



THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

striking a balance

*The Report of the
International Practice of Law Committee
on
Multi-Disciplinary Practices
and the Legal Profession*

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Executive Summary

Multi-disciplinary practices (MDPs) are business arrangements in which different professions practise together to provide a broad range of advice to consumers. These arrangements encompass a variety of forms, from highly integrated organizations with professionals all working under one ownership structure to loose referral networks. With some minor exceptions, highly integrated MDPs are generally prohibited in common-law jurisdictions such as Great Britain, the United States and Australia. They are currently permitted on a limited basis in Ontario.

MDPs in their varying forms may threaten some or all of the core values of the legal profession: self-governance of the profession, independence of the profession, avoidance of conflicts of interest, preservation of client confidentiality, preservation of solicitor-client privilege and avoidance of the unauthorized practice of law. To preserve these values, there are three main approaches to regulation: first, regulate individual lawyers only and not the MDP as a business entity; second, regulate the business entity, specifying who can control it and the types of services it can provide; third, permit MDPs generally but address specific issues that may be of particular concern.

The choice of approach is informed by two sets of conflicting public interests. The first is the preservation of lawyers' role in the administration of justice. This tends to favour the separation of the delivery of legal services from the delivery of other professional services and is consistent with the second approach above. The second set of public interests is based on freedom of choice, freedom of association, competition and efficiency. This argues for substantial departures from current business structures in which legal services are delivered and is consistent with the first approach above. The third approach above attempts to strike a balance between the two sets of public interests, but it is difficult to determine how that balance should be struck.

The Committee prefers the third approach. Choice, competition and freedom of association are aspects of the public interest that should be given more weight. At the same time, the Committee is not persuaded that the core values of the legal profession can be protected only by lawyers controlling MDPs or by MDPs only delivering legal services. The focus should be on regulation of individual lawyers and not the MDPs themselves.

Lawyers in MDPs must be subject to the rules of professional conduct of law societies and remain responsible for ensuring that the services they deliver comply with all such requirements. At the same time, lawyers practising in more traditional forms of practice should not be unfairly disadvantaged by MDPs as regards, for example, incorporation or advertising restrictions. The task of identifying issues of particular relevance to MDPs and addressing them in an appropriate manner will evolve as the phenomenon of MDPs evolves. These issues include: licensing, informing clients about differing professional standards within the MDP, insurance, avoiding conflicts of interest, maintaining confidentiality, protecting solicitor-client privilege in the MDP, informing clients of the potential risks to solicitor-client privilege, and prohibiting forms of practice that may be incompatible with certain forms of legal practice.

The Committee recommends that:

- MDPs be recognized to provide greater scope for choice and innovation regarding the provision of services by lawyers and others.
- Lawyers in MDPs be subject to the rules of professional conduct of the law societies and remain responsible for ensuring that the services they deliver comply with all such requirements.
- The CBA and law societies address specific regulatory issues regarding lawyers' participation in MDPs, with a particular focus on the preservation of solicitor-client privilege in MDPs.
- Subject to the above:
 - there be no distinction drawn between MDPs involving "practices", such as Captive Law Firms (CLFs) and fully integrated partnerships; and
 - there be no restriction on the kinds of services provided by MDPs.
- There be no requirement of control of MDPs by lawyers.
- With respect to licensing, the majority of the Committee believes that at the present time MDPs should not be required to obtain a license as a precondition to offering legal services, although circumstances may evolve which may require licensing of certain types of MDPs. The Chair believes that a licensing regime should be established as a precondition to MDPs offering legal services.

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I. Introduction

Multi-disciplinary practices (MDPs) are an important development in the delivery and consumption of legal services. They are certain to bring further, substantial changes. The initiatives for this development may be seen as part of a broader need to provide cost-effective and innovative professional services. At the same time, MDPs raise issues going to the core values of the legal profession.

During two years of deliberations and consultations, the International Practice of Law Committee (IPL, the Committee) of the Canadian Bar Association (CBA) has considered whether and how the legal profession can meet the challenge of broadening opportunities for lawyers to provide services while preserving the core values of the legal profession. The core values are:

- self-governance of the legal profession;
- independence of the legal profession;
- avoidance of conflicts of interest;
- preservation of client confidentiality;
- preservation of solicitor-client privilege; and
- avoidance of the unauthorized practice of law.

This Report contains a detailed discussion of the basis on which the Committee reached its recommendations, including an explanation of its departure from the tentative conclusions of its August 1998 Interim Report. This Report proceeds as follows:

- Part **II** discusses the development of MDPs in the provision of legal services.
- Part **III** describes the work of the Committee and other initiatives in various jurisdictions regarding MDPs.
- Part **IV** describes actual and proposed approaches that have emerged.
- Part **V** discusses issues regarding core values of the legal profession and competing views of the public interests at stake.
- Part **VI** focuses on accountancy firms as professional service providers and how they have become the driving force behind MDPs.
- Part **VII** summarizes the tentative position set out in the Committee's Interim Report of last year and explains why that position has been revisited.

- Part **VIII** contains the approach recommended by the Committee.
- Part **IX** outlines the conclusions and recommendations of the Committee.
- Part **X** describes the next steps proposed by the Committee.

The Committee recommends that:

- MDPs be recognized to provide greater scope for choice and innovation regarding the provision of services by lawyers and others.
- Lawyers in MDPs be subject to the rules of professional conduct of the law societies and remain responsible for ensuring that the services they deliver comply with all such requirements.
- The CBA and law societies address specific regulatory issues regarding lawyers' participation in MDPs, with a particular focus on the preservation of solicitor-client privilege in MDPs.
- Subject to the above:
 - there be no distinction drawn between MDPs involving “practices”, such as Captive Law Firms (CLFs) and fully integrated partnerships; and
 - there be no restriction on the kinds of services provided by MDPs.
- There be no requirement of control of MDPs by lawyers.
- With respect to licensing, the majority of the Committee believes that at the present time MDPs should not be required to obtain a license as a precondition to offering legal services, although circumstances may evolve which may require licensing of certain types of MDPs. The Chair believes that a licensing regime should be established as a precondition to MDPs offering legal services.

II. MDPs: an important development in delivering legal services

A. Forms of MDPs

MDPs are business arrangements in which individuals with different professional qualifications practise together in partnership or in other business arrangements.¹ A prime objective of MDPs is to combine different skills to provide a broad range of advice to consumers.

The most highly integrated form of MDP would consist of a single service organization, with a single structure of ownership, management and finances. The organization performs projects for clients utilizing competence in multiple disciplines, accomplishing this through co-workers, associates or partners who are members of different professions. This highly integrated form of MDPs is so far prohibited by the regulation of the legal profession in all Canadian provinces except Ontario.²

A second form of MDP is the quasi-integrated model. This model is found in jurisdictions where professional rules require a degree of formal separation between lawyers and non-lawyer professionals, and other service providers. Professionals may share office space and otherwise function in a closely coordinated way to provide complementary and integrated services to a client, but with a degree of separate management authority, while billing each client separately and keeping receipts separate in order not to run afoul of rules prohibiting fee-sharing between the professionals involved. The extent of the formal distinction is usually set by law and practice in the various jurisdictions.

Lastly, the functionally least integrated forms of MDP are loose alliances, associations, networks, and similar arrangements between firms of professionals from different disciplines. Many such multi-disciplinary practices amount to little more than non-exclusive reciprocal-referral arrangements.

B. Existence of MDPs

MDPs are vehicles through which lawyers might enter into practice with various professionals (and non-professionals). However, it is the relationship between lawyers and accountants in large international professional consulting service firms that is driving the debate over MDPs. On the whole, it is these large firms that are taking the initiative, believing that there may be strong economic reasons for linking lawyers to their practices in a number of ways, including through MDPs.³

In their most integrated form, involving partnerships, MDPs are generally prohibited in almost all common-law jurisdictions in Great Britain, the United States and Australia. Washington, D.C., and New South Wales, Australia, permit MDPs, including partnerships, with varying restrictions as to form or purpose.⁴ In Canada, their prohibition results from the application of the rules of professional conduct in every province except, recently, Ontario; for example, the rule prohibiting lawyers sharing fees with any other professionals. However, the Law Society of Upper Canada (Ontario) has recently amended its by-laws to permit MDPs, including partnerships, in limited circumstances and subject to particular regulation.⁵

MDPs currently exist in some countries of western Europe such as France, Germany, Spain and Great Britain, and in Australia. However, these MDPs appear to involve the second form of MDP described above (quasi-integrated). International accounting/professional service firms have created law firms separate from the accounting firms, but those associated law firms do work for the clients, and are marketed by the international professional service firms, on an exclusive or near exclusive basis. Such arrangements are often referred to as “tied” or “captive law firms” (CLFs); in some situations these CLFs have become very large. Thus, in Canada, the large accountancy/professional service firm of Ernst & Young has established and directly affiliated itself with a law firm, Donahue & Partners. That firm is growing and has announced plans to open offices, operating in conjunction with Ernst & Young, in cities across Canada.

C. MDPs, a Changing Profession and a Society in Transition

MDPs may present opportunities and challenges to a changing legal profession as Canada’s society and economy are being substantially altered.⁶ MDPs may present clients with an alternative to a single-profession firm. In addition, the profession of accountancy may provide useful lessons to lawyers in terms of the range of services offered to clients.⁷

In formulating its position on MDPs, the CBA, as the national organization representing lawyers, should not ignore the broader context of the relationships between law and other professions, particularly accounting (and its expansion of services). Such relationships should be examined, beyond the issues posed by MDPs, as part of the CBA’s deliberations regarding law as a profession in transition that must be responsive to a changing society and economy. The CBA can play a vital role in assisting its members with the opportunities presented by current developments.

III. The work of the Committee and other initiatives regarding MDPs

A. The IPL and its Mandate

The IPL was established as a Special Committee of the CBA in the Fall of 1997. Chaired by Thomas G. Heintzman, Q.C., of McCarthy Tétrault (Toronto), the Committee has benefitted from the membership of Christiane Alary of deGrandpré Chait (Montréal); Riyaz Dattu of McCarthy Tétrault (Toronto); James M. Klotz of Klotz Associates (Toronto); Simon V. Potter of Ogilvy Renault (Montréal); and T. Bradbrooke Smith, Q.C., of Stikeman, Elliott (Ottawa). CBA staff liaison has been provided by Joan Bercovitch, Senior Director of Legal and Governmental Affairs, and further CBA staff assistance has been provided by Michelle Brûlé, Administrative Assistant, and Richard Ellis, Legal Policy Analyst. The Committee also received issues papers prepared by Melina Buckley, Wendy King, Professor W.A. Bogart and Professor Colin Boyd. Professor Bogart also assisted in the preparation of initial drafts of this report.

The mandate of the Committee is to:

- Monitor the activities, negotiations and developments regarding the globalization of legal practice and the trend towards multi-disciplinary practices through NAFTA, the World Trade Organization (WTO) and the International Bar Association (IBA), and report regularly to the CBA's Senior Officers on such developments;
- Recommend to the CBA a policy framework to assist in the development of the CBA's position with respect to the globalization of legal practice and the trend toward multi-disciplinary practices; and
- Develop strategies for the CBA and law firms to assist the Canadian legal profession in addressing these trends.

B. Work of the IPL Regarding MDPs

The provincial and territorial law societies and their national body, the Federation of Law Societies (FLS), have a direct interest in MDPs from a regulatory perspective. However, the CBA, as the national voice of lawyers, is able to make a distinct contribution regarding the relevant issues.

The Committee began its work by assigning responsibility to individual members of the Committee to maintain contact with, and report to, the Committee on relevant developments within the IBA, the American Bar Association (ABA), the FLS and individual law societies, NAFTA and the WTO. A Committee member attended and testified before meetings of the ABA Commission studying MDPs. Committee members attended meetings of the IBA and were briefed by Canadian government negotiators to NAFTA and the WTO. They maintained ongoing communication with the FLS and with law societies active in relevant issues. In June 1998, the Committee expanded to include V. Randell J. Earle, Q.C., of O’Dea, Earle (St. John’s), a representative of the FLS.

1997-1998

In 1997-98, the Committee focused its attention on the issue of MDPs, and related developments domestically and internationally:

- A research paper on the policy implications of MDPs for the legal profession was prepared for the Committee by Melina Buckley.⁸
- A survey of 600 CBA members, including managing partners of firms across the country, was conducted with a view to ascertaining the preliminary views of the membership with regard to MDPs.⁹
- An options paper on potential regulatory approaches to MDPs was prepared for the Committee by Professor W. A. Bogart of the University of Windsor Faculty of Law.¹⁰
- A meeting of the Committee with representatives of the Law Society of Upper Canada was held in July 1998, to exchange information and to discuss “next steps” in the development of a Canadian response to the MDP phenomenon.
- The Committee released an Interim Report on MDPs in August 1998.¹¹

1998-1999

During 1998-99, the Committee consulted widely with CBA Branches, managing partners from firms in cities across Canada and law societies in Canadian jurisdictions. In February 1999, the

Committee invited the “Big 5” accounting firms to meet with it, but those firms declined. However, in late June 1999, Ernst & Young did meet with the CBA President. Members of the Committee spoke at Branch events and reviewed other materials including, for example, a survey on attitudes toward MDPs done by the British Columbia Branch. The Committee continued to commission research, consult and deliberate regarding its position on MDPs:

- Research papers were prepared on the following:
 - relevant legal issues regarding MDPs (Wendy King);¹²
 - developments in other jurisdictions and their policy implications (Professor W.A. Bogart);¹³
 - the transformation of the accounting profession (Professor Colin Boyd).¹⁴
- The CBA President held several meetings with law firm managing partners.¹⁵
- The Committee’s Interim Report was circulated to CBA members and Branches, provincial and territorial law societies, and the FLS for comment.¹⁶
- The Committee delivered a Status Report on MDPs (February 1999).¹⁷

C. Other Initiatives Regarding MDPs

MDPs have become the focus of deliberations in many jurisdictions. Internationally, they are under active examination by the Law Society of England and Wales (LSEW)¹⁸, the Law Council of Australia (Australia)¹⁹, the New York State Bar Association (New York)²⁰, the ABA²¹, the IBA²², and the WTO²³. As indicated earlier, MDPs are permitted in limited form in Washington, D.C.²⁴, and in New South Wales²⁵. In the former, MDPs must limit themselves to providing legal services. In the latter, MDPs must be controlled by lawyers.

In Canada, MDPs are also being examined by the FLS.²⁶ The FLS report is expected to be published in August 1999.

As mentioned earlier, the Law Society of Upper Canada’s Committee on MDPs (Ontario) issued a Report in the Fall of 1998.²⁷ That Society passed a by-law in May 1999 to address issues involving MDPs.²⁸

In March 1999, the Barreau du Québec adopted a series of recommendations made by its MDPs Committee in its February 1999 report.²⁹

In Spring 1999, the British Columbia Branch of the CBA established a Task Force on MDPs and conducted a survey of its members on attitudes toward MDPs.

All of these materials have been reviewed by the Committee in formulating this report.³⁰

IV. Approaches to regulation

This section briefly summarizes the positions (some of them provisional) that have been taken by the various bodies, listed in the previous section, that are examining MDPs. Basically, there are three approaches.³¹ The first (most closely associated with Australia) and second (most closely associated with Ontario) approaches represent two very different views of lawyers and their roles in MDPs, while the third represents a middle position between these two extremes.

The first approach asserts that the vehicle of practice (*i.e.*, the MDP) is essentially irrelevant, and it is individual lawyers who should be held to professional standards, however they deliver services. The second approach claims that, in order to ensure that lawyers in MDPs conform to legal professional rules, lawyers must control the entity and/or the MDP must be limited to providing legal services. The third approach approves of MDPs in principle but concludes that they pose special problems for lawyers that must be addressed by regulators of the legal profession.

A. Regulate Lawyers, Not Business Entities (Australia)

The Law Council of Australia has taken the position that the key in addressing issues raised by MDPs, in all their forms and varieties, is to focus on the role of lawyers, not to regulate the business entities in which lawyers may choose to deliver their services.

This focus assumes the following important elements:

- The concept of legal professional privilege will be further enshrined by legislation.
- There will be disclosure to the client of what services are offered by MDPs.
- The Law Council will stipulate limits on those who practise in association with lawyers in MDPs.

Even so, the Council recommendations are focused on the duties of individual lawyers:

- Model Rules should stipulate that any lawyer in an MDP must ensure that legal services provided by that lawyer are in accordance with legislation addressing legal practice and any rules of professional conduct.
- Legislation addressing legal practice should prohibit an MDP from requiring a lawyer in the MDP to act in breach of the lawyer’s obligations under the legal practice legislation or the professional rules of conduct.

B. Require Control by Lawyers and/or Limit MDPs Activities to Legal Services Only (Ontario, New South Wales, Washington, D.C.)

In contrast to Australia, Ontario (combining the requirements of the New South Wales and Washington, D.C., models) focuses on the regulation of the business entity regarding MDPs; in particular, what activities it can engage in and who can control it.

Thus the Ontario by-law stipulates that an MDP is a “law practice in which the services of non-lawyers support or enhance the delivery of the legal services in the practice” and in which “effective control of the practice rests with the lawyers”.³² MDPs may take the form of either associations or partnerships. However, in the case of partnerships, certain other requirements must be met. These conditions include the maintenance of professional liability insurance for the partnership to cover the activities of non-lawyers and the approval of the Law Society to practise as an MDP.

The Ontario by-law circumscribes the services that can be provided by an MDP, narrowing them to legal ones, and limits control of the entity to lawyers. It is, therefore, questionable in what circumstances these MDPs will be of interest to other service providers.

C. Permit MDPs Generally (Without Limitation to Control by Lawyers or to the Provision of Legal Services Only) and Address Specific Issues (New York, Québec, FLS, ABA, IBA, LSEW)

This position endorses (or at least tolerates) MDPs and rejects the assertion that they must be controlled by lawyers or that their services must be limited to the practice of law. However, the issues posed by MDPs and the ramifications for the legal profession are seen as requiring more than simply leaving such issues to be dealt with by individual lawyers in multi-disciplinary practices on an instance-by-

instance basis. Therefore, this position indicates that issues posing particular problems for lawyers in MDPs should be identified and addressed with some specificity in rules of professional conduct or by some other appropriate means.

However, the problem becomes one of identifying all such issues and addressing them in an appropriate manner. Two basic needs must be balanced. On the one hand, there is the need to provide for competition and choice by allowing for a range of services and ownership. On the other hand, while seeking to ensure that the core values of the legal profession are maintained, those bodies adopting this third position vary in important details regarding how the balance should be struck. Indeed, the minority (but not dissenting) position in the New York Report suggests that in addressing specific issues, there could be obstacles that would be “difficult, if not impossible, to overcome”.³³

Illustrative of the difficulties in striking this balance are the alternative approaches taken by the ABA and Québec, both of whom have a similar orientation to the issues. The ABA would require MDPs to give an annual undertaking to the highest court of a jurisdiction that the MDP will abide by certain standards of the legal profession. Québec would require non-lawyers in MDPs to enter into a contract that would spell out the terms on which fees would be shared and that would ensure that non-lawyers maintain the legal profession’s standards concerning confidentiality, professional independence and the avoidance of conflicts of interest.

V. Core values of the legal profession and competing views of the public interest regarding MDPs

A. Core Values of the Legal Profession

A critical concern in the debate over MDPs is that the greater their involvement in activities other than the practice of law, the more difficult it may be for lawyer members to discharge obligations that the practice of law properly demands. The Committee's Interim Report identified six core values that could be affected by MDPs:³⁴

- self-governance of the legal profession;
- independence of the legal profession;
- avoidance of conflicts of interest;
- preservation of client confidentiality;
- preservation of solicitor-client privilege; and
- avoidance of the unauthorized practice of law.

These core values enable a lawyer to speak on behalf of a client before the courts and before the tribunals of government in a unique way that is reflective of a society governed by the rule of law. They distinguish lawyers from all other professionals in their duty to their clients, to the judicial system and to society generally.

This is not to say that lawyers are by their nature more ethical than accountants, psychologists or other professionals who have obligations of their own concerning matters such as confidentiality and conflict of interest. Instead, the lawyer's obligations are of a different nature. They derive not just from a written professional code of conduct but also, and more importantly, from the requirements of a properly functioning judicial system in a constitutional democracy. For example, the judicial system cannot work properly if lawyers and their clients cannot be completely candid with each other. This openness can only be protected by the strictest rules concerning confidentiality and privilege.

Self-Governance and Independence

In terms of self-governance and independence, the concern is that MDPs that are owned by non-lawyers and that deliver a variety of services, especially in the case of large international entities, will erode control by lawyers of their own profession. The independence of the profession is seen to be in jeopardy. The practice of law may come to be viewed only as a business and lawyers seen, even by themselves, as no longer playing a larger public role.

In contrast, it is asserted that lawyers have long worked for large corporations and governmental entities, and those practices have not been viewed as threatening the independence and self-governance of the profession. In any event, it is argued that MDPs are a developing economic reality that cannot be contained by the insistence upon control by lawyers and by limiting them to delivering “legal services”.

Avoidance of Conflicts and Maintenance of Confidentiality

The legal profession has, over several centuries, developed a set of rules regarding conflicts and the maintenance of confidentiality that may be stricter or, at any rate, different from those of other professionals and service providers. These rules together form a cornerstone of the judicial system. There may be incompatibilities between lawyers and other service providers in the delivery of services for which confidentiality is essential and conflicts are anathema.

In response, it is contended that lawyers in MDPs will have to ensure that, whatever and however services are offered, the legal profession’s standards regarding conflicts and confidentiality are maintained. For example, the duty of public disclosure of other professionals and the lawyer’s duty to maintain confidentiality, particularly in the context of litigation, may be fundamentally incompatible. The solution may be for firms to employ screening devices to separate the practices, at least insofar as the two professionals come into contact with the same client. Law societies may even see the need to prohibit lawyers from practising in MDPs that deliver specified services judged by the law societies to be incompatible.

Moreover, it is argued that the courts will grapple with the evolving phenomenon of MDPs with respect to conflicts, just as they have coped well with the development of in-house counsel, the greater mobility of private practice counsel, and a variety of other challenges to the profession’s core values. Nor are the courts unable to cope with conflicts of interest in other professions: the House of Lords has very recently determined that accountants and consulting professionals should be held, in some circumstances, to the same standard as lawyers regarding client confidentiality.³⁵ Concerns have been raised in other

instances about the ability of accounting firms to protect against conflicts of interest. In at least one case, a judge ordered that a firm's "Chinese wall" was insufficient.³⁶

Solicitor-Client Privilege

It is asserted that lawyers in MDPs will not be able to guarantee that clients will enjoy solicitor-client privilege. Services of lawyers will be intermingled with those of others, leading to a blurring that will compromise the privilege. The very purpose of MDPs will accelerate the migration of confidential information from lawyer members to non-lawyer members, and multiply the prospects of claims of privilege being challenged.

There is therefore a real concern that solicitor-client privilege may not be as safe in the MDP as in the traditional law firm or in-house practice. As a matter of principle, solicitor-client privilege need not be lost in an MDP. However, the risks of it being lost may be quite substantial. The level of risk may vary based on a number of factors, such as the type and structure of the MDP involved and the differing purposes for which a client may approach an MDP.

The opposing view is that the courts have, generally, drawn a distinction between lawyers giving legal advice and lawyers communicating for other purposes, with solicitor-client privilege attaching only to the former. The courts will surely draw much the same distinction when called upon to do so with regard to MDPs; the occasions for doing so may be multiplied by MDPs, but the basis for the distinction will be essentially the same. In addition, clients can be warned that there may be less protection of the privilege when services are delivered through an MDP and that, as is already the case, communications are not privileged just because they are had with a lawyer. Clients can then choose whether or not to accept such services.

Unauthorized Practice

In terms of the unauthorized practice of law, the concern is that lawyers in MDPs will be drawn into abetting others to engage in services that should be delivered only by the legal profession.

In response, it is suggested that it is already unclear just what constitutes the unauthorized practice of law, and approaches taken to such issues by law societies are highly variable. For example, law societies have left accountants largely alone in terms of alleged encroachments regarding the practice of law (for

example, respecting tax issues) but have prosecuted independent paralegals with mixed success.³⁷ In any event, it is argued that law societies will be free to prosecute on any occasion when they are confident that certain service providers (in MDPs or elsewhere) are engaging in the unauthorized practice of law. Perhaps the impetus for such prosecutions will increase with the advent of MDPs.

Summary

The challenges posed by MDPs to these core values need to be carefully addressed. At the same time, such challenges should be faced by taking into account modern economic realities, current business conditions and the way in which professions actually work. There are, after all, challenges to the core values quite apart from MDPs.

The self-governance and independence of the legal profession are under constant review by a skeptical public and press. The core values of confidentiality and solicitor-client privilege are potentially at risk with emerging information technologies. MDPs may be the business context where these concerns come to a head.

B. Competing Views of the Public Interest

Almost all reports concerning MDPs hold the public interest as an essential factor in forging a policy no matter which of the three positions outlined above is adopted. However, views of what constitutes the public interest are not monolithic, and a number of public interests are relevant in deliberations over something as complicated as MDPs.

Two Views of the Public Interest

Two conflicting views of the public interest have emerged. On the one hand, there is a set of public interests focused on the role of lawyers in the administration of justice. Solicitor-client privilege, confidentiality, the avoidance of conflicts of interest, and the other core values are argued to be central to that role. On the other hand, there is also a set of public interests based on such values as freedom of choice, freedom of association, competition and efficiency.

The first set of public interests tends to favour the current separation of the delivery of legal services from the delivery of other professional services. This separation, it is argued, best protects solicitor-client privilege, confidentiality and independence, and most likely avoids conflicts of interest. Proponents of this view believe that some of these values simply cannot be accommodated within an MDP and that these values are far too important to be jeopardized for economic or business reasons. Most particularly, this viewpoint asserts that solicitor-client privilege is fundamental to the rule of law, and that that privilege will not survive in MDPs nor in a legal profession dominated by MDPs.

The second set of public interests argues for substantial departures from the current prohibitions. Here the assertion is that limiting the forms of business structures in which lawyers can deliver services blunts freedom of choice, freedom of association and competition. Proponents of MDPs contend that such entities and alliances can deliver services, including legal ones, that can be more innovative, timely, efficient and comprehensive to clients than traditional forms of professional practice.³⁸ What is more, it is argued that traditional arrangements for the delivery of legal services do not necessarily better protect core values. At any rate, ethical obligations should be imposed on individual lawyers and not mediated through business structures. Such significantly different views of the public interest need to be accounted for in any balanced policy on MDPs. The difficulty is how to reconcile these two very different sets of values.

Core Values Identified with Separate Law Firm Model

In the case of the Ontario position (summarized previously), the public interest involved with MDPs is heavily weighted towards the maintenance of solicitor-client privilege, independence and the avoidance of conflicts of interest and other core values, and limitation on business structures involving lawyers is seen as critical to achieving such goals.

According to the Ontario report,

...all of the concerns with respect to privilege, conflicts of interest, independence, public duty, etc., would be eliminated, as the service offering would be confined to the delivery of legal services. Furthermore, adherence to required professional norms in the delivery of such services would be guaranteed by the controlling influence of lawyers.³⁹

Competition and Freedom of Choice and Association

In contrast, in the Australian position (summarized previously), it is the public interest in competition and freedom of choice and association that is paramount. Concerns about dilution of solicitor-client privilege, independence, avoidance of conflict of interest and other core values are recognized but are not seen as dictating a particular vehicle for the delivery of services. Such issues are addressed by focusing on the ethical obligations of individual lawyers.

Thus Australia identifies three fundamental objectives for its policies:

- (a) paramountcy must be placed on the maintenance of lawyers' ethical obligations and professional responsibilities;
- (b) there should not be any restrictions on the manner in which lawyers choose to practise unless that restriction is in the public interest; and
- (c) the interests of consumers must be properly protected.

Australia asserts: "These objectives are consistent with national competition principles, protect the interests of consumers and will remove existing restraints on the capacity of the legal profession to compete with other service providers."⁴⁰

It is significant that the Law Council of Australia's position is linked to the government's competition policy and is being promoted by the government's position on competition among service providers. In addition, Australia has a divided Bar. Litigation lawyers practising separately may inspire greater confidence that the core values of the legal profession will be preserved more readily, at least in terms of advocacy functions.

Striking a Balance

The third position (summarized in the previous section) would permit MDPs generally, while addressing particular aspects of their impact on the legal profession. This approach attempts to recognize both the public interest in greater choice and competition for services while, at the same time, contemplating specific measures in the context of MDPs to protect core values. As already indicated, the difficulty is in determining how that balance should be struck and which particular measures are required. That critical issue is pursued below.⁴¹

VI. *The driving force behind MDPs — accountants as professional service providers*

MDPs could be formed by a variety of service providers and lawyers, for example, lawyers and paralegals, lawyers and land use planners, or lawyers and social workers. However, it is the possibility of lawyers and accountants practising in various arrangements that is driving both the development of MDPs and the debates about how they ought to be regulated.⁴²

A. The “Big 5”

The most significant developments regarding MDPs have not been with regard to accountants generally but, rather, those who practise in the “Big 5” firms. These firms are huge and internationally linked. Moreover, these firms now offer a host of services (such as a broad range of consulting and tax advice) that are far beyond those associated with the traditional practice of accounting. Many of the service providers in these firms are unregulated, or at least not regulated as strictly as lawyers and accountants. It is more appropriate to refer to the “Big 5” as professional service firms than as accounting firms. The former designation is promoted by the “Big 5”. It is these entities that are pursuing MDP possibilities with lawyers in many countries.

B. The “Big 5”, Accounting and MDPs

The following points may be made about the growth of the “Big 5”, the transformation of the accounting profession and MDPs:

- The business activities of the “Big 5” now go so far beyond their original core of accounting activities that it may be more appropriate to call them business advisory firms or professional services firms than accounting firms.
- Given the scope of their activities that go beyond accounting, they may be regulated more by market expectations than by a code of professional conduct.
- The legal profession may regard the “Big 5’s” acquisition of law firms as a simple issue of business diversification into law by business service conglomerates, and not as an amalgamation of

two professions, each with distinct codes of professional conduct with possibly contradictory elements.

C. A Policy for the Legal Profession Regarding MDPs

The point in this context is that the legal profession needs to forge its own policy regarding MDPs and lawyers. Moreover, that policy should not assume that regulatory issues are limited to the resolution of conflicts between existing codes of conduct of the legal profession and those of other professions. The “Big 5” present a much more diverse range of services and reflect much greater market forces than those in traditional accounting firms. Any policy regarding MDPs must take account of that reality.

VII. Revisiting the position in the interim report

A. Tentative Position in the Interim Report

The Committee set out a tentative position in its Interim Report. In summary, that position was that MDPs consisting of lawyers and non-lawyers should be permitted so long as:

- the MDP always has a majority of owners who are lawyers, and the MDP is controlled by lawyers;
- the primary activity of the MDP is the provision of legal services;
- all owners of the MDP offering legal services must be subject to the disciplinary jurisdiction of the Law Society of the province or territory in which they practise; and
- all owners of the MDP must be required to protect the privilege and confidentiality of the MDP's clients.⁴³

B. Reconsideration of the Position

The Committee has had the opportunity to consider its tentative position. It now believes that position (basically, that MDPs must be controlled by lawyers and offer primarily legal services) should be reconsidered in favour of permitting a broader range of opportunities in terms of lawyers delivering services in MDPs.

The survey it conducted, the consultations that have been held, and the reaction to the Interim Report all suggest, on balance, that the Committee's tentative position was too restrictive. The following were some of the reactions:

- the difficulty of drawing lines (regarding permitted and prohibited activities) between legal and other services;

- the difficulty of coming to a meaningful test of “control”;
- concerns that opportunities for innovation in the delivery and receiving of legal services were being missed or otherwise ceded to other service providers;
- the position could be perceived as simple “turf” protection.

Furthermore, on reflection, it appears that the challenges with regard to confidentiality and privilege, in a world in which lawyers already perform a variety of services not restricted to legal services, are the same regardless of the proportion of lawyers in an MDP.

The Committee has come to the conclusion that choice, competition and freedom of association are aspects of the public interest that should be given more weight in a policy regarding MDPs. The core values of the legal profession remain of critical importance, but the Committee is not persuaded that these core values can be protected only by lawyers controlling MDPs or by MDPs delivering only legal services, especially when such restrictions can impose appreciable costs in terms of choice, competition and freedom of association. In other words, the Committee has concluded that, at the present time, a policy on MDPs should focus on the regulation of lawyers in those MDPs and not on the MDPs themselves. The Committee is persuaded that a policy can be developed which does take account of the particular issues that lawyers in MDPs can experience.

VIII. The recommended approach

The Committee believes that law societies should not require that MDPs limit the services they provide to those of a legal nature, or that they be controlled by lawyers. Lawyers should be able to offer their services in any business entity delivering any services, so long as those services conform with applicable regulatory or other legal requirements. There may be exceptions in order to address certain issues (some of which are discussed below). However, those exceptions should be limited in order to provide both lawyers and consumers more choice in the delivery and consumption of services. Regulation should be focused on what can be shown to be necessary to ensure lawyers' adherence to their profession's ethical demands.

At the same time, lawyers in MDPs must be subject to the rules of professional conduct of law societies and remain responsible for ensuring that the services they deliver comply with all such requirements.

In addition, lawyers practising in more traditional ways, for example, in associations or partnerships comprised only of lawyers, should not be unfairly disadvantaged by MDPs. For instance, so long as lawyers are not permitted to incorporate, no lawyer should be permitted to deliver services to the public through a corporation simply because it identifies itself as an MDP. Similarly, lawyers within MDPs should not be permitted to advertise in ways other than those permitted for lawyers within traditional law firms.

The critical point is that scrutiny of codes of conduct and applicable legislation, in light of MDPs, should be approached from the perspective of the individual lawyer and of affording more choice and allowing more innovation in the provision and consumption of services. Such scrutiny should not be from the viewpoint of maintaining control by lawyers.

The task of identifying issues of particular relevance to MDPs and addressing them in an appropriate manner will evolve as the phenomenon of MDPs evolves. The following is a non-exhaustive list of issues and some comments regarding them.

Fee-splitting

Rules of professional conduct typically prohibit lawyers from splitting fees with non-lawyers. The Committee views this as anachronistic. Under the regime that the Committee envisages, this prohibition should be removed.

Regulatory Authority of Law Societies

Law societies will have to determine whether to license certain types of MDPs. There were divergent viewpoints among Committee members on this issue. The majority believes that at the present time, licensing should not be a precondition to MDPs offering legal services, although future experience with MDPs may give rise to the necessity for a licensing regime.

The rationale for this perspective, in part, derives from the fact that MDPs may take a multiplicity of forms, including some that operate today. Which forms of MDP should be licensed? Why some and not others? How can a set of licensing rules be developed prior to knowing the forms that MDPs will take? Other concerns include avoiding a patchwork of licensing procedures for firms operating in different jurisdictions and creating further delays in allowing lawyers to compete with existing professional service firms. Finally, there is uncertainty as to whether a licensing regime would accomplish anything more than would the regulation of individual lawyers.

The Chair of the Committee is of the view that MDPs should not be allowed to offer legal services in a jurisdiction without first being licensed by the relevant law society. Given the potential size and economic power of these firms, which would probably far surpass the size of any existing Canadian law firm, licensing would be necessary to ensure the firm's adherence to the core values. Regulation of individual lawyers within these mega-firms would not be sufficient. MDPs would be too new a vehicle, with too many potential risks to client interests, to leave them unlicensed. As well, licensing would not be overly expensive or time-consuming, and, if at any time it was determined to be unnecessary, it could be eliminated. It would be very difficult to introduce licensing at a later stage. The Chair is also influenced by the fact that the ABA proposes and Ontario requires some form of licensing, and that licensing exists in other overlapping professions — architects and engineers, for example.

In addition, the Committee does not exclude joint regulation with other professional bodies, where that is useful. Law societies should be alert to the prospect of those bodies seeking to regulate MDPs themselves. In addition, as in the Australian model, law societies should advocate that legislation be passed prohibiting an MDP from requiring a lawyer to act in breach of the rules of professional conduct or other applicable legislation.⁴⁴

Nature of Enterprise to Be Revealed to the Public

Lawyers who are members of fully integrated MDPs or captive law firms should advise their clients that their firms are comprised of different professionals and other service providers who are subject to varying professional standards.

Insurance

Law societies should ensure that lawyers practising in MDPs carry liability insurance of at least the same scope and quantum required of other practising lawyers. In addition, law societies should scrutinize and adjust the possible effects on their insurance programs for the additional risks and exposures that may arise for lawyers in MDPs, so that any such risks and exposures are not borne by other members of the law societies.

Unauthorized Practice of Law

Law societies have powers to prosecute for the unauthorized practice of law or for holding out the qualifications to practise law. They may use these powers in any circumstances that they judge appropriate with whatever consequences ensue. There would appear to be nothing further required regarding this issue.

Avoidance of Conflicts and Maintenance of Confidentiality

The Bar's professional standards regarding the avoidance of conflicts and the maintenance of client confidentiality must not be compromised as a result of lawyers practising in MDPs. Lawyers in an MDP must ensure that the MDP meets the standards of the legal profession with respect to conflict of interest and confidentiality in relation to the provision of legal services. If that cannot be done, lawyers should not practise in that MDP. This is the approach taken by the ABA, which has stipulated that the MDP must accept the legal profession's standards in terms of client confidentiality and conflicts of interest. The Committee understands that the FLS is considering a similar stance. Lawyers contemplating involvement in MDPs will need to ensure that nothing they do is in violation of the requirements of standards otherwise applicable to them.

Law societies may conclude that there are some specific services that cannot be combined with a legal practice because confidentiality and/or conflict concerns are too significant.

Solicitor-Client Privilege

The members of the Committee agree that, as a matter of principle, solicitor-client privilege can survive in an MDP. They also agree that solicitor-client privilege is at greater risk inside an MDP than in a traditional law practice. Where they differ is as to the severity of the risk to solicitor-client privilege posed by MDPs. One opinion is that the risk of clients losing solicitor-client privilege in the MDP is quite high, while others believe the risk is moderate and manageable with minimal regulation.

Bearing in mind the above differences, the variety of forms that MDPs may take and the variety of circumstances in which clients would retain MDPs, the Committee believes that the protection of solicitor-client privilege should be the subject of regulation and not merely left to the courts. As the circumstances of MDPs evolve, the CBA and law societies will need to address the issue of how to preserve solicitor-client privilege in the MDP. In the meantime, lawyers working in an MDP will have to ensure that the MDP puts measures in place to protect the privilege and advise their clients specifically of the potential that the privilege may be lost.

Incompatible Practices

The CBA and law societies will need to develop rules to deal with certain situations that arguably present conflicts of duty. Some — though not necessarily all — of these situations may be found to be simply incompatible with some forms of legal practice. Some examples that may raise concerns in an MDP are:

- If an accountant resigns an engagement because he or she has become aware of fraudulent or illegal activity by the client, the accountant has a duty to inform the possible “successor” accountant.⁴⁵ *The Canadian Institute of Chartered Accountants Handbook (Assurance)* recognizes that an auditor has a duty to communicate certain types of client information (regarding misstatements or illegal acts) either as part of an expression of opinion on the financial statements or as part of a statutory duty to advise regulators.⁴⁶ By contrast, the lawyer has a duty to hold in strict confidence all information acquired during the course of the relationship.⁴⁷
- Sections 231.1 and 231.3 of the *Income Tax Act*⁴⁸ allow extensive powers to Revenue Canada to inspect, audit, examine and seize documents that may relate to a taxpayer, as well as to require those in possession of such documents to answer all proper questions about the taxpayer’s affairs. In addition, Revenue Canada has the power under section 231.2 to require any person to give information or any document for any purpose related to the *Act*. These provisions

combined would require professionals such as accountants, financial and investment advisors and bankers to disclose confidential information about their clients to taxation authorities. By contrast, section 232 provides a specific exception for the disclosure of solicitor-client privileged information and documents.

- Provincial child welfare legislation requires that people report child abuse where there are reasonable grounds for believing it has occurred.⁴⁹ Some provinces place a specific obligation on certain categories of professionals, such as psychologists, social workers and family counselors, to report child abuse.⁵⁰ The above sections contain a specific exception for the disclosure of solicitor-client privileged information (although solicitors are contained in Ontario's list of professionals).⁵¹

IX. Conclusion and recommendations

The Committee recognizes that MDPs may pose a challenge to some of the values underpinning the legal profession and the provision of legal services in Canada. However, it believes that a balance can be struck between the preservation of these values and the promotion of choice, competition and freedom of association. Excessive limitation on the ability of lawyers to practise in different business arrangements is not an appropriate way to strike this balance. Rather, regulation should be focused on what is necessary to preserve the core values of the legal profession and protect the public.

The Committee recommends that:

- MDPs be recognized to provide greater scope for choice and innovation in the provision of services by lawyers and others.
- Lawyers in MDPs be subject to the rules of professional conduct of the law societies and remain responsible for ensuring that the services they deliver comply with all such requirements.
- The CBA and law societies address specific regulatory issues regarding lawyers' participation in MDPs, with a particular focus on the preservation of solicitor-client privilege in MDPs.
- Subject to the above:
 - there be no distinction drawn between MDPs involving “practices”, such as Captive Law Firms (CLFs), and fully integrated partnerships; and
 - there be no restriction on the kinds of services provided by MDPs.
- There be no requirement of control of MDPs by lawyers.
- With respect to licensing, the majority of the Committee believes that at the present time, MDPs should not be required to obtain a license as a precondition to offering legal services, although circumstances may evolve which may require licensing of certain types of MDPs. The

Chair believes that a licensing regime should be established as a precondition to MDPs offering legal services.

The Committee has greatly benefitted from the consultations it has held within the CBA and the broader legal community. As noted earlier in the Report, that process has largely shaped or refined the position on MDPs that is reflected in the Report.

X. *Next steps*

Once the Report is presented to CBA Council, the Association will enter into further consultations to test the position and to gauge reaction from the profession, both within Canada and internationally. A policy resolution to Council will be presented during the CBA's Mid-Winter Meeting, which will be held in Brandon, Manitoba, in February 2000.

For further information on the Report, the background papers or the consultation process, please contact Joan Bercovitch, Senior Director, Legal and Governmental Affairs, at the CBA National office (902 - 50 O'Connor Street, Ottawa, ON K1P 6L2; tel.: 613-237-2925 / 800-267-8860, ext. 138; fax: 613-237-0185; e-mail: joanberc@cba.org).

Endnotes

1. Law Society of Alberta, *Multi-Disciplinary Practices: Issues Brief* (1997).
2. See pp. 15-16, 18-19, below.
3. See pp. 27-28, below.
4. See pp. 15-19, below.
5. See pp. 15-16, 18, below.
6. See W.A. Bogart (editor), *Access to Affordable and Appropriate Law Related Services in 2020* - Report of a Roundtable sponsored by the Department of Justice, the Law Commission of Canada, the Canadian Bar Association, and the Faculty of Law, University of Windsor (January 1999).
7. See pp. 27-28, below.
8. Melina Buckley, *Multi-disciplinary Practices: Towards a Policy Framework* (February 1998).
9. See pp. 29-30, below.
10. W.A. Bogart, *Context - Approaching the Regulation of MDPs* (June 1998).
11. *Multi-disciplinary Practices: An Interim Report of the International Practice of Law Committee* (August 1998). See p. 29, below.
12. Wendy King, *Legal Issues Relating to Multi-disciplinary Partnerships* (February 1999).
13. W.A. Bogart, *Synthesis and Analysis* (December 1998).
14. Colin Boyd, *The Transformation of the Accounting Profession: The History Behind the Big 5 Accounting Firms Diversifying into Law* (May 1999).
15. See pp. 29-30, below.
16. See pp. 29-30, below.
17. *Status Report on Multi-disciplinary Practices* (February 1999). See pp. 29-30, below.
18. Law Society of England and Wales, *Multi-disciplinary Practices - Why? Why Not?* (November 1998).
19. Law Council of Australia, *Policy Statement on Multi-disciplinary Practices* (December 1998).
20. New York State Bar Association, *Report of Special Committee on Multi-disciplinary Practice and the Legal*

Profession (January 1999).

21. American Bar Association, Commission on Multidisciplinary Practice, Background Papers on Multidisciplinary Practice: *Issues and Developments* (January 1999) and *Hypotheticals and Models* (March 1999).
22. *Resolution on Multidisciplinary Practices* (June 1998).
23. In 1995, Canada became a signatory to the WTO Agreement which has, as Annex 1B, the General Agreement on Trade in Services (GATS). Article VI of the GATS deals with domestic regulation of services. Paragraph 4 of that Article authorizes the Council for Trade in Services to establish bodies to develop any disciplines (or rules) necessary to ensure that domestic measures relating to “qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services.” A Working Party on Professional Services has been established to examine what rules will be necessary for professional services. The Party is starting its study of the legal profession. See King, footnote 12, above.
24. District of Columbia, Rule of Professional Conduct 5.4(b).
25. New South Wales Solicitors’ Professional Conduct and Practice Rule 40.1.
26. The FLS report was not available at press time.
27. Law Society of Upper Canada, Working Group on Multi-Disciplinary Partnerships, *Report to Convocation* (September 1998).
28. Law Society of Upper Canada, By-Law 25 and The “Futures” Task Force, *Report of the Working Group on Multi-Disciplinary Partnerships - Implementation Phase* (April 1999).
29. Rapport du Comité du Barreau du Québec sur la multidisciplinarité entre avocats et comptables, *Pour une approche ouverte et responsable* (February 1999).
30. The Committee has also reviewed issues papers on MDPs prepared by the Law Society of British Columbia in 1994 (*Report on Multidisciplinary Practice*), and the Law Society of Alberta in 1997 (*Multidisciplinary Practices: Issues Brief*).
31. For discussion of other variations on these approaches see Bogart, *Context - Approaching the Regulation of MDPs*, footnote 10, above, 8-17, and K. Roach and E. Iacobucci, *Multi-Disciplinary Partnerships: A Review of the Literature and Multi-Disciplinary Practices and Partnerships: Policy Options* (undated, prepared for the “Futures” Task Force Working Group on Multi-disciplinary Partnerships of the Law Society of Upper Canada, footnote 27, above).
32. See footnote 28, above, *Implementation Phase*, 3-4.

33. New York, footnote 20, above, 3.
34. See footnote 11 above, 2-3 and New York, footnote 20, above. See also King, footnote 12, above and Hamilton, footnote 26, above.
35. *Bolkiah (Prince Jefri) v. KPMG (a firm)* [1999] 2 WLR 215 (HL). See also, J. Keefeld “*Prince Jefri Bolkiah v. KPMG: House of Lords Holds Accountants to Solicitors’ Duty of Confidentiality in ‘Chinese Walls’ Case*” (1999), 57 *The Advocate* 223.
36. “Chinese walls may need to be even stronger,” *Financial Times* June 25, 1999, p. VI; *Young v. Robson Rhodes*, unreported, HC 1999 No. 1297, 30 March 1999 (Ch. Div.).
37. A discussion of the tensions surrounding the expansion of tax practice by accountants in the United States is contained in New York, footnote 20, above, 22-23.
38. New York, footnote 20, above, 7-8 recounting the claims. These supposed advantages are doubted by Ontario: see Law Society of Upper Canada, *Report to Convocation*, footnote 27, above, 27-28.
39. *Implementation Phase*, quoting the *Report to Convocation*, footnote 28, above, 1.
40. Australia, note 19, above, 1.
41. See pp. 31-35, below. See also Law Society of Upper Canada, *Report to Convocation*, footnote 27, above, 16-17.
42. Boyd, footnote 14, above, 1.
43. *Interim Report*, footnote 11, above, 5-7.
44. Australia, footnote 19, above, 1.
45. Institute of Chartered Accountants of Ontario, *Rules of Professional Conduct*, Rule 302.
46. Sections 5135.22 and 5136.30.
47. Canadian Bar Association, *Code of Professional Conduct*, c. 4.
48. R.S.C. 1985, c. 1 (5th Supp.).
49. *E.g.*, Alberta - *Child Welfare Act*, S.A. 1994, c. C-8.1, s. 3.
50. *E.g.*, Ontario - *Child and Family Services Act*, R.S.O. 1990, c. C.11, s. 72.
51. The following are further examples:
 - An accountant who is engaged in public practice in the insolvency area (*e.g.*, as a trustee in bankruptcy, receiver or receiver manager) or who is engaged to review or audit financial statements,

financial information or other information is required to be free from influences that would reasonably affect his or her objectivity (Institute of Chartered Accountants of Ontario, *Rules of Professional Conduct*, Rules 204.1, 204.2 & 204.3; *Canadian Institute of Chartered Accountants Handbook (Assurance)*, s. 5100.02). By contrast, the lawyer in representing the client is not required to be objective, but rather is required to advocate the client's position "resolutely" and "fearlessly" (Canadian Bar Association, *Code of Professional Conduct*, c. 9).

- A number of pieces of legislation require health professionals to disclose medical conditions to the appropriate authorities. For example, under the *Aeronautics Act*, doctors and optometrists are required to disclose medical or optometric conditions that are likely to constitute a hazard to aviation safety (R.S.C. 1985, c. A-2, s. 6.5). A similar provision is contained in the *Railway Safety Act*, R.S.C. 1985, c. R-4.2, s. 35. In Ontario, the *Regulated Health Professions Act*, S.O. 1991, c. 18, Schedule 2, s. 85.1 requires that health professionals (including physicians, psychiatrists, nurses, dietitians, physiotherapists and psychologists) report sexual abuse of a patient by another health professional where there are reasonable grounds for believing it has occurred. Further, psychotherapists must provide an opinion as to whether the person will likely abuse again.
- Professional engineers are required by their codes of conduct to maintain the confidentiality of their clients' information. At the same time, their paramount duty is to secure the safety, health and welfare of the public. This requires professional engineers to disclose confidential information to the proper authorities in the event that a client's instructions constitute a threat to public safety (B.M. McLachlin, W.J. Wallace, A.M. Grant, *The Canadian Law of Architecture and Engineering* (Markham: Butterworths, 1994); Association of Professional Engineers and Geoscientists of British Columbia, *Code of Ethics*; *Professional Engineers of Ontario Regulations*, R.R.O. 1990, Reg. 941, ss 72, 77).
- Real estate brokers in Ontario are permitted to disclose confidential information to assist authorities to prevent, investigate or prosecute an offence (Real Estate Council of Ontario, *Code of Ethics*, Rule 8).

Appendix A

List of Background Materials Prepared for the Committee

Multi-disciplinary Practices: Towards a Policy Framework

Discussion paper prepared by Melina Buckley (February 1998)

Context — Approaching the Regulation of MDPs

Executive Summary and Options Paper prepared by Prof. W.A. Bogart (June 1998)

Interim Report (August 1998)

Synthesis and Analysis (Developments since the Interim Report of August 1998)

Discussion paper prepared by Prof. W.A. Bogart (December 1998)

Legal Issues Relating to Multi-disciplinary Partnerships

Paper prepared by Wendy King (February 1999)

Status Report presented at the 1999 Mid-Winter Meeting of Council (February 1999)

The Transformation of the Accounting Profession: The History Behind the Big 5 Accounting Firms Diversifying into Law

Paper prepared by Prof. Colin Boyd (May 1999)

