barriers faced by Aboriginal law students and lawyers.
- Studies to identify the factors that may constitute barriers to entering, remaining and re-entering the profession for members from equality-seeking communities.

<sup>46</sup> EAG recommends that the Law Society expand its research and studies to include intersectional analysis of the equality grounds including gender, race, disability and sexual orientation (see Appendix 2). Rotiio> taties recommends that the Law Society commission a demographic analysis of the Aboriginal lawyers in Ontario and

- c. **The following three research areas merit particular and urgent attention and should be identified as priorities:**
  - i. **Studies on barriers faced by students and members with disabilities;**
  - ii. **Studies on barriers faced by Aboriginal students and members of the profession;**
  - iii. **Studies to identify the factors that may constitute barriers to entering, remaining and re-entering the profession for members from equality-seeking, Francophone and Aboriginal communities.**
- d. **The Equity Advisor should be responsible for monitoring the implementation of the research plan.**

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across Canada. It also recommends that the Law Society commission a longitudinal study of students from equality-seeking communities to determine the pattern of participation in the profession from law school, to obtaining articles, to bar admission examination, to practice and longevity in the profession (see Appendix 2).

### ***Recommendation 3: Equity and Diversity Audit of the Law Society Programs and Services***

**The Law Society should evaluate its programs and services on an ongoing basis to ensure that they operate so as to promote the achievement of equity and diversity within the legal profession.**

#### **Initiatives Adopted by the Law Society**

##### **Corporate and Departmental Review Process**

52. In 2002, the Law Society strengthened its commitment to integrating equity and diversity within its operations. It recognized equity and access to justice as one of four core strategic areas with professional development and competence, professional regulation and policy and legal affairs. A key focus for the Law Society is now to integrate equity and diversity principles within all operational departments and the programs, products and services they provide.

53. Every department has the responsibility of integrating principles of equity and diversity within its goals, strategic directions and operations. Each department regularly review goals, strategic directions and operations, including integrated equity and diversity initiatives.<sup>47</sup> The Law Society relies on the criteria identified in the recommendations set out in the *Bicentennial Report* to identify gaps, and plans were made to address those gaps.

##### **Accessibility Audit of the Law Society's Services and Programs**

54. In 2000, as a result of the recommendations outlined in the *Bicentennial Report*, Handidactis Inc. completed a physical accessibility audit of the Law Society's Toronto facilities. The report provided a blueprint for improvements to the Toronto building to increase access for persons with disabilities. Such accommodations were identified by as priorities in all office and building renovations (See Appendix 3). For example, the Law Society installed a fire and security system designed to accommodate persons with disabilities, increased the number of door buttons and operators, installed strobe light

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<sup>47</sup> The Chief Executive Officer provides Convocation with semi-annual Operational Reports and annual Financial Statements. Each department, and the Law Society, review on an on-going basis goals, strategic directions and action plans.

warnings and audible fire alarms, modified fire pull stations and elevator control panels to be at an accessible height for persons in wheelchairs, improved signage and modified the main reception and Client Service Centre reception areas to accommodate persons in wheelchairs.

55. The Law Society also made the following changes:

- a. It provides materials in formats that may be read by recognition/playback software;
- b. The web site may be accessed in text format;
- c. It provides information technology for distance learning and wireless communication;
- d. It has an AT & T language telephone line and translation services for clients of the Client Service Centre; and
- e. It has a TTY telephone line for persons with hearing impairments.

### **Proposed Strategy**

56. The Working Group finds that the Law Society has made substantial efforts to implement this recommendation and encourages it to proceed further in its efforts to do so.

57. The management of the Law Society recognized equity as a strategic corporate area and management has made efforts to integrate equity and diversity within the operational departments. Examples of initiatives to meet these goals include publications by the Law Society in languages other than English and French, and the establishment of an Education Support Services Centre to provide support to students-at-law. The Law Society has also made its services, facilities and programs more accessible to members and clients with disabilities.

58. **The Working Group proposes that the Equity and Aboriginal Issues Committee report annually to Convocation on whether the Law Society's programs and initiatives are promoting equity and diversity.**

## ***Recommendation 4: Monitoring and Evaluation of Equity and Diversity Initiatives***

**The Law Society should formally monitor and evaluate the effectiveness of current and future equity and diversity initiatives.**

### **Initiatives Adopted by the Law Society**

#### **Formal Monitoring and Evaluation Process**

59. The Law Society monitors and evaluates the effectiveness of current and future equity and diversity initiatives on an ongoing basis. The Chief Executive Officer (CEO) presents semi-annual operational reports to Convocation<sup>48</sup> that include a review of corporate and departmental programs in support of the Law Society's mandate to govern the profession in the public interest. The CEO's Reports to Convocation outline Law Society equity and diversity initiatives.
  
60. Senior Managers are responsible for evaluating and monitoring their programs, including equity and diversity initiatives. Programs are evaluated by using formal processes and indicators. Evaluation processes include formal evaluations, analysis of statistical information and impact on financial and human resources.
  
61. The following evaluation and monitoring processes are in place:
  - a. Participants at public education events formally evaluate the programs. Other indicators of effectiveness include the consolidation of partnerships with stakeholders, the number of participants, the quality of programs and the materials and resources developed for the program
  - b. The DHC reports semi-annually to Convocation about the number of calls received, the types of calls and the resolution. Participants in the program may formally evaluate the services by completing an evaluation form.
  - c. The BAC monitors and evaluates programs through formal evaluation processes. BAC students evaluate instructors, courses and programs. The success of the program is also assessed by considering indicators such as pass/fail statistics,

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<sup>48</sup> Last CEO's Operational Report to Convocation, June 26, 2003.

attendance rate at lectures and feedback from instructors. The BAC also maintains statistics on the number of students and success rates of those registered in the distance-learning option.

- d. Articling programs are evaluated through formal processes, including surveys, studies and statistical analysis.
- e. The Education Support Services Centre monitors and evaluates programs through formal processes, such as statistical analysis and feedback from participants.
- f. The Mentoring Program is monitored through formal processes, such as evaluations, regular contacts with participants and statistical analysis.
- g. The student outreach initiatives and the Elder's Program are monitored by using success indicators such as the number of partners and participants in programs, formal evaluations, and number of events.
- h. The Equity and Diversity Training Program is monitored through formal processes, including evaluation forms, number of participants and number of programs offered. Other success indicators include follow-up requests for assistance in developing equity initiatives within law firms.<sup>49</sup>
- i. The Client Service Centre has developed monitoring and evaluation processes for all its programs, including statistical information and call monitoring.
- j. Communications initiatives are monitored through formal and informal processes. Success indicators include number of press releases on equity issues, coverage of Law Society initiatives by community press and the ethnic media.<sup>50</sup>

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<sup>49</sup> Since its inception in 2000, the Equity and Diversity Program has designed and delivered workshops on harassment, discrimination and other equity issues to associates, partners, para-legals and staff of large, medium and small law firms and other legal organizations. The workshops are custom designed to address the needs of the specific law firms or legal organization. Workshops have been offered to more than 3000 lawyers, law clerks, students-at-law, managers and staff of legal organizations. Participants formally evaluate the workshops and evaluations have shown that the program is very successful. Lawyers and non-lawyers have offered the workshops.

<sup>50</sup> Indicators of success include the promotion of the honorary degree ceremony for the Governor General in February 2003. The Law Society succeeded in having 21 media outlets attend the event, including every Chinese print and electronic outlet from Toronto to Ottawa. Also, media coverage for the 2003 Call to the Bar Ceremonies included coverage in London, Ottawa, Toronto and nationally about Chief Roberta Jamieson's honorary degree, students with disabilities who were called to the Bar, the diversity of the student population called to the bar, Chinese students who were prize winners. Strong working relationships have also been established with members of the Aboriginal press throughout Ontario and nationally. For example, newspapers such as Tansi and the Aboriginal Times are just two newspapers that are beginning to cover Law Society news and events and promoted the 2003 Bench Election.

## **Proposed Strategy**

62. The Law Society has made substantial efforts to implement this recommendation. However, there are no criteria in place that enable the Law Society to judge the success of its initiatives.
  
63. Current equity initiatives are numerous and vary in their conception, content and implementation. There is no consistency in evaluation methods, reporting mechanisms and success indicators. The diverse formats and types of initiatives pose challenges to the development of a universal evaluation process. However, there is value in establishing an evaluation process template to guide staff and benchers in this process.
  
64. Since 1997, the Law Society has actively promoted many equity initiatives. The Working Group observes that there should be an analysis of whether these initiatives have been effective.
  
65. **Therefore, the Working Group proposes that the Equity and Aboriginal Issues Committee report annually to Convocation on the effectiveness of its equity initiatives.**

## ***Recommendation 5: Resource for the Profession***

**In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.**

### **Initiatives Adopted by the Law Society**

#### **Initiatives that Maintain the Tools to Function as a Resource to the Profession**

66. The *Bicentennial Report* provides examples of the kind of initiatives that may assist in

achieving diversity and equity within the legal profession<sup>51</sup>, such as:

- a. Studying initiatives taken by other organizations;
- b. Undertaking consultations with stakeholders and law firms to determine if they have conducted organizational assessments;
- c. Providing assistance to law firms and legal organizations;
- d. Continuing to make available information relating to Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct*<sup>52</sup>;
- e. Continuing to provide ongoing training for the legal profession;
- f. Continuing to develop and distribute to law firms model programs and policies; and
- g. Establishing structured mentoring programs.

67. All the initiatives provided as examples in Recommendation 5 of the *Bicentennial Report* have been developed and are operational. Such initiatives are outlined below.

#### *Studying Initiatives taken by other Organizations*

68. The Law Society funded the publication *Achieving Equity for Women in Law Firms: A Report on Policies and Practices for Change*<sup>53</sup> that outlines tools and resources to advance equality for women lawyers. It also provided funding and human resources to develop the report entitled *Equity and Diversity for Law Firms: A Literature Review and*

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<sup>51</sup> *Bicentennial Report*, *supra* note 1 Appendix B at 41.

<sup>52</sup> *Rules of Professional Conduct*, *supra* note 21.

<sup>53</sup> *Achieving Equity for Women in Law Firms*, *supra* note 31..

*Bibliographical Essay*<sup>54</sup> that analyzes written and audio-visual documentation on the issues of diversity and equality in law firms.

*Consulting to Determine Whether Stakeholders Conduct Organizational Assessments*

69. In November 2002, the Law Society undertook a national consultation with legal organizations to share information about initiatives and to encourage the development of collaborative strategies amongst stakeholders. The report entitled *Report on Equity Initiatives and Resources in the Legal Profession*<sup>55</sup> outlines equity initiatives and resources of over sixty organizations across Canada, including provincial law societies, the judiciary, law students' associations, law schools, government, community groups, human rights commissions and associations of lawyers.

*Assistance to Stakeholders to Undertake Assessments of Programs*

70. The Equity Advisor and other staff members provide support and assistance to law firms and legal organizations to assess their programs, and offers custom-designed training programs to law firms.

*Making Available Information about the Rules of Professional Conduct*

71. The Law Society continues to publish information relating to Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct* in its BAC materials<sup>56</sup>, articling materials<sup>57</sup>, training materials for new instructors of the BAC<sup>58</sup>, training materials for lawyers and law firms<sup>59</sup>, model policies on harassment and discrimination<sup>60</sup>, DHC program semi-annual reports, on the web site and other documentation provided to members of the profession.

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<sup>54</sup> *Equity and Diversity for Law Firms*, *supra* note 32.

<sup>55</sup> *Report on Equity Initiatives and Resources in the Legal Profession*, *supra* note 28.

<sup>56</sup> The Professional Responsibility BAC course includes materials and formal instructions on Rules 5.03 and 5.04 of the *Rules of Professional Conduct*.

<sup>57</sup> The *Articling Handbook 2003* (Toronto: Law Society of Upper Canada, 2003) includes a chapter on harassment and discrimination and the *Rules of Professional Conduct*.

<sup>58</sup> New instructors receive materials on inclusive pedagogy. The materials include references to Rules 5.03 and 5.04 of the *Rules of Professional Conduct*.

<sup>59</sup> Custom-designed training programs for law firms on preventing and addressing harassment and discrimination include materials and power point presentation on the Rules 5.03 and 5.04 of the *Rules of Professional Conduct* and an analysis of legal development in that area.

<sup>60</sup> All Law Society model equity policies include an analysis of Rules 5.03 and 5.04 and legal developments in the area of harassment and discrimination. Available on Law Society web site at: [www.lsuc.on.ca](http://www.lsuc.on.ca)

*Providing Ongoing Training to the Legal Profession*

72. The Equity and Diversity Training Program offers custom-designed equity and diversity training programs to the legal profession. Each session is tailored to the specific needs of the law firm. Programs are delivered in many formats, such as seminars, workshops and informal education sessions and resource materials are provided, such as model policies, best practices, case studies and case law, checklists and referrals to other sources. Topics include:

- a. Creating an inclusive and positive workplace environment;
- b. The duty to accommodate creed, gender, and disabilities;
- c. Preventing and responding to harassment and discrimination;
- d. Workshop for advisors appointed to handle complaints of harassment and discrimination;
- e. Diversifying and expanding the firm's client base;
- f. Bias free hiring;
- g. Relevance of gender, race, sexual orientation, class and disability in the practice of law;
- h. Meeting your legal responsibilities when serving clients with disabilities;
- i. Providing legal services to persons with mental health disabilities; and
- j. Drafting and implementing equity and diversity policies for law firms.

73. CLE and public education programs include information about the current demographics of the legal profession, barriers experienced by lawyers, impact of these barriers on organizations, the responsibilities of individuals to ensure that barriers do not exist and/or are addressed.

74. The Law Society works in partnership with legal associations and communities to educate members of the public and the profession on equity and diversity issues. Each year, it hosts and participates in a number of public education events, such as:

- a. Louis Riel Day event;
- b. United Nations Human Rights Day event;
- c. Black History Month event;

- d. International Women’s Day event;
  - e. Law Week Proclamation Ceremony ;
  - f. National Aboriginal Day event;
  - g. Lesbian and Gay Pride event;
  - h. Access Awareness Week.
75. The Public Education Program is ongoing and partners have included: Pro Bono Law Ontario, Association des juristes d’expression française de l’Ontario (AJEFO), Rotiio > tities, Aboriginal Legal Services of Ontario, Metis National of Ontario, Association for Native Development and the Performing and Visual Arts, City of Toronto, Sexual Orientation and Gender Identity Committee of the Ontario Bar Association (OBA), Feminist Legal Analysis Committee of the OBA, A Legal Advocacy Resource Centre for Persons with Disabilities, South Asian Lawyers Association, Canadian Association of Black Lawyers, Chinese Canadian National Council, the Urban Alliance on Race Relations, Women’s Legal Education Action Fund, Black Law Students Association of Canada, African Canadian Legal Clinic, HIV/AIDS Legal Network, the Multicultural History Society of Ontario and many others.
76. The Law Society also supports, provides office space, and coordinates educational activities with other organizations mandated to promote equity, such as the Ontario Justice Education Network (OJEN)<sup>61</sup> and Pro Bono Law Ontario<sup>62</sup>.

#### *Development of Model Programs and Policies*

77. Model programs and policies are developed on an ongoing basis and are widely circulated to the legal profession.<sup>63</sup>

#### *Mentoring Program*

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<sup>61</sup> OJEN brings together leading institutions and individuals from the legal, educational and other sectors to work on initiatives designed to foster the public’s understanding of our justice system.

<sup>62</sup> Pro Bono Law Ontario is a *pro bono* resource centre that provides a coordinated approach to the delivery of *pro bono* legal services in Ontario.

<sup>63</sup> The Law Society adopted the *Model Policy on Harassment and Discrimination*, *supra* note 18, the *Model Policy on Accommodations*, *supra* note 17, the *Model Policy on Workplace Equity*, *supra* note 19 and the *Model Policy on Flexible Work*, *supra* note 20. All policies are updated on a regular basis.

78. The Law Society has created a structured mentoring program<sup>64</sup> for high school and university students, students-at-law and recent calls to the bar.<sup>65</sup>
79. Staff members also coordinate student outreach initiatives to promote law as a career. Equity Initiatives staff work with school boards from across the province, make presentations to high school and university students and participate in career fairs and community events. Examples of events include:
- a. Presentations to students at Jarvis Collegiate;
  - b. Louis Riel Day Public Education Event for High School Students;
  - c. Women’s Remembrance Day Public Education Event for High School Students;
  - d. Black History Month Event for High School Students;
  - e. International Women’s Day Public Education Event for High School Students;

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<sup>64</sup> Since the initiative was established by the Equity Initiatives Department in 2000, over 150 lawyers have volunteered as mentors. Mentors come from various backgrounds, different areas of practice, and numerous firms and organizations. Currently, there are over 50 volunteer mentors who are available to mentor. Mentors come from small and large firms, and provincial and federal governments. Some are employed as in-house counsel in organizations and companies, and a handful are sole practitioners. Mentors have indicated their experiences in the following areas of practice: corporate and commercial law, criminal law, securities law, real estate law, civil litigation, employment law, constitutional law, administrative law, human rights, Aboriginal issues, tax law and family law. Approximately one-third have self-identified as members of equality-seeking communities and members of lawyers’ associations that promote equity and diversity in the legal profession.

Approximately 95% of participants are high school students and 5% are students-at-law and new lawyers. Almost all who have applied in the program have self-identified as members of equality-seeking communities. An overwhelming majority have indicated being members of a racialized community.

The initiative began in the Toronto area and has expanded to Ottawa. There are efforts underway to promote the initiative in other centres (Kingston, London, Windsor, Sudbury, Thunder Bay). Efforts include targeted mailing to high schools and universities to raise awareness of the program. The initiative is being promoted to over 300 high schools across Ontario, with a potential reach of over 245,000 students. In addition, close to 1,500 teachers who are guidance/career counselors are being informed about the initiative. The initiative also targets students in universities, law schools, students-at-law, and new calls to the Bar. University career centres and student associations are being contacted to inform them about the initiative.

There are many opportunities that have been identified to expand the initiative and build its awareness. More schools, firms and organizations will be contacted to let them know the initiative exists and how they can participate. Through marketing and communication efforts, the list of mentors is expected to grow as more members find out about the initiative. We are going to expand our marketing and communication efforts to more members in more parts of the province. The different types of mentoring relationships that can be formed allow for greater flexibility in matching a mentor and a mentee who have different types of needs when forming a mentoring relationship. In addition to matching mentors and mentees, visiting high schools and giving presentations to students has been a very successful activity in reaching out to more students from diverse communities. This activity will continue to be offered to more schools.

<sup>65</sup> Information available on Law Society web site at [www.lsuc.on.ca](http://www.lsuc.on.ca)

- f. Women's History Month Event for High School Students; and
- g. Francophone Public Education Event for High School Students.

### **Other Initiatives**

80. Other programs have been created to implement Recommendation 5 of the *Bicentennial Report*. Such programs are outlined below.

#### *Discrimination and Harassment Counsel Program*

81. In June 2001, the Law Society adopted the DHC Program. Funded by the Law Society, the program operates at arms-length, and is available free-of-charge to the Ontario public and lawyers.<sup>66</sup> Since its creation, the person who has held the position of DHC has been bilingual (French and English).

#### *Making the Tools and Resources Available*

82. The Law Society's web site is regularly updated to enhance access to available tools and resources. In 2003, the web site was made more accessible to persons with visual impairment.

83. The French Language Services Advisor ensures that core publications of the Law Society, along with regulatory materials such as by-laws and regulations, are translated into the French language. The French Language Services Advisor has been actively involved in the development of the Law Society's French web site.

84. The *Ontario Lawyers Gazette* publishes useful tools and resources in French and English, including news about equity and diversity initiatives.<sup>67</sup>

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<sup>66</sup> Minutes of Convocation, June 22, 2001.

<sup>67</sup> The Law Society has undertaken quantitative research into what members want to read about and their overall impressions of the Gazette. This research, which asked over 200 members more than 60 questions, was conducted in 2000 and formed the basis of the improvements we have made and the editorial line-ups we have created over the past three years. The Law Society is now preparing to go back into the field with a sample study of more than 400 members to determine whether we are on the right track and to see what members want out of the Gazette. The Law Society will incorporate questions about equity and diversity.

In developing the editorial line-up for each issue, significant efforts have been made to include articles that incorporate equity and diversity. In fact, several focus sections of the OLG are dedicated to issues of equity and diversity including full coverage of the conference last November. There has been a significant increase in the Law Society's coverage of equity and diversity since 2000.

85. The Law Society created a comprehensive bilingual web site for the DHC program that provides valuable information about the program, frequently asked questions, links to publications and other helpful resources.<sup>68</sup>

*The Client Service Centre and Membership Services*

86. The Client Service Centre is the front line, one-stop access point to the Law Society. Staff members effectively deal with a range of requests from both the public and the legal profession. In 2002, the Centre handled 432,000 transactions from members and the public, via letters, e-mails, faxes, calls and in-person inquiries.

87. The call centre of the Client Service Centre functions in French and English and offers services in a number of other languages.

88. Other services are also offered to members in French and English, such as the Member's Annual Report, by-laws and regulations.

89. In 2002, the Member's Annual Report was modified to include the following questions:

- a. Do you communicate with your clients and provide legal advice to them in the French language?
- b. Do you communicate with your clients, provide legal advice to them, and represent them in French?

90. Answers to those questions assist the Law Society in maintaining statistical information about the legal profession and the provision of services to the Francophone community.

*Lawyer Referral Service*

91. The Lawyer Referral Service is a service that has been offered for more than 30 years. The program supports the Law Society's role in governing in the public interest by promoting greater access to legal services. By December 2002, 2,085 lawyers were subscribers to the

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<sup>68</sup> See web site at [www.dhcounsel.on.ca](http://www.dhcounsel.on.ca)

Lawyer Referral Service. Clients may request the Law Society to refer them to a lawyer that speaks a language other than English.

92. Callers who are in a crisis, such as domestic abuse situations, are incarcerated or are under the age of 18 may use the toll-free crisis line. In 2002, the Lawyer Referral Service received 24,698 calls (33% of calls received) on the toll-free line.

### **Proposed Strategy**

93. The Law Society has provided tools to function as a resource to the profession and works in partnership with legal associations to develop programs based on the needs of the legal profession. The Working Group recognizes the value of such programs and encourages the Law Society to continue to lead by example.

94. **The Working Group finds that the Law Society should continue to effectively implement this recommendation.**

## ***Recommendation 6: Institutional Resources***

**In order to facilitate and further the advancement of equity and diversity goals, the Law Society must dedicate appropriate human and financial resources specifically to those goals.**

### **Initiatives Adopted by the Law Society**

#### **Financial and Human Resources Allocated to Committees**

95. Since 1997, the Law Society has established a number of committees to address equity and diversity issues faced by the legal profession, such as the Equity and Aboriginal Issues Committee, the Access to Justice Committee, the Emerging Issues Committee, the Professional Development, Competence and Admissions Committee and the Professional Regulation Committee. Full time staff members of the Policy Secretariat provide support for committees of Convocation.
96. The Equity Advisory Group was also created to advise committees and staff members on equity and diversity initiatives.
97. The committee structure of the Law Society and the human and financial resources allocated to equity and diversity policy making and implementation initiatives have ensured that actions that relate to equity and diversity are consistently taken.

#### **Financial and Human Resources Allocated to Equity**

98. The Law Society provides permanent human and financial resources to support the profession in its pursuit of equity and diversity goals, to develop and maintain the tools to function as a resource, and to ensure that programs are ongoing.
99. Since 1997, the Law Society has established the Equity Initiatives Department, a department that has grown from a unit of 2 employees (the Equity Advisor and the Program Administrator) to 5 permanent full-time positions. In 2003, the Equity Department became part of the Policy Secretariat, increasing its influence. It is now fully included within the operations of the Law Society and is part of an influential department. It has the same status and approximately the same number of staff as Legal Affairs, another highly respected unit

of the Policy Secretariat. The new structure has the potential to strengthen the influence of the Equity Initiatives Department and to increase its visibility.

100. The Equity Advisor is responsible for ensuring that policies and initiatives of the Law Society promote equity and diversity principles. The position of the Equity Advisor has direct access and a reporting relationship to the CEO and is a full member of the Senior Management Team.
101. The Aboriginal Issues Coordinator is responsible for strengthening the Law Society's relationship with Aboriginal peoples and for providing support to Aboriginal students. The Equity Community and Policy Advisor is responsible for reaching out to the community and ensuring that communication strategies promote equity and diversity principles. The French Language Services Advisor provides French language services to members of the profession and to the Law Society.
102. The Working Group notes that it has received concerns about the new structure and the vacancies within the Equity Initiatives Department. The Working Group is pleased that the CEO is committed to ensuring that positions within the department are staffed and that the Equity Advisor will continue to report to the CEO and be a member of the Senior Management Team.
103. Although not specifically dedicated to the promotion of equity and diversity, other positions have the responsibility to address issues of equity and diversity principles. Those include the CEO and Senior Managers; the Registrar, the Associate Registrar and the Office Assistant for Education Support Services; bilingual (French/English) staff members in the BAC, Spot Audit, Client Service Centre and other departments; staff trained to handle harassment and discrimination cases in the Client Service Centre and the Professional Regulations Division.

104. The Equity Initiatives Department and the Discrimination and Harassment Program have operational budget and financial resources have been allocated to equity and diversity initiatives undertaken by other departments.

## **Proposed Strategy**

105. The Law Society has begun to implement Recommendation 6.

106. The Law Society has dedicated resources to promote diversity and equity, including the creation of a full-time Equity Advisor position with direct access and a reporting relationship to the CEO and membership on the Senior Management Team.

107. The current structure has been in place for approximately two months. The effectiveness of the transfer of the equity unit to form part of the Policy Secretariat would be best assessed after three years of operations.<sup>69</sup> The Working Group encourages the Law Society to maintain an effective equity initiatives unit with the following elements:

- i. The Equity Advisor's direct reporting relationship to the CEO;
- ii. The Equity Advisor's membership on the senior management team;
- iii. At a minimum, current staffing level and budget.

108. The Law Society has also adopted a French Language Services Policy that states its commitment to providing services in the French language to its own members and to the public. The Law Society is encouraged to ensure that all operational units implement the policy and deliver services in a manner consistent with the *French Language Services Act*.<sup>70</sup>

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<sup>69</sup> Rotiio> taties raised concerns about the new structure of the Equity Initiatives Department and the reporting relationship. The Working Group is of the view that this new structure will strengthen the influence of the department and increase its visibility. The Working Group recommends that the effectiveness of the new structure be assessed at the end of 2006.

AJEFO notes that the presence of bilingual staff within the Equity Initiatives Department is an asset. The mandate of the Equity Initiatives Department is to promote equality and diversity within the legal profession, including promoting Francophone rights. AJEFO believes that it is important to ensure that the department maintains the capacity to offer services in both official languages and to promote the rights of Francophone members. (See Appendix 2)

<sup>70</sup> AJEFO congratulates the Law Society for offering services to its members and to the public in both official languages and encourages the Law Society to continue to offer services in a manner consistent with the intent of the *French Language Services Act*.(See Appendix 2).

109. **The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:**
- a. **The effectiveness of the current structure of the Equity Initiatives Department should be re-evaluated in December 2006. At a minimum, an effective equity initiatives unit should be maintained, and fully staffed, with the following elements:**
    - i. **The Equity Advisor's direct reporting relationship to the CEO;**
    - ii. **The Equity Advisor's membership on the senior management team;**
    - iii. **Current staffing level and budget.**
  - b. **The Law Society services should be delivered to French and English speaking members and the public in a manner consistent with the intent of the *French Language Services Act*.**

### ***Recommendation 7: Participation in the Governance of the Profession***

**In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession:**

**(a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28 [now Rule 5.04]; and**

**(b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession.**

#### **Initiatives Adopted by the Law Society**

110. A number of initiatives were adopted by the Law Society to increase the representation of equality-seeking, Francophone and Aboriginal members in the governance of the profession. For example, it created EAG to advise the Law Society's Equity and Aboriginal Issues Committee, and other committees, on issues affecting Aboriginal peoples, Francophones and equality-seeking communities. EAG is composed of lawyers from across Ontario with expertise in various areas of law and legal analysis.

111. The Equity and Aboriginal Issues Committee regularly invites representatives of EAG, AJEFO and Rotiio> taties to attend and participate in its affairs.

112. In 2003, the Law Society encouraged members from equality-seeking communities, Francophone and Aboriginal members to run for election. During the 2003 Bencher Election process, an information session for members of equality-seeking, Francophone and Aboriginal communities was held. There was wide publication of the election process including the development of a web site solely for the bencher election. Every member of the profession was encouraged to run through a letter written by the Treasurer.

113. Representation of members from equality-seeking and Aboriginal communities has increased over the years. However, some communities, such as the Francophone community, remain unrepresented at Convocation.<sup>71</sup>

114. It could be argued that a higher voter turn out would lead to a Convocation that is more representative of its members. Statistics indicate a dramatic decrease in voter turnout between 1987 and 2003.<sup>72</sup> Female voter turnout has decreased even further, from 44.04% in 1987 to 32.55% in 2003.<sup>73</sup>

115. Some initiatives have been undertaken to alleviate demands on benchers. For example, the Policy Secretariat was created to provide support to committees, task forces and Convocation and the *Law Society Act* was amended to eliminate the requirement to hold Discipline Convocations. Prior to 2000, this accounted for 8 days per year of bencher time. Benchers may now attend Convocation and committee meetings by teleconference or videoconference. Compensation is also provided for childcare expenses.

### **Proposed Strategy**

116. The success of the implementation of Recommendation 7 may be a matter of controversy. Some may see the composition of the present Convocation as more reflective of the profession than previous Convocations, and therefore a start toward success in this area. Others may not.

<sup>71</sup> In 2004, 12 women, 2 Aboriginal lawyers, 1 Black lawyer and 1 lawyer with disabilities were elected members of Convocation. There are no Francophone or out gays or lesbians elected at Convocation. (Candidates and members do not self-identify. Consequently, the information provided above is tentative).

<sup>72</sup> The following are statistics on voter turnout:

	1987	1991	1995	1999	2003
Total eligible voters	56%	53%	43.72%	42.02%	36.77%
Women eligible voters	44.04%	51.10%	42.30%	37.95%	32.55%
Men eligible voters	58.40%	53.00%	44.24%	43.78%	38.88%

<sup>73</sup> The Law Society does not maintain statistical information about voter turnout based on other personal characteristics (except age).

117. Ultimately, equitable representation or diversity at Convocation is the greatest safeguard of the public interest and the Law Society recognizes the importance and value of representation of equality-seeking, Francophone and Aboriginal members in the governance of the profession. The Working Group proposes that research be undertaken to determine whether there are barriers within the current electoral process that limit the full participation and election of women and members from equality-seeking, Francophone and Aboriginal communities.
118. The Working Group is of the view that strategies to increase diversity in the governance of the profession should include ways to increase the participation of non-benchers in the work of the Law Society. This could be partially achieved with by-law amendments to allow the Equity Advisory Group, AJEFO and Rotiio> taties to each have a voting representative on the Equity and Aboriginal Issues Committee.<sup>74</sup>
119. The Working Group notes that the time commitment placed on benchers is a significant problem that should be addressed by the Law Society. A number of other issues within the current governance process may also create a heightened vulnerability for members of equality-seeking, Francophone and Aboriginal communities. The Law Society should develop strategies to identify and address barriers that prevent members of equality-seeking, Francophone and Aboriginal communities from participating in the Law Society's affairs.
120. **The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:**
- a. **An equity analysis should be undertaken to determine whether there are any barriers within the current electoral process that limit the full participation and election of women and members from equality-seeking, Francophone and Aboriginal communities.**<sup>75</sup>
  - b. **A report and strategic plan should be presented to Convocation by June 2006 to address the following:**

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<sup>74</sup> Rotiio> taties, AJEFO and EAG have suggested that their groups be represented as members of the Equity and Aboriginal Issues Committee. (See Appendix 2).

<sup>75</sup> The study should be placed in the context of other electoral reform projects.

- i. **the burden of committee time placed on benchers which may be a barrier to suitable candidates standing for bencher election; and**
  - ii. **non-bencher participation in bencher committees.**
- c. **By-law 9, Committees, should be amended so that EAG, AJEFO and Rotio>taties each have a voting representative on the Equity and Aboriginal Issues Committee.**

## *Recommendation 8: Bar Admissions*

**The Law Society should continue to ensure that Bar Admissions:**

- (a) Includes material designed to increase the profession's understanding of diversity/equity issues;**
- (b) Encourages the participation of equality-seeking groups in its design, development, and presentation;**
- (c) Uses material that is gender neutral;**
- (d) Uses audio visual material that includes the faces and voices of equality-seeking groups;**
- (e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).**

### **Initiatives Adopted by the Law Society**

#### **Operational Process**

121. Since the adoption of the *Bicentennial Report*, the Law Society has enhanced its initiatives to promote equality for students.<sup>76</sup>

122. The BAC materials include information designed to increase the profession's understanding of equity and diversity issues. The Equity Initiatives Department participates in the review process to update the BAC materials. BAC topics include Aboriginal law, addressing harassment and discrimination, the duty to accommodate persons with disabilities, religious beliefs and practices and family responsibilities and providing legal services to clients with disabilities. The materials, exams and other resources have been revised to ensure the use of gender-neutral language and audiovisual materials include the faces and voices of equality-seeking communities. Students provide input on materials through student course evaluations.<sup>77</sup>

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<sup>76</sup> One indicator of the success of the BAC is the increased diversity of the student population called to the bar. In 2003, 53% of students called to the bar were women, 16.0% were racialized, 5.6% were Francophones, 1.6% were Aboriginal, 1.4% were gay or lesbian and 1.9% were students with disabilities.

<sup>77</sup> The BAC maintains statistical data on student numbers and success rates for some of the student equity groups such as Aboriginal students, Francophones and students with disabilities or those requiring accommodations. During the delivery of the BAC, students at large provide evaluations on the course, the course materials, instructors and skills assessments. The evaluations are not specifically based on equity issues or concerns. They focus on evaluation of the content, the teaching and the value of attendance.

123. All instructors attend a workshop on effective teaching methodologies, including inclusive pedagogy. The workshop includes a discussion on the meaning of harassment and discrimination, methods of inclusive teaching methodologies and resources available to instructors and students.

124. BAC staff members attend training programs on the use of appropriate language in materials and classrooms, the duty to accommodate and equity and diversity principles. When an issue is raised about inappropriate behaviour in the classroom, the issue is reported to a Faculty, the Head of BAC, the Registrar, the Equity Advisor or the Director of the Department. Depending on the magnitude of the problem, the issue is dealt with by the person who receives the complaint or by the Director of the Department. The Equity Advisor is generally consulted.

### **Initiatives**

125. The Professional Development and Competence Department promotes the achievement of equity and diversity in the development and delivery of its programs, initiatives and products. It provides support to students in the Bar Admission Course and during the articling term. The following provides an overview of programs, initiatives and products that focus on the promotion of equity and diversity in the BAC.

#### *BAC in French and English*

126. The BAC is offered in both official languages, including reference materials, instruction and exams.

#### *E-Learning Web Site*

127. In 2002, the Law Society created its e-learning web site. The web site provides students with a flexible, accessible and user-friendly learning support system. Recognizing the realities of student schedules and life demands, this system allows students to access the reference materials on-line, some lectures, supplemental video presentations, supplemental material to support study efforts, including checklists, legislative summaries and fact situations.

#### *Education Support Services Centre*

128. The Education Support Services Centre offers students a range of supports and services that improve the learning environment for all students and offers accommodation for students in the BAC.<sup>78</sup> Accommodations include exams in alternative forms such as audiotape, Braille and text-to-speech and special equipment for persons with visual and auditory impairments. In 2003, 70 students accessed the services available through the Education Support Services Centre, including laptops, special software to assist the visibly and hearing impaired, private rooms, additional exam time, one-on-one American sign language interpretation and real-time captioning during exams.

129. The Education Support Services Centre also offers tutoring. Upon request, the Education Support Services Centre provides assistance to students that have difficulties with exams or assessments. There is no cost to the student for the first five hours of tutoring and where financial difficulty exists further tutoring is arranged at no cost. In 2003, 22 students received tutoring assistance.

#### *Mentoring Program*

130. The Mentoring Program is available to students in the BAC. The program provides matches for students-at-law with members of the bar, and offers a range of supports, from academic and career advice to job shadowing opportunities. The Mentoring Program is provided free of charge.

#### *Elders' Program*

131. The Elders' Program is an innovative program, that provides Aboriginal and non-Aboriginal students in the BAC with various teachings and counseling services. The

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<sup>78</sup> The Law Society adopted a *Policy and Procedures for Accommodations for Students-at-Law in the Bar Admission Course* (Toronto: Law Society of Upper Canada, February 2001). Ongoing accommodations provided to BAC students include:

- For students with a visual impairment: Optical Character Recognition software for scanning documents; Information made available in alternate formats and alternate fonts; software such as ZoomXtra 7.0 and Dragon Speaking Software.
- For students with a hearing impairment: real time captioning and sign language assistants.
- For students with learning disabilities: extra time to hand in assignments and read materials and tutors for assistance and additional access to faculty.
- For French students: access to a bilingual assessor when doing assessments; pairing of French students to do the presentations in French; French markers provided to mark exams.

Additional examinations accommodations include invigilation services for distance learners, computers with adaptive technology, extra time for writing the examinations, tape-recording of exam answers, height adjustable desks, ergonomic chairs and supervised breaks.

program provides opening prayers, cleansing ceremonies, traditional teachings, talking circles, meditations and pipe ceremonies, and is also available for one-on-one time with students in need of assistance. The program was launched in the fall of 2000 and is offered at Osgoode Hall on a weekly basis during the BAC.

#### *Partnerships with Aboriginal Bar*

132. The Law Society works with members of Rotiio> taties and others in the Aboriginal Bar to support Aboriginal students in their legal education, foster a sense of community among the students and the Aboriginal Bar, and develop mentoring relationships, professional development and articling opportunities.

#### *Self-Directed Study Arrangements*

133. The Law Society provides opportunities for students who do not have access to the exam BAC locations by allowing students to take the courses, write the exams and to complete the BAC through self-directed study arrangements. In 2003, 60 students completed sections of the course through distance learning at various sites across Ontario, Canada and outside of Canada. In 2001, 2002 and 2003, 148 students chose the distance learning option to complete their BAC exams. The number of self-identified students as Aboriginal, Francophone, mature, persons with disabilities or racialized students is increasing as a percentage of the total, starting with 28% self-identified in 2001 up to 48% self-identified in current 2003 distance-learning programs. Of the students who self-identified, 16 out of 18 (89%) completed the process and passed. Two out of 18 have yet to complete the process (have not yet written the exams). Not one self-identified student failed the process or pulled out. Twenty-five self-identified students are currently enrolled (2003) and have not yet been through a term. Of the other 105 students, 66 have completed the process and passed. Not one student failed and pulled out. Three students have yet to complete the process (have not written exams) and 35 are currently enrolled in the program (2003).

#### *Repayable Allowance Program*

134. The average debt load of BAC students is over \$40,000 in 2003, representing an increase of approximately \$7,000 since 2000. The Law Society has attempted to assist students that have financial needs by offering financial assistance through its Repayable Allowance

Program. Those in the BAC who demonstrate need to meet their educational and living expenses during the course may apply for a loan.

135. In 2001, there were 61 applications for this assistance and a total of \$170,700 was approved to assist 47 students.<sup>79</sup> In 2002, 68 applications were received, 57 students received funding and \$213,395 was awarded to students. In 2003, 38 students received funding for a total of \$117,176. The Working Group is concerned that although the debt load of students has increased, the numbers of persons receiving loans and the amounts awarded have dramatically decreased. Therefore, the Working Group proposes that the effectiveness of the RAP be reviewed.

136. The J. Shirley Denison Fund was established by a 1951 bequest to the Law Society for the relief of impoverished or indigent members of the Law Society, their wives, widows and children. The class of beneficiaries was widened to include BAC students. The J. Shirley Denison Fund is administered by the Finance Department and is advertised in the Ontario Lawyer's Gazette, the Ontario Reports, the Law Society web site, the Ontario Bar Assistance Program (OBAP) and the call centre staff members provide information about the fund. A recommendation was adopted in 2001 to disburse \$11,000 of the grant money annually, and the Law Society has followed the recommendation. The Law Society rarely denies applications for funding from the Shirley Dennison Fund.

#### *Success of the BAC Initiatives*

137. The initiatives undertaken by the Law Society to provide support to BAC students have been successful. With membership of the legal profession growing at a rate of approximately 1,200 annually, the increasing diversity of the profession is evident. More women, persons of colour, Aboriginal peoples, gays, lesbians, persons with disabilities and Francophones are entering the profession. For example:

- a. 53% of students who entered the BAC in 2003 were women compared to 48.7% in 1998.

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<sup>79</sup> Allowances are made up to a maximum of \$5,000 per calendar year. Full program details are available on the Law Society's web site at [http://www.lsuc.on.ca/services/bac\\_financial.jsp](http://www.lsuc.on.ca/services/bac_financial.jsp). The program's effectiveness has not been assessed.

- b. 16.0% of students in the 2003 BAC self-identified as racialized compared to 14.9% in 1998. In comparison, 17.5% of the population is made up of persons from racialized communities, according to the 1996 Canadian Census.
- c. 1.6% of students in the 2003 BAC were Aboriginal compared to 1.3% in 1998. In comparison, 1.4% of the population is Aboriginal (1996 Canadian Census).

### **Proposed Strategy**

138. The Law Society has made substantial efforts to implement this recommendation and the real challenge will be to integrate these efforts into the new BAC.
139. Since the adoption of the *Bicentennial Report*, the Law Society has developed additional support resources, such as the e-learning web site, to assist students in the BAC. The Law Society should ensure that these resources are regularly revised and integrate an equity and diversity analysis.
140. The Law Society has adopted an appropriate language policy that applies to BAC resources and materials, as recommended by the *Bicentennial Report*. The policy, applicable to communications in French and English, not only encourages the use of gender-neutral language but also of inclusive language.
141. The Law Society administers its programs so that its demands do not impact disproportionately on the basis of personal characteristics. For example, the Law Society, provides loans to students in need, accommodates special needs of students, provides tutoring support, maintains an e-learning web site and delivers the Elders' Program. Such initiatives have been beneficial and should be maintained and enhanced where appropriate to meet the needs of students.

142. The Law Society has integrated within the BAC curriculum, materials and examinations information designed to increase the profession's understanding of diversity and equity issues. Also, all materials and examinations are available in French and English.<sup>80</sup>
143. On December 5, 2003, Convocation adopted the recommendations of the Task Force on the Continuum of Legal Education that will lead to significant changes to the current BAC model. Therefore, the Law Society should consider strategies to address the needs of equality-seeking, Francophone and Aboriginal students under the new BAC and should invite members from equality-seeking, Francophone and Aboriginal communities to participate in the design and implementation of the new BAC.
144. **The Working Group proposes that the Equity and Aboriginal Issues Committee examine, with the Professional Development, Competence and Admission Committee and/or the Task Force on the Continuum of Legal Education, the following strategies, and if required, make recommendations to Convocation:**
- a. **Members from equality-seeking, Francophone and Aboriginal communities should be involved in the design and delivery of the BAC program, including the model adopted by Convocation on December 5, 2003 (the new BAC).**
  - b. **BAC students should be informed of the role of the Discrimination and Harassment Counsel (DHC) and options available to students and lawyers who experience harassment and/or discrimination.**
  - c. **The new BAC should continue to be offered in both official languages.<sup>81</sup>**
  - d. **The effectiveness of the Repayable Allowance Program should be assessed and improved if required.**

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<sup>80</sup> Rotiio> taties indicates concerns with the BAC instructions and the general inability instructors to address Aboriginal content. Rotiio> taties is also concerned about moving to an electronic BAC format because many Aboriginal students do not have access to that format. As the BAC moves towards a new licensing model as the sole method of evaluation, Rotiio> taties is concerned of the impact of that method of evaluation on Aboriginal students. Rotiio> taties recommends that the Discrimination and Harassment Counsel be featured during the BAC to make students aware of the Law Society's resources to address discrimination complaints. (See Appendix 2)

<sup>81</sup> AJEFO made such recommendation in their submission to the Bicentennial Report Working Group (See Appendix 2).

### ***Recommendation 9: Articling***

**The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).**

#### **Initiatives Adopted by the Law Society**

145. The Law Society has created the position of Associate Registrar to coordinate the articling program and provide support to students, and the position of Aboriginal Issues Coordinator to provide support to Aboriginal students in the BAC and during the articling process.
146. Since the adoption of the *Bicentennial Report*, the Law Society has increased its efforts to provide support to students during the articling term. Students have options and flexibility in competing all the necessary requirements of articling. For example, students may apply to complete a non-traditional articling placement (any articling placement other than full-time Ontario articles and includes joint, part-time, national and international articling experiences) or for articling abridgments (a reduction of the traditional articling term) based on compassionate or non-compassionate grounds.<sup>82</sup>
147. Placement initiatives provide assistance to students-at-law by offering job search skills workshops and counselling services. The job search skills workshops include topics such as how to do electronic job searches, winning interviews, creating impressive resumes, writing compelling covering letters, building useful contact lists and finding opportunities.
148. Articling position postings are advertised on the Law Society's web site. In 2002, two workshops were held on job search skills and 115 articling placement opportunities posted on the web site. Also, 49 BAC students were matched with lawyers for career mentoring

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<sup>82</sup> Abridgment and Non-Traditional Articling Policies, adopted by Convocation, February 21, 2001. The Law Society does not have demographic data on who benefits from non-traditional articles. Approximately 5% to 10% of students opt for non-traditional articling placements. The Law Society is improving its data base to track the demographics in more detail.

and 64 biographical summaries were distributed to articling principals to assist unplaced students in securing articling positions.

149. The Mentoring Program is available to articling students. The program matches articling students with mentors and offers a range of supports, from academic and career advice to job shadowing opportunities or co-op placements. The Mentoring Program is provided free of charge.
150. The Law Society works with members of Rotiio> taties and others in the Aboriginal Bar to support Aboriginal articling students and to develop articling opportunities.
151. The Registrar and Associate Registrar attend annually at all law schools to provide students with information about the BAC and the articling program and opportunities.
152. Notwithstanding the efforts mentioned above, the *Articling Placement Report 2003*<sup>83</sup> indicates that although a high percentage of students are placed when entering the BAC, students from equality-seeking, Francophone and Aboriginal communities remain over represented in the group of students that have difficulty finding articles.<sup>84</sup> By the end of the usual articling term, all students from equality-seeking communities, with the exception of Francophone students, experienced greater than 90% placement rate. Francophone students experienced a placement rate of 88.4%. Almost 95% of all students who entered the 45<sup>th</sup> Bar Admission Course in 2002 and who were actively looking for an articling position were placed within six months of the usual start of articling.<sup>85</sup>

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<sup>83</sup> *Articling Placement Report 2003*, *supra* note 5, available on the Law Society Web site at [www.lsuc.on.ca](http://www.lsuc.on.ca).

<sup>84</sup> Rotiio> taties notes that articling continues to be a stumbling block for many Aboriginal students. For some students, the failure to find an articling position eventually causes them to withdraw from law altogether. While ultimately most Aboriginal students find placements, there are some who do not. The Indigenous Bar Association is engaged in a new initiative to support Aboriginal students and recent calls to find articles and employment. Rotiio> taties recommends that the Law Society work with the IBA to develop meaningful strategies to identify and address the barriers faced by Aboriginal students and lawyers. (See Appendix 2)

<sup>85</sup> *Placement Report 2002/2003 of Students Enrolled in the 45<sup>th</sup> BAC 200*, *supra* note 5.

153. Each year a number of students who have successfully completed the BAC either do not find articling positions or are deemed not to be actively looking for a position. Based on the submissions received, the Working Group is concerned that these may include Aboriginal and racialized students as well as those from other equality-seeking communities. It is for this reason that the Working Group proposes that the Law Society conduct research on those who drop out of the legal profession at this and other stages of their legal career.
154. The *Articling Interview Survey Report*<sup>86</sup> also shows that a relatively high percentage of students felt that their membership or association with a group affected the questions they were asked during interviews. In 2001, 33% of incoming BAC students were surveyed about the nature of the questions asked by members during the articling interview process. 30% of students felt that their personal characteristics affected the questions they were asked. The Law Society addresses this issue by publishing in the Ontario Reports a bilingual summary of Student Hiring Practice Guidelines. It also offers training programs for law firms on effective interviewing techniques.

### **Proposed Strategy**

155. The Law Society has made progress in implementing Recommendation 9. It has considerably increased its placement initiatives and support programs for articling students by doing outreach initiatives, developing a mentoring program and offering education and career development programs. The Working Group is of the view that these initiatives should be maintained.
156. However, students from equality-seeking, Francophone and Aboriginal communities remain over represented in the group of students that have difficulty finding articles. There is also insufficient information to assess the quality of articling experience of students from equality-seeking, Francophone and Aboriginal communities. The Working Group indicates that most students article in large and medium size law firms, whereas a high percentage of Ontario lawyers practice in small law firms or as sole practitioners.<sup>87</sup> This would suggest

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<sup>86</sup> *Articling Interview Survey Report*, *supra* note 38, available on the Law Society Web Site at [www.lsuc.on.ca](http://www.lsuc.on.ca).

<sup>87</sup> It is also noteworthy that 93.4% of students article in large urban centers and 90% in medium and large firms, including government (firms of 5 lawyers or more).

that the articling term might not adequately train students to enter the legal profession and practice in small firm settings or as sole practitioners. Areas of practice in large and medium-size law firms in urban areas are generally different than areas of practice in small non-urban centers, where lawyers often set up general practices in criminal, family and residential real estate law.

157. The Working Group proposes that strategies be developed to address barriers faced by equality-seeking, Aboriginal and Francophone students and to enhance the articling experience. There are many opportunities for the Law Society to assist articling students and articling principals to achieve a highly satisfactory articling term. One of these is to provide a variety of enhanced services and learning supports to assist in supplementing articles. Enhanced support during articling might be particularly important now that the Law Society has adopted the new BAC.
  
158. The Working Group also notes that members of the profession still frequently ask inappropriate interview questions. Training programs on interviewing techniques have not been offered on a regular basis and the Law Society might consider using a proactive strategy to promote these programs.
  
159. **The Working Group proposes that the Equity and Aboriginal Issues Committee and the Professional Development, Competence and Admission Committee and/or the Task Force on the Continuum of Legal Education examine the following strategies and, if required, make recommendations to Convocation:**
  - a. **The current articling structure should be assessed to determine whether equality-seeking, Aboriginal and Francophone students face systemic barriers in finding quality articling positions and alternative structures should be identified to eliminate the most significant barriers.**
  - b. **Research should be undertaken to determine why some students who have successfully completed the BAC do not seek or cease to seek articling positions. Strategies should be developed to address this issue.**
  - c. **The CEO or delegate should provide annual reports to the Equity and Aboriginal Issues Committee about strategies and progress on addressing the needs of equality-seeking, Aboriginal and Francophone students for suitable articles.**
  - d. **Services and learning supports to assist students and principals throughout the articling process should be maintained and enhanced based on needs.**

## ***Recommendation 10: Continuing Legal Education***

**The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:**

- (a) Includes material designed to increase the profession’s understanding of diversity/equity issues;**
- (b) Encourages the participation of equality-seeking groups in its design, development, presentation, and attendance;**
- (c) Uses material that is gender neutral;**
- (d) Uses audio visual material that includes the faces and voices of equality-seeking groups;**
- (e) Is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 (now Rule 5.04).**

### **Initiatives Adopted by the Law Society**

160. Since 1997, the Law Society has developed affordable, accessible and relevant continuing legal education programs through various initiatives that include its Public Education Program, Equity and Diversity Training Program and CLE programs on human rights and harassment and discrimination. Public education events are usually open to the public and are free of charge. Other CLE programs are offered on a cost recovery basis and are affordable. The Law Society tries to attract a broad audience by offering CLE programs in core practice areas that integrate equity and diversity principles.

161. Each year, the Law Society hosts and participates in 10 to 15 public education events. A number of those events include a continuing legal education component.<sup>88</sup>

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<sup>88</sup> Such as: Louis Riel Day Panel Discussion “Re-Awakening the Nation”, November 2001; United Nations Human Rights Day Seminar, December 2001; Black History Month Event, February 2002; International Women’s Day Event/Launch of “In the Face of Justice Video”, March 2002 ; Law Week Proclamation Ceremony 2002: Celebrating the 20<sup>th</sup> Anniversary of the Charter and Launching the Ontario Justice Education Network, April, 2002; National Aboriginal Day event “Urban Aboriginal Governance”, June, 2002; South Asian Professional Development Workshop 2002, “Providing Legal Services to the Marginalized South Asian Client”, July 2002; Lesbian and Gay Pride Event, “Advocacy in Our Communities: Networking for Change”, June, 2002; AJEFO convention (the Law Society assisted in organizing the convention and hosted the convention), June, 2002; “Promoting Dialogue, Creating Change: Equity and Diversity in the Legal Profession”, a national conference, November 2002; Aboriginal peoples at Public Forum 2003, “Do Anti-Discrimination Laws Address Needs of Aboriginal peoples?”, January, 2003; Black History Month Event 2003, “How Lawyers Can Make a Difference in the Lives of Youth”, February 2003; A Celebration of National Aboriginal Day 2003, “Experiences in the Gladue (Aboriginal Persons) Court: Innovations In Implementing *R. v. Gladue*”, June 2003; Pride Day Celebrations 2003, “Common Law Wrongs, Charter Rights and Remedies in a Constitutional Democracy: The Future of Equality Discourse in Canada”, June 2003; Law Day/Law Week Opening Ceremony 2003, “*Freedom, Security And You*”, April, 2003; Access to Justice symposium, “The Way Forward, Access to Justice Symposium”, May 2003.

162. The Professional Development and Competence Department also offers CLE programs to meet the needs of lawyers. In 2003, CLE programs were offered in a variety of formats and delivery methods to improve accessibility and assist lawyers in meeting their professional development goals. It is anticipated that in 2004, CLE programs will be offered on addressing harassment and discrimination in the legal workplace and offering legal services to persons with disabilities.<sup>89</sup>
163. The Professional Development and Competence Department will soon launch CLE programs in core areas of practice in the French language. Working in partnership with the AJEFO, the Law Society has surveyed its Francophone members to determine professional development needs.
164. In 2003, the Interactive Learning Network was launched. The initiative enables lawyers to attend live programs without incurring the costs associated with absence from the office and long distance travel. CLE programs are transmitted in real time to between 10 and 20 sites across the province. The sites have been chosen to allow members to travel no more than one and a half hours to attend.
165. The Professional Development and Competence Department also offers equity and diversity custom-designed training programs to assist lawyers in meeting their obligations under the Ontario *Human Rights Code* and in integrating equity and diversity within their legal practice and organizations. Each session is tailored to meet the specific needs of the law firm and/or practitioner and offers the programs in many formats, such as seminars, workshops, informal education sessions, continuing legal education and train-the-trainer sessions.

### **Proposed Strategy**

166. The Law Society has taken significant steps to implement Recommendation 10. It should be commended for making its program more accessible to members of the profession, including members from equality-seeking, Aboriginal and Francophone communities.

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<sup>89</sup> Organized with Pro Bono Law Ontario and the Advocacy Resource Centre for Persons with Disabilities

167. CLE programming has increased considerably in the area of equity and diversity and the Law Society has facilitated access to its programs for members in remote areas by diversifying its delivery format.
168. The Law Society has been less successful in integrating an equity and diversity analysis in “core” CLE programs and does not maintain information about the representation of members from equality-seeking, Francophone and Aboriginal members as CLE faculty.<sup>90</sup> The Working Group also notes that foreign-trained lawyers and members who are re-entering legal practice may have distinct educational needs. The Law Society is encouraged to tailor education programs to the needs of those groups.
169. **The Working Group proposes that the Professional Development, Competence and Admission Committee examine the following strategies and, if required, make recommendations to Convocation:**
- a. **The bursary program for CLE should be expanded and aggressively advertised to those who cannot afford CLE.**
  - b. **Education programs should be tailored to meet the needs of:**
    - i. **Foreign-trained lawyers.**
    - ii. **Members re-entering the profession.**
    - iii. **Members from equality-seeking, Aboriginal and Francophone communities.**
  - c. **There should be representation of members from equality-seeking, Aboriginal and Francophone communities within the CLE Faculty, including “core” CLE programs.**

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<sup>90</sup> Although there appears to be gender parity in the pool of Faculty, there is insufficient information to determine whether faculty members are representative of members of equality-seeking, Aboriginal and Francophone communities.

## ***Recommendation 11: Rules of Professional Conduct***

**The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession.**

### **Initiatives Adopted by the Law Society**

#### **Rules of Professional Conduct**

170. In 1992, Convocation adopted a new *Rule of Professional Conduct* dealing with Sexual Harassment (Rule 27), and in 1994, Rule 28 on Non-discrimination. On November 1, 2000, new *Rules of Professional Conduct* came into force and Rules 27 and 28 were revised and amended. Rule 5.03 prohibits sexual harassment and Rule 5.04 prohibits discrimination based on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, same-sex partnership status, age, record of offences, marital status, family status and disability. The duty not to discriminate applies with respect to professional employment and in professional dealings. Rule 5.04 also prohibits harassment based on grounds other than sex.

171. Rule 1 of the *Rules of Professional Conduct* was amended in 2001 to include a commentary that provides that “a lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter.”

#### **Discrimination and Harassment Counsel Program**

172. The Discrimination and Harassment Counsel Program (DHC) was established in 1999 as a pilot project, and in 2001 as a permanent program, to confidentially assist anyone who may have experienced discrimination or harassment by a lawyer or within a law firm. This service, funded by the Law Society, operates at arms-length, and is available free-of-charge to the Ontario public and lawyers. Between November 2002 and June 2003, 110 individuals made contact with the DHC Program, with 60% relating to matters within the mandate of the DHC Program. Forty-four individuals contacted the Program because they had a complaint of discrimination or harassment by a lawyer or against a law firm in Ontario. Fifty-nine percent came from members of the public, with the remaining coming from members of the profession. Complaints from the public were almost evenly from men and women.

173. One third of the complaints reported to the DHC Program involved sexual harassment (including two complaints of sexual assault). The second most voluminous category of complaints were racial discrimination and discrimination based on disability, which together comprised another third of the total complaints. Five additional grounds of discrimination and harassment were raised, namely sexual orientation, religion, age, sex and family status. Overall, 18 harassment complaints and 26 discrimination complaints were received. The following reflects what complainants told the DHC they intended to do after being advised of their options: 16 would report to the Law Society, 6 to a human rights commission, 1 to the police, 1 would file an internal workplace grievance, 6 would seek legal advice to commence legal proceedings, 5 would take no action and 4 would request mediation by the DHC.

174. During the reporting period outlined above, 40 surveys were conducted with individuals with discrimination and harassment complaints. The surveys indicate the following demographics of those who contacted the program: 25 females and 15 males; 35 heterosexual, 3 lesbian/gay and 2 bisexual; 4 Aboriginal, 2 Arab, 5 Black, 2 Chinese, 1 Korean, 1 Latin American, 1 Southeast Asian, 1 South Asian and 23 White/Caucasian; 31 English speaking, 3 French, 2 Cantonese, 1 Greek, 1 Korean, 1 Malay and 1 Hindi.

175. The Professional Regulation Division's Quarterly Reports for the periods of January to March 2003 and April to June 2003 indicate that 23 cases of sexual misconduct and discrimination were selected for investigation.

#### **Professional Regulation Division: Complaints of Harassment and Discrimination**

176. The Law Society established a process to ensure that cases of harassment and discrimination are appropriately handled. In the event that a call received by the Client Service Centre may be a complaint of harassment or discrimination by a member of the profession, the call is referred to a counsel who has the expertise to handle such cases. The counsel discusses options with the caller, including the investigations process and the DHC program. If the complainant wishes to proceed to the investigation stage, the call is

forwarded to an investigation counsel team with expertise to handle cases of harassment or discrimination. If a case of harassment or discrimination proceeds before a discipline panel, a Discipline Counsel with expertise in the area handles the case.

177. The Law Society has designed an education curriculum for benchers who sit on hearing panels. The delivery of the training program began with the newly elected bench in 2003 and will be ongoing. The education program includes topics such as legal development in harassment and discrimination, assessing the credibility of a witness, the duty to accommodate and identifying bias and stereotypes.

### **Proposed Strategy**

178. The Law Society has mostly implemented Recommendation 11. However, the effectiveness of the complaints process to address issues of harassment and discrimination has not been assessed.

179. The Law Society is addressing the issue of discriminatory practices in the legal profession by:

- a. Adopting rules of professional conduct prohibiting such behaviour;
- b. Creating a Discrimination and Harassment Counsel Program to provide confidential advice on harassment or discrimination;
- c. Structuring a complaint, investigation and discipline process involving staff members with the requisite expertise to handle those cases;
- d. Providing, with the Discrimination and Harassment Counsel, training programs for the legal profession and law firms on the prevention of harassment and discrimination and the duty to accommodate;<sup>91</sup>
- e. Maintaining statistical information about calls to the DHC Program and complaints to the Law Society.

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<sup>91</sup> EAG recognizes the educational function of the Discrimination and Harassment Counsel Program and suggests that it be promoted to the profession. (See Appendix 2)

180. The Working Group notes, however, that the Law Society has limited information about the effectiveness of its programs in eliminating discriminatory practices within the legal profession. There is still anecdotal evidence indicating that incidents of harassment and discrimination are unreported or are not dealt with effectively by law firms and/or the Law Society. The Working Group proposes that the Law Society evaluate the effectiveness of its processes, the extent to which harassment and discrimination are present in the legal profession, the most common grounds of harassment and discrimination, the types of unreported behaviour and the level of awareness by members of the public and the legal profession of the DHC Program and the complaint process of the Law Society.

**181. The Working Group proposes that the Equity and Aboriginal Issues Committee consider working with the CEO, or delegate, and the Discrimination and Harassment Counsel where appropriate, to determine the effectiveness of programs aimed at eliminating harassment and discrimination within the legal profession and discuss strategies for improvement if appropriate.**

### ***Recommendation 12: Accreditation of Foreign-Trained Lawyers***

**The Law Society should facilitate the participation of minority groups in the legal profession by liaising with other groups to ensure that the accreditation requirements for foreign-trained lawyers or Quebec non-common law trained lawyers to practise in Ontario do not represent an unreasonable barrier.**

#### **Initiatives Adopted by the Law Society**

182. On September 14, 1995, the former Legal Education Committee appointed Gavin MacKenzie to study the system in place through the National Committee on Accreditation (the NCA) for the accreditation of lawyers who have received their legal education and training either outside of Canada or through a civil law program in the province of Quebec or the University of Ottawa; and to report back with a recommended course of action. The *Report to the Admissions and Equity and Aboriginal Issues Committee of the Law Society of Upper Canada on the Accreditation of Foreign-Educated Lawyers and Quebec Lawyers with Non-Common Law Legal Education* (the *MacKenzie Accreditation Report*) was presented to Convocation on September 26, 1997.<sup>92</sup>

183. The *MacKenzie Accreditation Report* made the following recommendations:
- a. The Law Society should continue to support the NCA.
  - b. A person with expertise in comparative education and prior learning assessment should be retained to review the NCA's guidelines and the application of those guidelines to determine how (if at all) the guidelines [...] might be amended to ensure that, to be granted advanced standing, applicants meet the necessary level of competence, and that applicants are treated equitably.
  - c. The NCA's guidelines should be amended to permit applicants who have experience working as law clerks in Canada [...] to be given appropriate credit based upon an individual assessment of the extent to which (if at all) the experience they have gained has contributed to their state of preparedness to practice law in Canada [...]

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<sup>92</sup> Gavin MacKenzie, *Report to the Admissions and Equity and Aboriginal Issues Committee of the Law Society of Upper Canada on the Accreditation of Foreign-Educated Lawyers and Quebec Lawyers with Non-Common Law Legal Education* (Toronto: Law Society of Upper Canada, June 3, 1997).

- d. Members of the NCA should continue to be drawn from legal academia, those involved in the regulation of the profession, and the practicing bar. The committee should also, however, include a representative of the community of foreign-educated lawyers who is a member of an ethno-cultural minority group [...]
- e. The NCA should continually endeavour to improve its communication of the basis of its assessments with a view to making the process more transparent generally.
- f. The NCA should make applicants aware of clinical legal education opportunities available at law schools, and should reduce the number of required courses that applicants who are interested in pursuing clinical alternatives are required to take where to do so would not detract from the applicants' need to satisfy substantive law requirements.
- g. The NCA, in conjunction with the law schools, should arrange for the development of a language test that is designed to assess candidates with specific reference to the language proficiency required to perform competently as lawyers.
- h. Canadian citizens who obtain their legal education in other countries and who meet the requirements established by those countries for admission to the bar should continue to be assessed in accordance with the standards applicable to all NCA candidates.
- i. [...] the Law Society should pursue discussions with the University of Toronto Law School with respect to the issues of fees and services to NCA candidates with a view to facilitating an appropriate solution of these issues.
- j. An orientation program for NCA candidates who have been admitted to the Ontario law schools should be offered shortly before law school classes begin for the year, so the NCA candidates will have the benefit of an introduction to the study of Canadian law.
- k. [...] The NCA, with the assistance of a counselor with [...] expertise [...] should move toward a system of individualized assessment of what each foreign-educated (and Quebec non-common law) lawyer requires to become qualified to practice law in common law jurisdictions in Canada, with the expectations that

taking law school courses and writing challenge exams would be only two among a number of possible alternatives.

184. Convocation considered the report and its recommendations in the following context:

- a. The NCA is a standing committee of the Federation of Law Societies. Accordingly, policy decisions concerning the operation and requirements of the NCA are within the jurisdiction of the Federation of Law Societies (the Federation), of which the Law Society is one of thirteen members.
- b. The Law Society has authority over the admission of lawyers to the bar of Ontario. Pursuant to the rules made under section 62(1) of the *Law Society Act*<sup>93</sup>, in 1996-1997, the Admission and Equity and Aboriginal Issues Committee's mandate included developing, for Convocation's approval, "policies to ensure that the accreditation process operates in a reliable, fair, open, and equitable accreditation process."<sup>94</sup> Accordingly, in assessing its continuing role in the NCA, the Law Society should be satisfied that the part of the accreditation process that is governed by the NCA's requirements accord with the Law Society's own policies for a reliable, fair, open, and equitable accreditation process.
- c. Most of the recommendations proposed action for the NCA to consider. Only two recommendations (recommendations (a) and (j)) proposed action to be considered by the Law Society. Other recommendations (such as (i)) proposed action for organizations other than the Law Society or the NCA to consider.

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<sup>93</sup> R.S.O. 1990, Chapter L.8.

<sup>94</sup> The revised committee structure does not include a committee with a mandate to develop "policies to ensure that the accreditation process operates in a reliable, fair, open, and equitable accreditation process". By-law 9, Committees, provides that the mandate of the Professional Development, Competence and Admissions Committee is to develop for Convocation's approval,

(a) policy options on all matters relating to the professional competence of members;

(b) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;

(c) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;

(d) policies to govern the transfer to the Society of persons qualified to practise law in any province or territory of Canada; and

(e) policies respecting the Bar Admission Course.

185. On June 27, 1996, Convocation accepted the *MacKenzie Accreditation Report* and confirmed that the Law Society:
- a. Supports recommendation (a) (to continue to support the NCA);
  - b. Supports recommendations (b) – (h), (j) and (k) to be made to the Federation;
  - c. Supports recommendation (i) (to pursue discussions with the University of Toronto Law School with respect to the issues of fees and services to NCA candidates with a view to facilitating an appropriate solution of these issues).
186. In 1997, the Federation of Law Societies established the Accreditation Review Committee (ARC) to review the *MacKenzie Accreditation Report*. The ARC considered and analyzed the recommendations of the *MacKenzie Accreditation Report*, and other issues related to the mandate, operation and composition of the NCA. The ARC recommended some changes to the operation of the NCA. Also, it noted that the NCA had made its own changes to increase access to the legal profession in Canada’s common law jurisdictions for lawyers who had acquired their legal education and qualifications elsewhere. The ARC recognized that the NCA’s guidelines are objective and systematic, and consider both formal education and knowledge gained through experiential learning.
187. The ARC identified five issues for consideration by the NCA and the Federation: the decision-making process, transparency, the composition of the NCA, the competency-based assessments and Quebec applicants to the NCA.<sup>95</sup>
188. At its annual meeting on August 28, 1998, the delegates of the Federation adopted the recommendations proposed by the ARC.
189. The Federation, the NCA, the Law Society and other organizations have considered and addressed all issues raised in the *MacKenzie Accreditation Report*. The ARC considered the *MacKenzie Accreditation Report* and, in light of that report, studied the NCA process and

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<sup>95</sup> Brian J. Wallace, Q.C., *Review of the Accreditation Process Conducted by the National Committee on Accreditation* (Federation of Law Societies of Canada, 1998).

concluded that, “[O]ur recommendations are therefore proposed as enhancements to what we regard as a successful program.”<sup>96</sup>

190. Members called to the Quebec bar are in a different situation than other foreign-trained lawyers. Quebec has signed the National Mobility Agreement, which describes the manner in which a lawyer called to the bar in one province may be called to the bar of another province in Canada, including Ontario. Once Quebec has adopted the necessary regulatory requirements to implement the Agreement, it will be applicable to Quebec educated and trained lawyers.

### **Proposed Strategy**

191. The Law Society has made efforts to implement Recommendation 12. The Federation, the National Committee on Accreditation (NCA) and the Law Society have considered and addressed all issues raised in the *MacKenzie Accreditation Report*, approved by Convocation in 1996.

192. The Working Group regrets the lost expertise of foreign-trained lawyers as a resource to the Ontario public. It believes that there is a public value in assisting those foreign-trained lawyers to enter the Ontario legal profession.

193. Foreign-trained lawyers face formidable barriers. The *MacKenzie Accreditation Report* indicated that NCA students often feel alienated at law school, the number of spaces available at law school is limited and the BAC failure rate of those students is higher than that of LL.B. students. Foreign-trained lawyers also admitted that, as lawyers who are qualified to practise in other jurisdictions (and often had practiced for many years), the obligation to return to law school is neither the fairest nor the most effective way to educate them in Canadian laws. NCA students, and particularly members of racialized communities, encounter appreciably more difficulty in securing articling positions. Finally, foreign-trained lawyers who are admitted to the practice in Ontario can help to serve the needs of

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<sup>96</sup> *Ibid.* at 4.

communities of immigrants from the same communities.<sup>97</sup> The Working Group is of the view that strategies should be developed to facilitate the full participation of foreign-trained lawyers to the profession.

194. **Further to the *MacKenzie Accreditation Report*, the Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:**
- a. **A joint initiative should be developed with the Professional Development, Competence and Admission Committee and the Access to Justice Committee to develop strategies to assist foreign-trained lawyers to qualify as lawyers in Ontario.**
  - b. **Information should be gathered about the success rate of NCA candidates in the BAC and in articling placements and strategies should be developed to address unfair elements, if any.**
  - c. **NCA students or recently called foreign-trained lawyers should be invited to provide input into the development and implementation process of the new BAC.**

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<sup>97</sup> See MacKenzie report, *supra* note 92.

### ***Recommendation 13: Requalification***

**In implementing its requalification policy the Law Society should continue to develop a process that is fair and equitable to all members of the profession.**

#### **Initiatives Adopted by the Law Society**

195. Until the beginning of 2002, the Requalification program of the Law Society<sup>98</sup> provided that, if a member had not made substantial use of legal skills on a regular basis for a period of five years, the member had to meet requalification requirements described in Section 8 of By-law 28, including the completion of a self-study course, an accounting examination and one or more examinations in the areas of regulatory issues in the practice of law and/or management of a law practice, as well as the completion of 10 hours of continuing legal education.
196. In February 2002, Convocation approved a new program called the Private Practice Refresher Program (PPRP), which will require lawyers who have not been in private practice for five years or more to undergo a refresher program prior to entering private practice.<sup>99</sup> Replacing the former Requalification Program, the PPRP came into effect in early 2002, but will not affect lawyers until 2007.
197. The new program will more effectively address the goals of the original program, to ensure that those members who have been out of private practice for five years or more are provided with a refresher program in those areas in which their skills may have eroded. The focus will be on practice management and client relationships. There will be no requirement to redo the BAC, or any aspect of it.
198. The PPRP also establishes a process that is fair and equitable to all members of the profession, including women who are more likely to leave the profession temporarily to care for their children or families. The program is capable of consistent application and

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<sup>98</sup> By-law 28 - Requalification (amended in February 2002 and changed to the Private Practice Refresher Program).

<sup>99</sup> Information on the Private Practice Refresher Program is available on the Law Society web site at [www.lsuc.on.ca](http://www.lsuc.on.ca).

simple administration. The members will no longer be required to fill out a detailed qualification form in the Member's Annual Report. The Law Society will no longer track members each year or issue notices on an annual basis regarding qualification status.

199. The program can be summarized as follows:

- a. Member categories have been defined, with rights and privileges that flow under each category:

Category A: Any member eligible for insurance under the Law Society's insurance plan and who is required to have insurance because he or she engages in the practice of law;

Category B: All members who are not in Category A or C;

Category C: Retired members.

- b. Members seeking to change their category status from B or C to A will be entitled to do so unless for 80 percent or more of the five years immediately preceding the date of the request the member has been a category B member or a category C member. In such a case the member will be advised which of eight practice management and client relationship modules he or she must complete. These are: time management, file management, financial management, client service and communication, technology, professional management, personal management and professional responsibility.
- c. Upon satisfactory completion of the modules the member's category status will be changed from category B or C to category A.

200. Members will only have to complete those modules of the program that reflect gaps in their experience during the absence from private practice. The new program preserves the self-study nature of the original program. Guidelines have been developed to assist members in Category B or C to know which modules they may have to complete.

201. Members will be required to notify the Law Society when they seek to change from Category B or C to A. At that time the Law Society will determine whether they are subject to the Private Practice Refresher Program.

### **Proposed Strategy**

202. The Law Society has substantially implemented Recommendation 13 by replacing its requalification program by a Private Practice Refresher Program that allows lawyers who have not been in private practice for five years or more to undergo a self-study program and assessment prior to re-entering private practice. The effectiveness of the program should be examined after 5 years of implementation.

203. However, the Working Group notes that women and members from equality-seeking, Francophone and Aboriginal communities still face barriers when re-entering the practice of law. These barriers are often unrelated to requirements established by the Law Society. For example, those who temporarily leave the practice of law often lose their professional networks, making the search for employment more challenging. Those who re-enter the practice of law after temporary absences may also have different professional goals. The Working Group encourages the Law Society to study the barriers faced by lawyers who re-enter the practice of law.

204. **The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:**

- a. **The effectiveness of the Private Practice Refresher Program and its impact on members of equality-seeking, Francophone and Aboriginal communities should be examined after five years of implementation.**
- b. **Strategies should be developed to ensure truly equal opportunities for women returning to the practice of law and for members of equality-seeking, Francophone and Aboriginal communities.**

### ***Recommendation 14: Fees***

**The Law Society should examine the impact of and the barriers presented by its current annual fee structure and consider options for revising its fee structure, if warranted.**

#### **Initiatives Adopted by the Law Society**

205. Between 1984 and 1988, the Law Society considered the issue of membership fee categories a number of times before it determined to move from one fee for all members to three main fee categories.
  
206. In September 1997, the Finance and Audit Committee began examining the issue of its three main fee categories and considered three options:
  - a. Maintain the status quo;
  - b. Maintain 50% and 100% categories and create nominal and part-time classes;
  - c. Eliminate categories within Class 1 and charge all members the full fee and introduce a nominal fee class to create a more equitable system.
  
207. The Finance and Audit Committee's report was circulated to the Admissions & Equity and Aboriginal Issues Committee whose members felt that there should be a further assessment of the issue. As a result, a working group with membership from the Finance and Audit and Admissions & Equity and Aboriginal Issues Committees (the Fee Structure Working Group) was formed to consider the issues and report to the committees.
  
208. The Fee Structure Working Group considered the following information:
  - a. One of the impetuses of the analysis was the concern that as fees have risen, there may have been an increase in the number of non-practising members who have gone into suspension or resigned primarily because they could no longer afford the fees. Many provinces have a non-active members' fee ranging from between \$100 and \$250.
  - b. LawPRO's program to permit members who practice law part-time to pay reduced fees.

- c. In 1997, revenues were down as a result of more members than anticipated moving into lower fee categories or not paying fees at all.
  - d. There is significant pressure on the Law Society to lower the membership fee generally.
209. The Fee Structure Working Group was of the view that until the 1999 budget was determined, it was difficult to address the issue properly.
210. The Fee Structure Working Group raised concerns about the financial impact of modifying the fee structure on those least able to afford it. For example, members in the non-practising categories had been paying a percentage of the overall fee. This means that as fees increase, they would be responsible for the pro-rata share of the increases. A change in fee structure that results in a general increase in fees would have a financial impact on the members in the non-practising fee categories.
211. Various Law Society committees, including the committee responsible for equity issues, have reviewed a number of possible approaches to revising the membership fee categories and their financial impact on membership fees.
212. The Equity and Aboriginal Issues Committee considered the above-mentioned background information in 2002 and decided not to proceed with a further study of the fee structure unless otherwise instructed by Convocation.
213. The current fee structure, governed by By-law 15, Annual Fee, provides a fee reduction for those on maternity, paternity or adoption leave. The fee structure includes a 100% full fee category for those who practise law<sup>100</sup>, 50% fee category for members who do not practise law<sup>101</sup>, a 25% fee category for members who do not engage in any remunerative work or who are full-time students and do not practise law or who are on maternity,

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<sup>100</sup> A member practises law if the member gives any legal advice respecting the laws of Ontario or Canada or provides any legal services.

<sup>101</sup> Including a member employed in education, in government or in a corporation in a position where he or she is not required to practise law.

paternity or adoption leave and does not practice law.<sup>102</sup> It appears, however, that the 25% fee category still represents a significant burden for those who do not engage in any remunerative work.

214. Notwithstanding the review of the current fee structure by the Equity and Aboriginal Issues Committee and other committees of Convocation, the Working Group notes that studies and anecdotal evidence suggest that some groups still face barriers due to the current fee structure. For example, Rotiio> taties<sup>103</sup> observes that fees continue to be a barrier for many Aboriginal lawyers in private practice. Studies undertaken by the Canadian Bar Association<sup>104</sup> and by Professor Kay<sup>105</sup> indicate that fees may be a barrier for women lawyers who wish to re-enter private practice on a part-time basis. The demographic analysis of the Ontario legal profession based on 1996 Census Canada statistics indicates that women, Aboriginal and racialized lawyers still have a significantly lower income than Caucasian male lawyers.<sup>106</sup> Information about lawyers suspended for non-payment of fees also shows that a large number of those are sole-practitioners.

215. The Working Group is of the view that the Law Society should consider strategies to establish a reduced fee structure for those who practice part-time and have a low income, including those working in public interest areas. Also, the Law Society should consider establishing a process to allow members to request exemptions from fees based on compassionate grounds.

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<sup>102</sup> The following members pay twenty-five percent of the annual fee:

1. A member who does not engage in any remunerative work, including the practice of law, in or outside of Ontario.
2. A member who is in full-time attendance at a university college or designated educational institution within the meaning of the *Income Tax Act* (Canada) and does not practise law.
3. A member who is on a maternity, paternity or adoption leave and does not practise law.

<sup>103</sup> Rotiio> taties observes that fees continue to be a barrier for many Aboriginal lawyers in private practice. Rotiio> taties believes that most Aboriginal lawyers are practising in government, small firms or in sole practice. Few Aboriginal lawyers practice in firms with significant financial resources and therefore, Law society fees and insurance pose significant hardships for Aboriginal lawyers. In order to attract and retain Aboriginal lawyers, Rotiio> taties recommends that the Law Society explore a structure that would allow for reduced fees where circumstances warrant. (See Rotiio> taties's submissions at Appendix 2).

<sup>104</sup> See *Touchstones for Change* (Ottawa: Canadian Bar Association, 1993).

<sup>105</sup> See *Transitions* report, supra note 9 and *Barriers* report, supra, note 9.

<sup>106</sup> Ornstein report, supra note 11.

## **Proposed Strategy**

216. The Law Society has partially implemented Recommendation 14.

217. **The Working Group proposes that the Equity and Aboriginal Issues Committee consider the following strategy and, if required, make recommendations to Convocation to establish a working group and/or task force composed of members of the Equity and Aboriginal Issues Committee, the Finance Committee and other members as determined by Convocation, to review the impact of the fee structure on members who practice part-time or have a low income, or who work in public interest areas.**

## *Recommendation 15: Law Society as Employer*

**The Law Society should continue to set and monitor equity standards for its own staff that will make it a model for the profession as an employer.**

### **Initiatives Adopted by the Law Society**

#### *Recruiting*

218. The Law Society's job postings include a notice encouraging applications from persons from equality-seeking communities, Francophones and Aboriginal peoples. The notice typically reads:
- a. The Law Society of Upper Canada is an equal opportunity employer striving to reflect the population of Ontario. We welcome applications from women, persons with disabilities, racialized persons, Aboriginal peoples, gays, lesbians and Francophones.
  - b. All postings in French include a notice that typically reads: Le Barreau du Haut-Canada souscrit au principe de l'égalité des chances afin de représenter la diversité de notre profession et de nos communautés. Les candidatures de femmes, personnes handicapées, personnes de couleur, personnes Autochtones, gais, lesbiennes et francophones sont les bienvenues.
219. Recruitment interviews include questions that relate to the candidates awareness of equity and diversity principles.

#### *Workforce*

220. As of 2002, the Law Society's workforce of 365 employees was comprised of people from diverse backgrounds. Of the 365 employees, sixty-six per cent were women.<sup>107</sup> Women held sixty per cent of management positions. Currently, eight out of nine members on the Senior Management Team are women. A total of 32 positions are designated bilingual in French and English. In addition, a significant number of Law Society employees can communicate in a wide range of languages such as Mandarin, Cantonese, Spanish, Portuguese, German and Italian.

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<sup>107</sup> The Law Society does not ask staff members to self-identify. It maintains limited information relating to representation of equality-seeking communities, Aboriginal peoples and Francophones in its workforce.

## *Workplace Policies*

221. In 2002, all internal human resources policies were revised to ensure conformity to human rights obligations under the *Human Rights Code* and employment standards legislation.

222. Internal workplace policies and practices address equity and diversity issues, issues of harassment and discrimination and the duty of the organization to accommodate employees with special needs. These policies include:

- a. Law Society staffing policy;<sup>108</sup>
- b. Equity and diversity in recruitment and hiring practices;<sup>109</sup>
- c. French Language Services Policy and Guidelines;<sup>110</sup>
- d. Translation Guidelines;<sup>111</sup>
- e. Appropriate Language Policy and Guidelines;<sup>112</sup>
- f. Preventing and Responding to Harassment and Discrimination;<sup>113</sup>

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<sup>108</sup> The Law Society's Staffing Policy and Procedures, effective April 20, 2001, establishes the framework to attract, hire and retain employees that reflects the Law Society's diversity policy.

<sup>109</sup> As mentioned above, recruitment and hiring practices encourage applicants from equality-seeking communities, Aboriginal peoples and Francophones to apply for employment. The interview process includes questions about the applicants' knowledge of equity and diversity principles.

<sup>110</sup> In June 1989, Convocation adopted the French Language Services Policy (also available in French) which includes the following:

- The Law Society is committed to providing services in the French language to its own members and to the public from Osgoode Hall and other Law Society offices in Toronto and from its facilities in the City of Ottawa.
- The Law Society is committed to providing instruction and materials in the French language to students pursuing the Bar Admission Course in the City of Ottawa.
- The Law Society is committed to providing continuing legal education programmes in the French language.
- The Law Society is committed to reviewing its existing and future programmes with the objective of bringing these programmes into conformity with its policy on the provision of French language services.
- The above commitments are subject to such limits as circumstances make reasonable and necessary with the goal of having the policy substantially implemented within three years.

<sup>111</sup> The Translation Guidelines provide that under the French Language Services policy adopted by Convocation in 1989, the Law Society is committed to serving the profession and the public in English and French at its Toronto and Ottawa offices, offering the Bar Admission Course in French in Ottawa and providing CLE programmes in French. The purpose of the translation policy, pursuant to the FLS policy and in line with Ontario's legal bilingualism, is to provide uniform corporate procedures and guidelines that will assist in continuing to produce high-quality French materials in a timely and cost-effective manner in keeping with the customer service focus and the regulatory function of the Law Society.

<sup>112</sup> The Appropriate Language Policy and Guidelines provides direction to assist staff in communicating effectively and appropriately with members of the profession and the public, other staff and community and legal organizations.

<sup>113</sup> The Workplace Harassment and Discrimination Prevention Policy and Procedures prohibits harassment and discrimination in the workplace, based on the grounds enumerated in the Ontario *Human Rights Code*. In addition, the policy is broader than the Ontario *Human Rights Code*. It also prohibits discrimination and harassment on the

- g. Accommodation Policy and Procedures;<sup>114</sup>
- h. Purchasing Agreements compliance to equity and diversity requirement;<sup>115</sup>
- i. Internal human resources policies allow for religious observances;<sup>116</sup>
- j. Flexible time arrangements;<sup>117</sup>
- k. Bereavement Leave Policy;<sup>118</sup>
- l. Maternity Leave Policy;<sup>119</sup>
- m. Bencher/Staff Relations policy.<sup>120</sup>

### *Advisors Appointed under the Harassment and Discrimination Policy*

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basis of other human characteristics such as physical appearance, socio-economic background or occupational group. It also considers unacceptable of any kind of behaviour that is physically and/or verbally abusive, demeaning or degrading of any employee.

<sup>114</sup> The Law Society's Accommodation Policy and Procedures recognizes the Law Society's duty to accommodate employees and provides procedures to request and determine reasonable accommodations.

<sup>115</sup> In October 2001 the Purchasing Policy was modified to include an equity compliance program (See Recommendation 16, Contract Compliance, for further information on the Law Society's Purchasing Agreement).

<sup>116</sup> The Personal Days Policy, effective September 4, 2001, provides for 3 personal days per calendar year. Personal day uses include absences for religious observances, illness, injury or medical emergency of the employee, death, illness, injury or medical emergency of a listed family member and urgent matter concerning a listed family member. Family members are: employee's spouse or same-sex partner; a parent, step-parent or foster parent of parent or spouse or same-sex partner of employee; a child, step-child or foster child of the employee, employee's spouse or the employee's same-sex partner; a grandparent, step-grandparent, grandchild or step-grandchild of the employee, the employee's spouse or the employee's same-sex partner, the spouse or same-sex partner of a child of the employee, the employee's brother or sister; and a relative of the employee who is dependent on the employee for care or assistance.

The Business Dress Policy, effective September 4, 2001, states that religious and cultural observances are respected.

<sup>117</sup> The Compensation for Hours of Work Policy, effective September 4, 2001, establishes standard weekly hour of work, and provides a framework for part-time hours, flexible work hours, regular attendance and punctuality.

<sup>118</sup> Under the Leaves of Absence and Vacation policy, effective September 4, 2001, employees shall be granted up to three days leave of absence with pay in the event of the death of a family member. Employees are granted one day leave of absence with pay to attend the funeral of any close friend or relative not defined as a family member.

Family members are: employee's spouse or same-sex partner; a parent, step-parent or foster parent of parent or spouse or same-sex partner of employee; a child, step-child or foster child of the employee, employee's spouse or the employee's same-sex partner; a grandparent, step-grandparent, grandchild or step-grandchild of the employee, the employee's spouse or the employee's same-sex partner, the spouse or same-sex partner of a child of the employee, the employee's brother or sister; and a relative of the employee who is dependent on the employee for care or assistance.

The Policy also provides for extended leave during the grieving process.

<sup>119</sup> The Maternity Leave Policy, effective July 2000, provides that female employees on maternity leave will be eligible to receive 93% of salary for seventeen weeks, subject to a 12 month period of employment before the employee qualifies for leave.

<sup>120</sup> The Bencher/Staff Relations Policy establishes procedures to address complaints of harassment and/or discrimination against a bencher.

223. Advisors are appointed under the policy on preventing and responding to harassment and discrimination to assist employees by answering questions about harassment and discrimination, explaining the harassment and discrimination policy, outlining options available to employees, helping employees with the implementation of a remedy and helping employees document a complaint for investigation. The membership of the advisor group is diverse. The group is composed of employees with various levels of experience, who work in different departments and units of the Law Society and, to the extent possible, are of differing age, race, ethnic origin, family status, sexual orientation, and religion, as well as individuals with disabilities.

224. The advisors attend a three-day training session on how to address issues of harassment and discrimination in the workplace, and meet every two months to discuss ongoing issues. The advisors report statistical information about incidents to the Equity Advisor and the Director of Human Resources. The statistical information assists the Human Resources Department, in cooperation with the Equity Advisor to identify educational needs for employees.

#### *Training Programs for Employees*

225. As part of the commitment to promoting diversity and equity, all employees attend training sessions to assist them in being more culturally sensitive in dealing with each other and with persons from diverse backgrounds who need the Law Society's assistance. For example, all new employees undergo training for the prevention of harassment and discrimination, including special additional training for managers.

226. Staff members also receive support materials that include appropriate language guidelines policies that support the provision of French language services and tools that help them communicate more effectively with persons with disabilities.

227. All new employees attend an orientation session, which includes information regarding the Law Society's equity initiatives and programs and contact information from the advisors appointed under the harassment and discrimination policy.

## Proposed Strategy

228. There is insufficient empirical evidence to demonstrate whether the Law Society has implemented Recommendation 15.

229. The Law Society has adopted processes and policies that promote equity and diversity within the workplace such as recruitment practices that encourage applications from equality-seeking, Aboriginal and Francophone individuals; internal policies that encourage an inclusive workplace environment; and a successful training program for its workforce.

230. The Law Society has been successful in hiring and promoting women. However, it does not have a program by which employees self-identify on a voluntary basis. Therefore, it does not have statistical information about the diversity of its workforce.<sup>121</sup> This is of particular concern for an organization that strives to be a leader in the promotion of equity and diversity. Statistical information is a fundamental tool in assessing whether there is equality in the workplace. Information should be consistently gathered and maintained on those employed by department and rank, and about promotion and retention of staff from Francophone, Aboriginal and equality-seeking communities. The Law Society's commitment to equality in the workplace is adversely affected by the lack of formulated strategies to promote equality.

**231. The Working Group proposes that the Equity and Aboriginal Issues Committee examine the following strategies and, if required, make recommendations to Convocation:**

- a. **The CEO should compile data on the diversity of the workforce of the Law Society and develop strategies to promote equality in the workplace.**
- b. **The CEO or designate should provide an in person annual report to the Equity and Aboriginal Issues Committee regarding the implementation status of equality in the workplace initiatives.**

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<sup>121</sup> Rotiio> taties observes that the Law Society has only one or two Aboriginal employees on its staff. It is not obvious that the Law Society has done any significant work in implementing this recommendation. There is no information available to assess the progress made. Rotiio> taties recommends that the Law Society begin to target recruitment within the Aboriginal community for mid and senior level positions across the organization.

Rotiio> taties observes that not only must Aboriginal employees be recruited (and retained), the Law Society must ensure that the working environment is one that is sensitive to and respects Aboriginal culture and traditions and is welcoming and affirming of the staff from Aboriginal and equity seeking communities. (See Appendix 2).

## ***Recommendation 16: Law Society as a Contractor for Legal Services***

### **The Law Society should:**

- (a) Develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession; and**
- (b) Examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.**

### **Initiatives Adopted by the Law Society**

232. In October 2001, the Senior Management Team of the Law Society approved the Law Society's Purchasing Policies and Procedures (the Purchasing Policy). The Purchasing Policy was modified to include an equity compliance program. The Equity Compliance Program states that: "Convocation has undertaken that individuals and organizations representative of Francophone, Aboriginal people and equality-seeking communities have access to appropriate services, and are able to participate in the planning, development and delivery of services directly provided, purchased and contracted by the Law Society."
233. The Purchasing Policy envisions the initiation of activities leading to the development of increased representation of equality-seeking communities as suppliers, without sacrificing operational requirements, best value, prudence, and sound contracting management.
234. Notwithstanding its Purchasing Policy, the Law Society has not been successful in implementing an effective contract compliance program.

### **Proposed Strategy**

235. The Law Society has made little progress in the implementation of this recommendation and the Working Group is of the view that it should implement a contract compliance program as described below.
236. Current procedures for the procurement of goods and services vary considerably within the organization. The flexibility has led to inconsistency, coupled with very limited adherence to equity. When suppliers are chosen directly by individual departments it becomes more difficult to identify inadvertent patterns of exclusion or missed opportunities

to diversify. Heightened attention to diversity is consistent with continued concern for cost, quality of the product/services and delivery options.

237. Although the Senior Management Team has articulated an Equity Compliance Policy to guide the Law Society's purchasing practice, employees involved in the process are not always aware of the policy. The contract compliance process should be designed to respond effectively to the range of service-providers who contract with the Law Society.
238. The Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society (as approved by Convocation March 22, 2001) cites as one of the conditions of retainer that all outside counsel retained by the Law Society "shall be in compliance with the Law Society's contract compliance policy as in force from time to time." However, a contract compliance policy is not outlined in the document. The Law Society does not maintain information about Counsel's self-identification based on the grounds enumerated in human rights legislation.
239. Recommendation 16 notes that the Law Society should develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession. The Law Society has not developed such guidelines.
240. Recommendation 16 also provides that the Law Society should examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements. The Law Society has not examined the value of requiring firms and organizations to meet equity and diversity requirements.
241. **The Equity and Aboriginal Issues Committee should examine the following strategies and, if required, make recommendations to Convocation:**
- a. **The CEO should report to Convocation by the end of 2004 with respect to:**
    - i. **The implementation of a contract compliance program for the retention of outside lawyers that reflects, as possible, the diversity of the Ontario legal profession.**

- ii. **A provision by which law firms wishing to do business with the Law Society file data indicating whether their organization is representative of the diversity of the legal profession.**
- iii. **A provision by which suppliers wishing to do business with the Law Society file data indicating whether their workforce is representative of the Ontario population.**

