LET RIGHT PREVAIL

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

November 21, 2013
8:30 a.m.

CONVOCATION MATERIAL

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CONVOCATION AGENDA
November 21, 2013

Convocation Room – 8:30 a.m.

Treasurer's Remarks

Consent Agenda - Motion [Tab 1]
- **Confirmation of Draft Minutes of Convocation** – October 24, 2013
- **Motion -** Appointments
- **Report of the Director of Professional Development and Competence** – Deemed Call Candidates
- **Audit and Finance Committee Report –** J. Shirley Denison Fund Applications (in camera)
- **Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report** – In Camera Item
- **Inter-Jurisdictional Mobility Committee Report** – Territorial Mobility Agreement 2013

Professional Development and Competence Committee Report *(J. Minor)* [Tab 2]
- Proposal for Integrated Practice Curriculum
- Pathways Implementation

Treasurer's Report *(H. Goldblatt)* [Tab 3]
- Mentoring and Advisory Services Proposal Task Force

Professional Regulation Committee Report *(M. Mercer)* [Tab 4]
- Submission on the Federation of Law Societies of Canada National Suitability to Practice Standard Consultation Report

For Information
- Report on Judicial Complaints

Address by Art Vertlieb, Q.C., President of the Law Society of British Columbia

Address by Fred W. Headon, President of the Canadian Bar Association

Federation of Law Societies of Canada Report *(L. Pawlitza)* [Tab 5]
- President's Report to the Law Societies, November 2013

Audit and Finance Committee Report *(C. Bredt, C. Hartman)* [Tab 6]
- LibraryCo. Inc. 2014 Budget

For Information
- Law Society Financial Statements for the period ended September 30, 2013
- Investment Compliance Reporting for the period ended September 30, 2013
- Other Committee Work

Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report *(J. Potter)* [Tab 7]
- Human Rights Monitoring Group Interventions

For Information
- Guides to Advising Clients of their French Language Rights
- Law Society French Language Services
- Public Education Equality and Rule of Law Series Calendar 2013/2014

Complaints Resolution Commissioner Selection Committee Report *(C. Strosberg)* (in camera) [Tab 8]

Government Relations and Public Affairs Committee Report *(W. McDowell)* (in camera) [Tab 9]

Law Society Foundation Report *(M. Boyd)* (in camera)

LL.D. Advisory Committee Report *(A. Doyle)* (in camera) [Tab 10]

Chief Executive Officer's Report *(R. Lapper)* (in camera) [Tab 11]

Lunch – Benchers' Dining Room

Tab 1

THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON NOVEMBER 21, 2013

MOVED BY:

SECONDED BY:

THAT Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Tab 1.1

D R A F T

MINUTES OF CONVOCATION

Thursday, 24th October, 2013
8:30 a.m.

PRESENT:

The Treasurer (Thomas G. Conway), Anand, Armstrong, Backhouse, Banack, Boyd, Bredt, Callaghan, Campion, Chilcott (by telephone), Dickson, Doyle, Dray, Earnshaw, Elliott, Epstein, Eustace, Evans, Falconer (by telephone), Furlong, Go, Gold, Goldblatt, Gottlieb, Haigh, Halajian, Hartman, Horvat, Krishna, Leiper, Lerner, MacKenzie (by telephone), MacLean, Marmur, McGrath, Mercer, Minor, Murchie, Murphy (by telephone), Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch (by telephone), Richardson, Richer, Ross, Ruby (by telephone), Sandler, Scarfone, Schabas, Sheff, Silverstein, C. Strosberg, H. Strosberg (by telephone), Sullivan (by telephone), Swaye, Symes, Wadden, Wardlaw and Wright (by telephone).

……

Secretary: James Varro

The Reporter was sworn.

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TREASURER'S REMARKS

The Treasurer welcomed Heather Laing, Q.C., President of the Law Society of Saskatchewan, Miguel Martinez, Vice-President and Tom Schonhoffer, Executive Director.

The Treasurer reported briefly on the Federation of Law Societies of Canada meeting in St. John's, Newfoundland from October 16 to 19, 2013. The Treasurer noted the official signing of the National Mobility Agreement 2013, and thanked former Bâtonnier Nicolas Plourde for his dedication to national mobility.

The Treasurer informed Convocation that Bill 111 was introduced in the legislature on October 1, 2013, and includes a number of amendments to the *Law Society Act* related to regulation, tribunals and paralegal governance. The Treasurer thanked Attorney General John Gerretsen for his efforts in bringing the Bill forward.

The Treasurer thanked Alternative Business Structures Working Group co-chairs Malcolm Mercer and Susan McGrath and the staff for their efforts in organizing a very successful symposium on October 4, 2013.

The Treasurer updated Convocation on the TAG Symposium to be held October 29, 2013, and referred to material available in the Convocation Materials on this initiative.

The Treasurer advised of the opening of nominations for the election of paralegals to the Paralegal Standing Committee in March 2014.

The Treasurer announced that CanLII has added 15,000 cases from the Ontario Reports from the 1930s. The Treasurer thanked Law Society staff who assisted in this significant effort.

The Treasurer congratulated Josée Bouchard on her receipt of the Ordre du Mérite from the Association of French-Language Jurists of Ontario (AJEFO) on October 5, 2013 for her work on the advancement of access to justice in French.

The Treasurer congratulated Julian Porter on the release of his new book, *149 Paintings You Really Need to See in Europe (So You Can Ignore the Others).*

The Treasurer congratulated Constance Backhouse on her outstanding achievement in receiving a 2013 Governor General's Award in Commemoration of the Persons Case.

Hearing Panel Appointments

The Treasurer announced the appointment of the following non-bencher adjudicators for a term ending May 22, 2014: lawyers Philippe Capelle, Marc D'Amours, Laura Donaldson, Lyle

Kanee, Susan Opler, Frederika Rotter; paralegals Michelle M. Lomazzo, Errol Sue, Michelle Tamlin; and lay person Andrew Oliver.

MOTION – CONSENT AGENDA

It was moved by Mr. Earnshaw, seconded by Ms. Hartman, that Convocation approve the consent agenda set out under Tab 1 of the Convocation Materials.

Carried

MOTION – APPOINTMENT – Tab 1.1

That Avvy Go be appointed to the Hearing Panel for a term ending May 22, 2014.
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Carried

DRAFT MINUTES OF CONVOCATION – Tab 1.2

The draft minutes of Convocation of September 25, 2013 were confirmed.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE – Tab 1.3

THAT the Report of the Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

ADDRESS BY THE PRESIDENT OF THE LAW SOCIETY OF SASKATCHEWAN

Heather J. Laing, Q.C., President of the Law Society of Saskatchewan addressed Convocation.

AUDIT & FINANCE COMMITTEE REPORT

Ms. Hartman presented the Report.

Re: 2014 Law Society of Upper Canada Budget

It was moved by Ms. Hartman, seconded by Mr. Bredt, that Convocation approve the Law Society's 2014 Budget including the following annual fee amounts:

For lawyers:

General Fee	$1,376
Compensation Fund	238
LibraryCo	202
Capital	50
Total	$1,866

For paralegals:

General Fee	$796
Compensation Fund	150
Capital	50
Total	$996

It was moved by Mr. Silverstein, seconded by Mr. Evans, that the Parental Leave Assistance Program be discontinued at the earliest opportunity.

Withdrawn

Mr. Goldblatt undertook to report to Convocation in February 2014 with information on and the status of the Parental Leave Assistance Program.

The main motion carried.

For Information

- Law Society Funding of External Organizations

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Proposed Amendments to the Rules of Professional Conduct Arising From Implementation of the Federation of Law Societies Model Code of Professional Conduct

It was moved by Mr. Mercer, seconded by Mr. Schabas, that Convocation approve the amendments to the *Rules of Professional Conduct* as set out in Tab 3.1.2, as amended by the corrections distributed under separate cover, to be effective October 1, 2014.

Carried

For Information

- Professional Regulation Division Quarterly Report

PRIORITY PLANNING COMMITTEE REPORT

Mr. Goldblatt presented the Report.

Re: Call for Input on Enhancements to the Structure of the Annual General Meeting

It was moved by Mr. Goldblatt, seconded by Mr. Anand, that Convocation approve a call for input on proposals for enhancements to the Law Society's Annual General Meeting.

Carried

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Ms. Minor presented the Report.

Re: Pathways Report Implementation: Articling Enhancements and Experiential Assessment

It was moved by Ms. Minor, seconded by Ms. Murchie, that Convocation approve the implementation of performance-based evaluations in the Articling Program that mirror the expected completion of skills and tasks competencies in the Law Practice Program ("LPP"), along the lines outlined in the Proposal at Tab 5.1.2: Skills Experiential Assessment in Articling, deferring consideration of the optimal focus and format of the Final Skills/Culminating Assessment until more information is available about learning outcomes in the articling program and the LPP.

Carried

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EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Request for Intervention

It was moved by Mr. Schabas, seconded by Ms. Potter, that Convocation approve the letters of intervention and public statement respecting human rights lawyer Nasrin Sotoudeh in Iran, as set out at Tab 7.2.1.

Carried

Re: Creation of a Law Society Human Rights Award

It was moved by Mr. Schabas, seconded by Mr. Goldblatt, that Convocation approve the creation of a Law Society Human Rights Award and the Terms of Reference presented at Tab 7.1.1.

Carried

For Information

- Sexual Orientation and Gender Identity Guide for Law Firms and Other Organizations
- Law Society Funding of External Organizations
- Public Education Equality and Rule of Law Series Calendar 2013/2014

ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Boyd presented the Report.

Re: Funding of External Organizations

It was moved by Ms. Boyd, seconded by Mr. Goldblatt, that Convocation approve an amended policy on requests for funding from external organizations as set out in the Report.

Carried

INTER-JURISDICTIONAL MOBILITY COMMITTEE REPORT

Ms. Horvat presented the Report.

Re: By-Law 6 Amendment – National Mobility Agreement 2013 Insurance Provisions

It was moved by Ms. Horvat, seconded by Mr. Mercer, that Convocation approve the amendments to By-Law 6 to implement the insurance provisions of the National Mobility Agreement 2013, as set out in the motion at Tab 11.

Carried

REPORT FOR INFORMATION ONLY

Tribunals Committee Report
- Terms of Reference - Law Society Tribunal Chair's Practice Roundtable
- In Camera Item

CONVOCATION ROSE AT 1:07 P.M.

Tab 1.2

THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON NOVEMBER 21, 2013

THAT Alan Gold be reappointed to the Judicial Appointments Advisory Committee for a three year term commencing January 21, 2014.

THAT Constance Backhouse be reappointed to the Ontario Justice Education Network Board of Directors for a three year term commencing November 24, 2013.

THAT Ross Earnshaw, Jacqueline Horvat, James Scarfone and Alan Silverstein be reappointed to the LibraryCo Inc. Board of Directors for a one year term commencing December 31, 2013.

Tab 1.3

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, November 21st, 2013

ALL OF WHICH is respectfully submitted

DATED this 21st day of November, 2013

CANDIDATES FOR CALL TO THE BAR
November 21, 2013

Transfer from another province (Mobility)

Zehra Akhar
Michael Gianacopoulos
Mary Alison Hamer
Kaylee May Langille
Jennifer Jeeyeon Lee
Daniel Pink

Transfer from another province (Quebec)

Claire Zoë Bider Hall
Kelly Anne McClellan

Licensing Process

Eun-Joo Gloria Dykstra

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

TAB 1.6

Report to Convocation
November 21, 2013

Inter-Jurisdictional Mobility Committee

Committee Members
Jacqueline Horvat (Chair)
William McDowell
Malcolm Mercer
Janet Minor
Joe Sullivan
Peter Wardle

Purpose of Report: Decision

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

TABLE OF CONTENTS

For Decision

COMMITTEE PROCESS

1. The Committee met on October 8, 2013. Committee members Jacqueline Horvat (Chair), Malcolm Mercer, Janet Minor and Peter Wardle attended the meeting. Staff members Allison Cheron and Sophia Sperdakos also attended.

TAB 1.6.1

DECISION

TERRITORIAL MOBILITY AGREEMENT 2013

MOTION

2. That Convocation approve the Territorial Mobility Agreement, 2013 ("TMA 2013") set out at TAB 1.6.1.2: TMA 2013.

Background

3. The National Mobility Agreement, 2013 ("NMA 2013"), which Convocation approved in February and June 2013, was signed by 10 provincial law societies during the Federation of Law Societies conference in St. John's, Newfoundland, in October 2013.

4. The three Territories did not sign the original National Mobility Agreement. In 2006 the Territorial Mobility Agreement ("TMA") was entered into for mobility between the Territories and the provinces. A revised TMA was entered into in 2011. To reflect the new provisions of the NMA 2013, with which the Territories agree, consequential amendments to the current TMA are necessary.

5. The Federation of Law Societies Council has approved the TMA 2013 for transmission to law societies for their consideration and approval.

6. The proposed amendments are set out at **TAB 1.6.1.1: Bluelined TMA 2013**. The final version of the TMA 2013 is set out at **TAB 1.6.1.2: TMA 2013,** which the Committee has reviewed and recommends to Convocation for approval.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

TERRITORIAL MOBILITY AGREEMENT 2013

Territorial Mobility Agreement 2013

FEDERATION OF LAW SOCIETIES OF CANADA

~~November , 2011~~ September 2013

Introduction

The purpose of this Agreement is to extend the scope of the National Mobility Agreement 2013 ("NMA 2013") in facilitating permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this Agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this Agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,

- differences exist in the legislation, policies and programs pertaining to the signatories, ~~particularly~~ including those differences between common law and civil law jurisdictions in Canada, and lawyers have a professional responsibility to ensure that they are competent with respect to any matter that they undertake, and

- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Background

In August, 2002, the Federation of Law Societies of Canada (the "Federation") approved the report of the National Mobility Task Force ("the Task Force") for the implementation of full mobility rights for Canadian lawyers. This led to adoption of the National Mobility Agreement ("NMA") by ~~10~~ all provincial law societies other than the Chambre des notaires du Québec ("Chambre"). ~~and its full implementation in nine jurisdictions.~~

Territorial Mobility Agreement 2013

~~Since that time, all Canadian law societies have also signed the Quebec Mobility Agreement, which facilitates~~facilitating ~~reciprocal mobility between Quebec and the common law jurisdictions.~~

~~**Territorial Mobility Agreement**~~

The resolution adopted by the Federation in approving the report of the ~~National Mobility~~ Task Force ~~report~~ included an acknowledgement that "the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed in the Task Force's terms of reference, but should be undertaken in the future."

In 2006 all law societies other than the Chambre signed the Territorial Mobility Agreement ("TMA"). To recognize the unique circumstances of the territorial law societies, the agreement provided for reciprocal permanent mobility between the law societies of the provinces and the territories, without requiring the territorial law societies to participate in the temporary mobility provisions of the NMA. The original term of the ~~Territorial Mobility Agreement~~TMA was five years. In 2011 the agreement was renewed without a termination date. ~~5, an informal Territorial Mobility Group ("the Group") was formed with representatives of the Task Force, the law societies of the provinces in Western Canada and the law societies of the territories. The Group developed a proposal respecting territorial mobility to address the unique characteristics of the law societies of the territories. This agreement gives effect to the Group's proposal.~~

~~The purpose of this Agreement is to allow the law societies of the territories to participate in national mobility for lawyers to the extent possible for them, given their unique circumstances. Specifically, the signatories agree that the territorial law societies will participate in national mobility as reciprocating governing bodies with respect to permanent mobility, or transfer of lawyers from one jurisdiction to another, without a requirement that they participate in temporary mobility provisions.~~

In March 2010, all Canadian law societies except the Chambre signed the Quebec Mobility Agreement ("QMA"), facilitating reciprocal mobility between Quebec and the common law jurisdictions. The mobility provisions set out in the QMA were extended to members of the Chambre in March 2012 with the signing by all law societies of the Addendum to the QMA.

The signatories to the NMA and the Chambre have now approved a revised agreement that extends the permanent mobility provisions of the NMA to mobility to and from the Barreau du Québec and incorporates the mobility provisions of the QMA and the

Territorial Mobility Agreement 2013

Addendum to the QMA applicable to the Chambre. The "NMA 2013" will be executed in October 2013.

This Agreement has been amended to ensure that references to the relevant clauses of the ~~National Mobility Agreement~~NMA 2013 are accurate.

The signatories to this Agreement who are not signatories to the ~~National Mobility Agreement~~ NMA 2013 do not hereby subscribe to the provisions of the ~~National Mobility Agreement~~NMA 2013, except as expressly stated in this Agreement.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this Agreement, unless the context indicates otherwise:

"governing body" means the Law Society or Barristers' Society in a Canadian common law jurisdiction, and the Barreau;

"home governing body" means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and **"home jurisdiction"** has a corresponding meaning;

"Inter-Jurisdictional Practice Protocol" means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

"lawyer" means a member of a signatory governing body;

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

"National Mobility Agreement 2013" or **"NMA 2013"** means the ~~2002~~ National Mobility Agreement 2013 of the Federation of Law Societies of Canada, as amended from time to time;

"permanent mobility provisions" means clauses ~~32~~ 33 to ~~36~~40, ~~39~~ 43 and ~~40~~ 50 of the ~~National Mobility Agreement~~NMA 2013;

"practice of law" has the meaning with respect to each jurisdiction that applies in that jurisdiction;

"Registry" means the National Registry of Practising Lawyers established under clause ~~17~~ 18 of the ~~National Mobility Agreement~~NMA 2013;

Territorial Mobility Agreement 2013

General

2. The signatory governing bodies will

(a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;

(b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;

(c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and

(d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.

3. Signatory governing bodies will subscribe to this Agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this Agreement.

4. A signatory governing body will not, by reason of this Agreement alone,

(a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

(b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

Permanent Mobility

6. The signatories that are signatories to the ~~National Mobility Agreement~~NMA 2013 agree to extend the application of the permanent mobility provisions of the ~~National Mobility Agreement~~NMA 2013 with respect to the territorial signatories to this Agreement.

7. The territorial signatories agree to adopt and be bound by the permanent mobility provisions of the ~~National Mobility Agreement~~NMA 2013.

Territorial Mobility Agreement 2013

8. A signatory that has adopted regulatory provisions giving effect to the permanent mobility requirements of the ~~National Mobility Agreement~~NMA 2013 is a reciprocating governing body for the purposes of permanent mobility under this Agreement, whether or not the signatory has adopted or given effect to any other provisions of the National Mobility Agreement.

Transition Provisions

9. This Agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

10. Provisions governing permanent mobility in effect at the time that a governing body becomes a signatory to this Agreement will continue in effect~~:~~ until this agreement is implemented.

Dispute Resolution

11. Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

Withdrawal

12. A signatory may cease to be bound by this Agreement by giving each other signatory written notice of at least one clear calendar year.

13. A signatory that gives notice under clause 12 will immediately notify its members in writing of the effective date of withdrawal.

Territorial Mobility Agreement 2013

SIGNED on the day of , ~~2011~~2013.

Law Society of British Columbia

Per: _____
Authorized Signatory

Law Society of Alberta

Per: _____
Authorized Signatory

Law Society of Saskatchewan

Per: _____
Authorized Signatory

Law Society of Manitoba

Per: _____
Authorized Signatory

Law Society of Upper Canada

Per: _____
Authorized Signatory

Barreau du Québec

Per: _____
Authorized Signatory

Chambre des notaires du Québec

Per: _____
Authorized Signatory

Law Society of New Brunswick

Per: _____
Authorized Signatory

Territorial Mobility Agreement 2013

Nova Scotia Barristers' Society

Per: _____
Authorized Signatory

Law Society of Prince Edward Island

Per: _____
Authorized Signatory

Law Society of Newfoundland and Labrador

Per: _____
Authorized Signatory

Law Society of Yukon

Per: _____
Authorized Signatory

Law Society of the Northwest Territories

Per: _____
Authorized Signatory

Law Society of Nunavut

Per: _____
Authorized Signatory

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

TERRITORIAL MOBILITY AGREEMENT 2013

Territorial Mobility Agreement 2013

FEDERATION OF LAW SOCIETIES OF CANADA

September 2013

Introduction

The purpose of this Agreement is to extend the scope of the National Mobility Agreement 2013 (“NMA 2013”) in facilitating permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this Agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this Agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,

- differences exist in the legislation, policies and programs pertaining to the signatories, including those differences between common law and civil law jurisdictions in Canada, and lawyers have a professional responsibility to ensure that they are competent with respect to any matter that they undertake, and

- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Background

In August, 2002, the Federation of Law Societies of Canada (the "Federation") approved the report of the National Mobility Task Force (“the Task Force”) for the implementation of full mobility rights for Canadian lawyers. This led to adoption of the National Mobility Agreement (“NMA”) by all provincial law societies other than the Chambre des notaires du Québec (“Chambre”).

Territorial Mobility Agreement 2013

The resolution adopted by the Federation in approving the report of the Task Force included an acknowledgement that “the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed in the Task Force’s terms of reference, but should be undertaken in the future.”

In 2006 all law societies other than the Chambre signed the Territorial Mobility Agreement (“TMA”). To recognize the unique circumstances of the territorial law societies, the agreement provided for reciprocal permanent mobility between the law societies of the provinces and the territories, without requiring the territorial law societies to participate in the temporary mobility provisions of the NMA. The original term of the TMA was five years. In 2011 the agreement was renewed without a termination date.

In March 2010, all Canadian law societies except the Chambre signed the Quebec Mobility Agreement (“QMA”), facilitating reciprocal mobility between Quebec and the common law jurisdictions. The mobility provisions set out in the QMA were extended to members of the Chambre in March 2012 with the signing by all law societies of the Addendum to the QMA.

The signatories to the NMA and the Chambre have now approved a revised agreement that extends the permanent mobility provisions of the NMA to mobility to and from the Barreau du Québec and incorporates the mobility provisions of the QMA and the Addendum to the QMA applicable to the Chambre. The “NMA 2013” will be executed in October 2013.

This Agreement has been amended to ensure that references to the relevant clauses of the NMA 2013 are accurate.

The signatories to this Agreement who are not signatories to the NMA 2013 do not hereby subscribe to the provisions of the NMA 2013, except as expressly stated in this Agreement.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this Agreement, unless the context indicates otherwise:

“governing body” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau;

"home governing body" means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and **"home jurisdiction"** has a corresponding meaning;

"Inter-Jurisdictional Practice Protocol" means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

"lawyer" means a member of a signatory governing body;

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

"National Mobility Agreement 2013" or **"NMA 2013"** means the National Mobility Agreement 2013 of the Federation of Law Societies of Canada, as amended from time to time;

"permanent mobility provisions" means clauses 33 to 40, 43 and 50 of the NMA 2013;

"practice of law" has the meaning with respect to each jurisdiction that applies in that jurisdiction;

"Registry" means the National Registry of Practising Lawyers established under clause 18 of the NMA 2013;

General

2. The signatory governing bodies will

(a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;

(b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;

(c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and

(d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.

3. Signatory governing bodies will subscribe to this Agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this Agreement.

4. A signatory governing body will not, by reason of this Agreement alone,

(a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

(b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

Permanent Mobility

6. The signatories that are signatories to the NMA 2013 agree to extend the application of the permanent mobility provisions of the NMA 2013 with respect to the territorial signatories to this Agreement.

7. The territorial signatories agree to adopt and be bound by the permanent mobility provisions of the NMA 2013.

8. A signatory that has adopted regulatory provisions giving effect to the permanent mobility requirements of the NMA 2013 is a reciprocating governing body for the purposes of permanent mobility under this Agreement, whether or not the signatory has adopted or given effect to any other provisions of the National Mobility Agreement.

Transition Provisions

9. This Agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

10. Provisions governing permanent mobility in effect at the time that a governing body becomes a signatory to this Agreement will continue in effect until this agreement is implemented.

Dispute Resolution

11. Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

Withdrawal

12. A signatory may cease to be bound by this Agreement by giving each other signatory written notice of at least one clear calendar year.

13. A signatory that gives notice under clause 12 will immediately notify its members in writing of the effective date of withdrawal.

Territorial Mobility Agreement 2013

SIGNED on the day of , 2013.

Law Society of British Columbia

Per: _____
Authorized Signatory

Law Society of Alberta

Per: _____
Authorized Signatory

Law Society of Saskatchewan

Per: _____
Authorized Signatory

Law Society of Manitoba

Per: _____
Authorized Signatory

Law Society of Upper Canada

Per: _____
Authorized Signatory

Barreau du Québec

Per: _____
Authorized Signatory

Chambre des notaires du Québec

Per: _____
Authorized Signatory

Law Society of New Brunswick

Per: _____
Authorized Signatory

Territorial Mobility Agreement 2013

Nova Scotia Barristers' Society

Per: _____
Authorized Signatory

Law Society of Prince Edward Island

Per: _____
Authorized Signatory

Law Society of Newfoundland and Labrador

Per: _____
Authorized Signatory

Law Society of Yukon

Per: _____
Authorized Signatory

Law Society of the Northwest Territories

Per: _____
Authorized Signatory

Law Society of Nunavut

Per: _____
Authorized Signatory

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

TAB 2

Report to Convocation
November 21, 2013

Professional Development & Competence Committee

COMMITTEE MEMBERS
Janet Minor (Chair)
Jacqueline Horvat (Vice-Chair)
Barbara Murchie (Vice-Chair)
Alan Silverstein (V-Chair)
Raj Anand
Jack Braithwaite
Robert Burd
Mary Louise Dickson
Adriana Doyle
Ross Earnshaw
Larry Eustace
Howard Goldblatt
Vern Krishna
Michael Lerner
Dow Marmur
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Joseph Sullivan
Gerald Swaye
Robert Wadden
Bradley Wright

Purpose of Report: Decision

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

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For Decision

COMMITTEE PROCESS

1. The Committee met on November 7, 2013. Committee members Janet Minor (Chair), Jacqueline Horvat (Vice-Chair), Barbara Murchie (Vice-Chair), Alan Silverstein (Vice-Chair), Raj Anand, Jack Braithwaite, Adriana Doyle, Ross Earnshaw, Howard Goldblatt, Vern Krishna, Dow Marmur, Judith Potter, Nicholas Pustina, Joe Sullivan, Gerry Swaye, Robert Wadden and Bradley Wright attended. Julian Falconer attended part of the meeting. Staff members Diana Miles and Sophia Sperdakos also attended.

TAB 2.1

PROPOSAL FOR INTEGRATED PRACTICE CURRICULUM AT LAKEHEAD UNIVERSITY FACULTY OF LAW

MOTION

2. That Convocation approve Lakehead University Faculty of Law's integrated practice curriculum as satisfying the Law Society's experiential training requirement for lawyer licensing.

Background

3. The Articling Task Force Report (The Pathways Report) that Convocation approved in November 2012 recommended a Law Practice Program ("LPP") that would take place following law school. In both the Task Force's consultation report and its final report, however, it addressed the issue of practical legal training occurring during law school as part of the curriculum. It noted the potential result that students who graduated from a law school whose curriculum addresses the Law Society's standards might be credited with their [LPP][1] requirement, or part of it. The report noted that this "would shorten the licensing program for those students and address some of the financial challenges of [an LPP] that occur after law school."

4. The Pathways Report specifically noted the following:

> Although the pilot project the Task Force is recommending will take place after law school, the Task Force is of the view that this would not and should not preclude a law school that wishes to propose a Carnegie-like[2] law degree from seeking approval from the Federation's Common Law Approval Committee and exploring with the Law Society whether its practical component could satisfy part or all of the transitional training requirements. In the Task Force's view there is nothing to preclude such a proposal, properly framed so that it meet the goals of transitional training, and approved, from operating alongside the pilot project.

[1] The Consultation Report referred to a "Practical Legal Training Course (PLTC)." The Final Pathways Report uses the term "Law Practice Program (LPP)" instead.
[2] Carnegie Foundation's report entitled *Educating Lawyers: Preparation for the Profession of Law* ("the Carnegie Report") in which a greater role for skills-based learning in American law schools is discussed.

5. During the RFP process the Law Society received a proposal from Lakehead University's Faculty of Law to integrate the Law Society's LPP competency requirements and work placement requirement within and throughout its three-year law school curriculum.

6. In the first instance, Pathways Working Group #1[3] considered the proposal. In addition to the working group receiving written material on the proposal, some members of Working Groups #1 and #2 attended a presentation by Lakehead's Dean, Lee Stuesser, and one of its Faculty members, Jason MacLean, respecting the law school's three-year curriculum.

7. The Law Faculty's proposal demonstrates how both the Law Society's licensing competency requirements for experiential training and the work placement requirement are met within and throughout its three year law school curriculum.

8. The Chair will provide Convocation with an overview to the Lakehead integrated practice curriculum.

9. The working group and the Committee are of the view that Lakehead University Faculty of Law's integrated practice curriculum will satisfy the Law Society's experiential training requirement for lawyer licensing. The Committee agrees with the Pathways Report that nothing in that report should preclude consideration of this type of program, provided the Law Society's standards are met.

10. If Convocation approves the recommendation, necessary amendments to By-law 4 will be prepared for Convocation's subsequent approval.

[3] Two working groups were established to consider the implementation of the Pathways Report. Both report to the PD&C Committee. Working Group #1 focuses on the RFP for the LPP and on general implementation of the Pathways Pilot Project, which includes both articling and the LPP. Working Group #2 focuses on culminating assessments and the overall pilot project evaluation.

TAB 2.2

PATHWAYS REPORT IMPLEMENTATION

MOTION

11. That Convocation approve a one million dollar lawyer licensee contribution to the 2014-2015 licensing process to defray the costs to licensing candidates.

Background

12. Since the approval of the Pathways Report in 2012, the design of the implementation of each component has been ongoing. The anticipated overall cost of the new licensing process for the 2014-2105 licensing year can now be reasonably estimated within a range that is dependent upon the number of registrations within the LPP. These overall costs relate to both the *new* components of the licensing process emerging from implementation of the Pathways Report[1] and the *existing* components of the licensing process.[2] The final fee for the 2014-2015 licensing process cannot be determined until mid-to-late January 2014, after candidates have selected their experiential learning path.

13. Based upon the assumption, however, that approximately 400 candidates select the LPP stream in 2014-2015, the anticipated fee attributable to the new components of the licensing process is $2,400 dollars per candidate. The anticipated fee attributable to the existing components of the licensing process is $2,810. The total anticipated licensing fee per candidate for 2014-2015 is **$**5210, before HST and $5,887, including HST.

[1] These consist of the LPP, enhancements to the articling program and implementation of an evaluation framework.

[2] Existing components are (1) two licensing examinations (Barrister and Solicitor), held three times per annum, in four locations across the province, (2) existing articling program administration activities, including relevant document filings and supports, (3) support for the accommodation and special needs requirements of candidates, (4) call to the bar administration, support and events, (5) web enabled application, registration and ongoing communications processes and client service, (6) online Professional Responsibility and Practice Course offered during the articling term including annual updates, ongoing improvements and hosting costs, (7) processing of applications, registrations and good character and other administrative items that are required to support the day-to-day oversight of the licensing system.

14. In November 2012 Convocation approved a motion respecting defraying licensing process costs to licensing candidates. Pursuant to the approved motion Convocation is to approve an appropriate licensee contribution to the licensing process on the PD&C Committee's recommendation.

15. In reaching its recommendation the PD&C Committee has considered what would constitute an appropriate lawyer licensee contribution for the 2014-2015 licensing year. It has considered a number of factors, including the intent of Convocation's November 2012 motion, the overall licensing fee and lawyers' historic contribution to the licensing process, which over the last number of years has averaged one million dollars per year.

16. The Committee recommends that an appropriate lawyer licensee contribution for the 2014-2015 licensing process to defray the costs to licensing candidates is one million dollars. This will result in a reasonable reduction in the overall fee to candidates of approximately $500 each, based on estimates discussed above. There is precedent for a contribution in this range.

17. With this contribution, the adjusted candidate licensing fee would be approximately $4700 ($5311 with HST). As a frame of reference, in 2005 the final year of the bar admission process that preceded the current licensing process, the comparable fee for licensing was $4735 plus GST per candidate.

18. While the Committee considers this lawyer licensee contribution appropriate for the 2014-2015 year, it is also aware that licensing candidates may have differing abilities to pay the licensing fee depending upon a number of factors.

19. Over the coming months, as the PD&C Committee continues to work on the Pathways Report implementation, it will also explore the creation of a bursary program and report its findings to Convocation in the fall of 2014. With additional information and details respecting candidates, which will become available over the coming months, the Committee will be in a position to consider this issue and make recommendations.

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

Tab 3

Report to Convocation
November 21, 2013

Treasurer’s Report

Purpose of Report: Decision

Prepared by the Policy Secretariat

MENTORING AND ADVISORY SERVICES PROPOSAL TASK FORCE

Motion

1. That Convocation approve:

a. the creation of the Mentoring and Advisory Services Proposal Task Force,

b. the appointment of Janet Minor and Howard Goldblatt as Co-chairs and the members of the Task Force as set out in this report, and

c. the Task Force's terms of reference as set out in this report.

Background

2. In its Report to Convocation approved in December 2011, the Priority Planning Committee identified "Competence and Professional Standards" as one of the six priorities on which the Law Society should focus its attention over the subsequent four years.

3. The Report describes competence and professional standards as "the foundations of the Law Society's regulatory authority" and states that "as a core objective of the Law Society, the focus on competence extends to various forms of support to licensees with the end goal of ensuring and maintaining competence within the professions."

4. The Report identifies mentoring and support for licensees, including "mentoring programs, advisory services, and practice supports" as activities that require review and consideration by the Law Society.

5. In recognition of the integral role of these services in promoting and maintaining competence and professional standards, Convocation is requested to authorize the creation of a Task Force to develop a proposal for the Law Society's response to establishing mentoring and advisory services for lawyers and paralegals.

6. The Co-Chairs of the Task Force will be Janet Minor and Howard Goldblatt.

7. The following are proposed as members of the Task Force: Paul Dray, Julian Falconer, Susan Hare, Jacqueline Horvat, Dow Marmur, Derry Millar, Linda Rothstein, Paul Schabas and Peter Wardle.

Terms of Reference

8. The following Terms of Reference, based on priority discussed above, are proposed for Convocation's approval.

The Mentoring and Advisory Services Proposal Task Force is mandated to

a. inform itself about the mandatory and optional mentoring and advisory services that are provided to lawyers and other professions by their regulatory bodies and trade or professional associations in Canada and abroad;

b. develop a set of criteria to assess the effectiveness of these services in addressing the practice needs of the legal professions in Ontario;

c. determine the range of mentoring and advisory service models, including technology-assisted, virtual advisory and mentoring services, partnering with other organizations, centralizing or establishing mentoring and other resources, that could be explored and considered;

d. consult with external stakeholders on the objectives and best practices for such services;

e. examine and determine to the extent possible the immediate and long term financial implications to the Law Society.

Budget

9. The Task Force will be provided with a budget of up to $30,000, to be funded from the Competence budget of the Professional Development and Competence Department for 2014; the funds are to be used for research, consultation, travel, and related expenses incurred through to January 2015.

Reporting

10. The Task Force will provide its recommended proposal in a report to Convocation no later than January 2015. It will provide periodic interim reports to Convocation, including but not limited to a brief report in June 2014.

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

TAB 4

Report to Convocation
November 21, 2013

Professional Regulation Committee

Committee Members
Malcolm Mercer (Chair)
Paul Schabas (Vice-Chair)
John Callaghan
Robert Evans
Julian Falconer
Janet Leiper
William C. McDowell
Kenneth Mitchell
Ross Murray
Jan Richardson
Susan Richer
Peter Wardle

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
(Margaret Drent (416-947-7613)

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COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on November 7, 2013. In attendance were Malcolm Mercer (Chair), Paul Schabas (Vice-Chair), John Callaghan, Robert Evans, Julian Falconer, Janet Leiper, William C. McDowell, Kenneth Mitchell, Ross Murray, Jan Richardson, Susan Richer, and Peter Wardle. Staff members attending were Zeynep Onen, Naomi Bussin, Janice LaForme, Sophia Sperdakos, and Margaret Drent.

TAB 4.1

FEDERATION OF LAW SOCIETIES OF CANADA: CONSULTATION REPORT ON SUITABILITY TO PRACTISE STANDARD - LAW SOCIETY SUBMISSION

MOTION

2. **That Convocation approve the Law Society Submission, set out at TAB 4.1.1: Submission, responding to the Federation of Law Societies of Canada's Consultation Report on a Suitability to Practise National Standard.**

BACKGROUND

3. In September the Paralegal Standing, Professional Development & Competence, Professional Regulation and Tribunals Committees all received a copy of the Federation of Law Societies' ("the Federation") Consultation Report on Suitability to Practise (good character). This report, set out at **TAB 4.1.2: Federation Consultation Report**, has arisen out of the Federation's identification of the following strategic priority:

> To develop and implement high, consistent and transparent national standards for Canada's law societies in core areas of their mandates.

4. To facilitate the Committees' discussions of the report, a Working Group with representatives from each of the four Committees was established.[1] The working group met three times, providing a memorandum for committees and, based on the Committees' discussions at two meetings, the submission set out at **TAB 4.1.1: Submission.** The four committees have considered the submission and recommend it for approval and transmission to the Federation.

[1] The members of the Working Group are Malcolm Mercer (Chair) and Susan Richer from this Committee, Janet Minor and Ross Earnshaw from the Professional Development and Competence Committee, Cathy Corsetti and Paul Dray from the Paralegal Standing Committee, and Raj Anand and Larry Banack from the Tribunals Committee.

LAW SOCIETY OF UPPER CANADA

SUBMISSION ON

THE FEDERATION OF LAW SOCIETIES OF CANADA'S

NATIONAL SUITABILITY TO PRACTISE STANDARD

CONSULTATION REPORT

NOVEMBER 2013

Introduction

One of the Law Society of Upper Canada's ("the Law Society") legislative functions is to ensure that those who are licensed in Ontario are of good character. This requirement applies equally to lawyer and paralegal licensees.

With the introduction of national mobility, admission as a lawyer in one jurisdiction effectively opens the door to admission in all jurisdictions in Canada. While all Canadian law societies have good character requirements, there is currently no uniform national standard expressing what applicants for licensing must demonstrate to meet that requirement.

The Federation of Law Societies of Canada's National Admission Standards Project includes the development of a national good character standard to ensure that requirements are clearly articulated and defensible and that the process of assessing licensing applicants is consistent and fair across the country.

The National Suitability to Practise Standard Consultation Report ("the Consultation Report) seeks input from law societies on the proposed standard, which in the case of the Law Society of Upper Canada would apply to both lawyer and paralegal licensees.

The Law Society appreciates the Federation's work-to-date as a first step in the ongoing discussion among law societies on the development of the good character national standard. This submission provides the Law Society's preliminary views on the issues addressed, with comment on additional issues to consider going forward.

Its comments also anticipate that law societies will have a further opportunity to provide more detailed input as the proposed approach is more fully developed.

Discussion

The Consultation Report considers and then accepts that there are valid regulatory reasons for law societies to continue to require applicants for a license to be of good character. It then sets out a proposed approach to assess whether applicants have met the requirements.

The Law Society's submission addresses each of these points, as follows:

1. Are there valid regulatory reasons to have a good character requirement?

2. If the good character requirement is to continue,
    a. is the current approach to considering good character appropriate and sufficient, making the proposed changes unnecessary?

    b. if changes are warranted, is the term "suitable to practice" an improvement over "good character?"

    c. if changes are warranted, are the four behaviours set out in the Consultation Report, the appropriate ones?

Regulatory Reasons for a Good Character Requirement

One of the criticisms of the good character requirement is that there is little evidence that an applicant's past conduct predicts misconduct after licensing. Critics suggest that the absence of predictive value means that law societies are expending resources for an activity that has no real regulatory benefit, does not protect the public and is unfair to applicants.

The Law Society agrees that there is little evidence that past misconduct is a meaningful predictor of future behaviour, particularly as it relates to future professional misconduct. Despite this, however, it is of the view that there are other reasons to continue the requirement, particularly if the enhancements discussed in the Consultation Report and elaborated upon later in this submission are introduced to improve the transparency and predictability of the standard.

It is important to convey to the public and the profession that licensees are required to comply with standards of professional conduct. One of the ways of doing so is to license those who, at the time of licensing, have demonstrated the behaviours discussed in the Consultation Report namely, respect for the rule of law and the administration of justice, honesty, governability and

financial responsibility. Underlying these behaviours is the principle that the profession must be worthy of clients' and the public's trust. If an applicant's past conduct has raised some question about his or her respect for the behaviours integral to the profession, it is valuable for law societies to make further inquiries and determine whether the applicant should be licensed. In this way, the Law Society's commitment to maintaining standards of professional conduct is demonstrated.

Furthermore, communicating a more clearly articulated good character requirement may deter some of those whose past behaviour raises concern, and who are not prepared to attempt to demonstrate an ability to maintain professional standards in the future, from applying for a license. Finally, through a more directed questionnaire developed to identify relevant past behaviours, the Law Society may be better alerted to those applications that merit further examination.

The Consultation Report's Focus on Four Behaviours

The Consultation Report states that the term "good character" suffers from vagueness and potential subjectivity in application, providing little concrete guidance to applicants on the standard they must meet. The Consultation Report recommends replacing the current concept of character with one of "suitability to practise" with a focus not on character traits, but on four behaviours that are required of lawyers, and in Ontario, paralegals as well.

Is the current approach to considering good character appropriate and sufficient, making the proposed changes unnecessary?

The Law Society has considered the current approach to interpreting and applying the good character requirement, which has evolved largely through developing jurisprudence. For some, this approach best addresses the need for flexibility to consider individual cases. The reliance on jurisprudence provides direction and guidance, while allowing panels flexibility.

While some flexibility is important, overall the Law Society agrees with the Consultation Report that the current open-ended approach to the good character inquiry can lead to subjective analyses that provide little concrete guidance to applicants and adjudicators on the standard to be

met. It can also lead to inconsistent and potentially non-transparent licensing decisions, which is particularly problematic with national mobility.

The commitment to transparent, fair and effective self-regulatory processes necessitates improvements to the way in which good character requirement is defined, communicated and applied.

If changes are warranted, is the term "suitable to practice" an improvement over "good character?"

The change in terminology from "good character" to "suitability to practise" would not improve the process or enlarge the public or profession's understanding of the requirement. "Good character" is a familiar term to many people, particularly as it is applied across many professions, trades and walks of life. A criticism of the term is that its vagueness allows for a wide range of interpretations, but the same objection could be applied to the term "suitability," which has a variety of meanings. These include behavioural propriety, substantive competency, mental or physical fitness and social or cultural "fit." Moreover, the term good character permeates law society legislative provisions and jurisprudence, suggesting that only a compelling rationale should result in a change.

The term "good character" should continue to be used provided that it is made clear that what is subject to inquiry is not open-ended, but rather focused on the standards of professional conduct required of lawyers and paralegals.

If changes are warranted, are the four behaviours set out in the Consultation report, the appropriate ones?

The Law Society examined the four behaviours that the Consultation Report specifies as relevant to law society inquiries, namely:

- Respect for the rule of law and the administration of justice
- Honesty
- Governability
- Financial responsibility

It also examined the draft questionnaire included in the Consultation Report, which highlights the relevant areas of inquiry under each named behaviour. The Law Society agrees that these four pillars are the main areas of behaviour with which law societies should be concerned, for the reasons set out in the Consultation Report. They highlight what should be the main concerns of a good character standard and make clear that inquiries into an applicant's good character are focused on specific professional obligations. Greater specificity in the good character standard, as illustrated by the four behaviours, should assist applicants to know the past behaviours that may affect their ability to be licensed. The public will also be made aware of the specific behaviours on which law societies place emphasis.

While the Law Society agrees that these are the primary behaviours with which law societies should be concerned, it is also of the view that there should be residual discretion for law societies to inquire beyond these four behaviours where circumstances warrant. This should not be open-ended and should require an adjudicator who makes a finding not based on the four behaviours to provide specific reasons for doing so. Reliance on this residual discretion should properly require careful analysis and explanation of the relevance of the past behavior to the professional responsibilities.

The adoption of the four behaviours, with a limited residual discretion, provides greater predictability to the good character inquiry without removing appropriate flexibility.

The Law Society also considered whether certain past misconduct should act as an absolute bar to licensing, either permanently or subject to conditions. Sometimes referred to as a bright line test, this approach would be applied without further investigation or hearing and with no possibility to consider context or relevant factors. Alternatively, such past misconduct might give rise to a presumptive bar to licensing, capable of being rebutted only by a sufficient passage of time since the misconduct occurred together with compelling evidence of rehabilitation.

Certain types of egregious misconduct may merit especially intensive scrutiny into the applicant's respect for the rule of law and the administration of justice, honesty, governability or

financial responsibility. The Law Society is of the view it is sufficient to focus particular attention on such conduct without requiring the rigidity of a bright line test.

In the Law Society's view, without limiting panels' ability to consider the facts of each case, it may be appropriate to provide some policy guidance on the types of misconduct that should give rise to greater scrutiny as well as on the evidence that should be considered in determining current good character. The Consultation Report discusses each of the four behaviours and the types of conduct under each that might raise regulatory concerns. Guidance or commentary such as that set out in the Consultation Report could be provided as the national standard is developed. The Consultation Report also discusses some of the factors that should be taken into account in assessing the relevance of past conduct on current character. These include the nature, seriousness, consequences of and penalties for the past conduct, as well as evidence of subsequent rehabilitation and compliance with the law. Policy guidance could usefully elaborate on the type of objective evidence that should be taken into account to enhance consistency of decision-making generally and in particular on the issue of subsequent rehabilitation.

The Law Society supports the adoption of guidelines as a means of increasing more consistent and fairer decision-making and transparency. Guidelines that are analogous to the commentary to the Rules of Professional Conduct should better assist law societies and adjudicators in decision-making, without interfering with flexibility.

Finally, the Law Society is of the view that within the behavior defined as "respect for the rule of law and the administration of justice" and the related questions, greater attention should be paid to specifying breaches of human rights codes as conduct that should be further investigated on a good character inquiry. Specific reference to respect for and adherence to human rights and equality principles sends an important message to those entering the legal profession.

A National Process and Questionnaire

Having addressed the policy component of the Consultation Report, the Law Society also considered the report's consideration of a national implementation process and questionnaire.

The Law Society agrees that the goals of a national standardized questionnaire and similar information gathering, investigation, assessment and hearing processes are worth pursuing. At the same time, however, there must be careful consideration of purpose and utility. The Law Society suggests that a number of considerations are important to the development of a fair and effective system and to effective allocation of resources.

The system should remain primarily self-reporting. While there may be some areas in which independent verification of answers is important (e.g. criminal record checks) there should be a careful assessment of when this is actually necessary. Increasing the resources devoted to the assessment process and adding to the amount of information gathered as part of the process should only be done where there is sufficient reason to think that regulatory outcomes are actually improved and the purpose of the inquiry is directly connected to the regulatory goal.

The Consultation Report proposal is not yet specific enough to enable law societies to understand proposed benefits and assess the effect on resources. For example, the potential operational impact on law societies of the "gathering and verifying of information" and the "further investigation" components of the Consultation Report proposal, could be significant depending upon how proactive and resource intensive each step is. In the quest for a rationalized process law societies should not place burdens and costs on applicants and the profession that are not justified by improved regulatory outcomes. They must be proportionate to the benefits actually achieved.

Similarly, the Law Society has considered the proposed questionnaire. It supports the approach in which questions are posed under each of the relevant behaviours. This focuses attention on the relevance of each question to an identified behaviour integral to lawyer and paralegal professional responsibilities.

The Law Society is of the view, however, that further work must be done on the questionnaire. In particular, each question should be considered to determine whether it,

- directly addresses one of the behaviours that underpin the proposed national standard;

- is as specific as possible to ensure that applicants are not being required to over-report conduct that is not a reliable measure of their adherence to the standard;

- is not under-inclusive, leaving out important inquiries; and

- is focused on addressing the *conduct* that is relevant to the national standard. So, for example, law societies may not need to know about every "charge" pending against an applicant however trivial; their interest is better restricted to those circumstances when the conduct that is the subject of the charge is relevant to one of the four behaviours. Where questions are unnecessarily intrusive or vague and the value of the answers may be minimal they should be avoided.

Implementation of a National Standard

The Consultation Report does not address how a national standard would be implemented. Although each law society has a good character requirement, the authority for and specificity of the requirement may differ from jurisdiction to jurisdiction. Depending upon the Federation's proposed approach, law societies may have different views on how best to move the national standard forward.

So, for example, the Law Society has considered two possible approaches. The first is formal and prescriptive, entailing possible legislative, rule and by-law amendments to enshrine the national standard. The second is less prescriptive and more iterative, envisioning law societies adopting a national policy protocol to provide policy guidance for good character assessments. This would enable the introduction of the national standard with the ability to assess and refine it as necessary. In its preliminary consideration of the implementation issue the Law Society is of the view that the latter approach may be more appropriate, but further discussion of implementation issues will be important.

The Law Society encourages the Federation to address this issue in its next report to enable law societies to consider the potential implementation implications of the proposed national standard.

Conclusion

The Law Society looks forward to the Federation's further consultations with law societies following its consideration of comments on the Consultation Report. The more detailed the

Federation’s next report, addressing law society concerns, such as those raised in this submission, the better able law societies will be to move forward in developing a national good character standard.

National Suitability to Practise Standard

Consultation Report

July 2013

NATIONAL SUITABILITY TO PRACTISE STANDARD

CONSULTATION REPORT

INVITATION TO COMMENT

Law societies in Canada are mandated by statute to regulate the legal profession in the public interest. Setting appropriate standards for admission to the profession to ensure that lawyers and Quebec notaries are competent and understand their ethical obligations is a critical aspect of this mandate. While there is much common ground in the admission programs in Canada's 14 law societies, differences do exist.

Members of the legal profession in Canada today enjoy unprecedented mobility between jurisdictions. The mobility regime established under the Federation's mobility agreements – the National Mobility Agreement, the Territorial Mobility Agreement, and the Quebec Mobility Agreement and Addendum - permits members of the profession to move with ease between jurisdictions. Changes to the federal-provincial-territorial Agreement on Internal Trade have led to mobility rights for all licensed professionals and certified workers being enshrined in legislation.

Mobility has generated increased reflection about what the law societies do and why. With admission as a lawyer in one jurisdiction effectively opening the door to admission in all jurisdictions in Canada, mobility may make different regulatory practices difficult to justify as being in the public interest. Recognizing this, the Council of the Federation has identified the following strategic priority:

> To develop and implement high, consistent and transparent national standards for Canada's law societies in core areas of their mandates.

The National Admission Standards Project reflects this priority.

In 2010, Canada's law societies agreed on a uniform national requirement that graduates of Canadian common law programs must meet to enter the licensing program of any of the Canadian common law jurisdictions. The national requirement, which will apply to graduates of existing and prospective law schools effective 2015, specifies the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place. The National Admission Standards Project is intended to build on this base by developing comprehensive standards for admission for implementation in each jurisdiction.

The Council of the Federation identified two goals for the first phase of the project: (i) developing a national profile of the competencies required upon entry to the profession; and

(ii) the drafting of a common standard for ensuring that applicants meet the requirement to be of good character.

Through the collaborative efforts of senior law society admission staff members, professional credentialing consultants, and practicing lawyers, a profile of entry-level competencies – knowledge, skills and tasks – was developed. The National Entry-Level Competency Profile for Lawyers and Quebec Notaries was adopted by the Council of the Federation in September 2012. The profile has now been adopted by 13 of Canada's 14 law societies. Work is now under way to explore options for implementation of the profile by the law societies.

Law society policy and credentialing counsel (the Good Character Working Group) have also been working on drafting a common good character standard.[1]

Although applicants for admission to the profession across Canada are required to "be of good character", there is no nationally agreed upon statement of exactly what an applicant must demonstrate to meet the requirement. The drafting of a common standard is intended to address this problem by ensuring that the requirements are clearly articulated and defensible and that the process of assessing candidates is consistent and fair. The Good Character Working Group ("the Working Group") has reviewed relevant statutory requirements, academic literature and criticism, case law, current law society practices, and the practices of regulators in other countries and other professions to consider the policy rationale for the good character requirement, define the principles that should be reflected in a common standard, and recommend consistent processes.

The considerations and preliminary views of the Working Group are set out in the following consultation report. The goal of this consultation is to obtain the comments of law societies and other interested stakeholders on the Working Group's views to facilitate the final development of a national standard.

Detailed feedback is invited on any or all aspects of the report, in particular related to,

[1] Concurrent with the drafting of a common good character standard, the Working Group explored the appropriateness of a "fitness to practise" requirement. Some law societies enquire into fitness to practise by asking applicants about their mental health, physical health, and substance abuse or addictions. The Working Group recommended that a Fitness Task Force be created to explore fitness issues more broadly, both at entry to the legal profession and throughout a legal professional`s career. Due to other Federation priorities, the establishment of a Fitness Task Force has been deferred. The drafting of a National Suitability to Practise Standard will proceed without consideration of a fitness requirement at this time. A recommendation about fitness to practise in the context of the National Suitability to Practise Standard may be made in the future after the Task Force has been established and has completed its work. In the meantime, law societies may choose to continue their current practises concerning fitness enquiries on admission to the profession.

- the working group's consideration of the purpose of the good character assessment;
- the proposed use of the concept of "suitability to practise";
- the four elements that should form part of the national standard; and
- the proposed guidelines for applying the standard.

Interested stakeholders are encouraged to provide written comments by **November 30, 2013**. Please direct them to:

National Admission Standards Project
Federation of Law Societies of Canada
consultations@flsc.ca

INTRODUCTION

1. Applicants for admission to the legal profession bear the onus of showing that they are qualified for admission. Some qualifications, such as whether the applicant has the required law degree or has passed the bar exam, are straightforward to assess. Determining whether an applicant understands and can be expected to act in accordance with the standards demanded of lawyers and Quebec notaries[2] is more complex.

2. The provincial and territorial statutes under which Canadian law societies operate include requirements that members of the profession be of "good character", "good repute", or "fit and proper persons" (referred throughout this report as "good character"), and all regulators of the legal profession in Canada currently assess good character as part of the admission process. It has been suggested that the conceptual rationale for the requirement rests on the interrelated concepts of protection of the public and protection of the reputation of the profession.[3] Assessing character, it is argued, is essential for determining whether an applicant will adhere to the high ethical standards required of members of the profession.[4]

3. The legal profession is not alone in requiring that its members be of good character; most professions have similar requirements. In the case of the legal profession, the roles that lawyers and Quebec notaries play in the legal system and the nature of their relationships with their clients provide perhaps the strongest justification for the requirement.

4. Lawyers and Quebec notaries occupy a position of trust. The administration of justice, in which legal professionals play an integral part, can operate effectively only if those who function within it do so with honesty and integrity. Individual clients, the public at large, the courts, and the regulators must be able to rely on members of the profession to be honest and trustworthy. Clients require honest and candid advice, and tribunals and other members of the profession must be able to rely on the representations of legal counsel. As key participants in the justice system and as officers of the court, lawyers and Quebec notaries must also demonstrate respect for the rule of law and the administration of justice, and a willingness to be governed by the regulators of the

[2] In Ontario, licensed paralegals regulated by the Law Society of Upper Canada, must also meet the good character requirement. As the licensing of paralegals is unique to Ontario and as Ontario's paralegals do not fall under the Federation's umbrella, the report refers to lawyers and Quebec notaries throughout.

[3] *Re Rajnauth and Law Society of Upper Canada* (1993), 13 O.R. (3d) 381 at 384

[4] *Law Society of Upper Canada v. Aidan Christine Burgess,* 2006 ONLSHP 0066 at para 10 (paraphrasing from *Preyra v. Law Society of Upper Canada*, [2000] L.S.D.D. No. 60) ["*Burgess*"]

profession. As fiduciaries for their clients legal professionals must place their clients' interests above their own at all times and must be capable of handling client funds honestly and responsibly.

~~5.~~ While it seems reasonable to expect regulators to take steps to screen out applicants who pose a risk of breaching their ethical duties and harming their clients, the ability of good character assessments to achieve this goal has been the subject of discussion and criticism.

6. The Working Group was asked to consider whether there is a sufficient rationale for continuing to assess the character of applicants for admission and if it concluded there was, to draft a common good character standard for consideration and adoption by the provincial and territorial regulators of the legal profession. In doing so it has considered criticisms that the requirement's vagueness and inconsistency in application make its utility in protecting the public questionable. It has also considered whether, if the requirement is to continue, the process for conducting good character assessments could be improved.

7. The Working Group has reviewed the statutory provisions related to good character from each jurisdiction, the practices of each law society in applying the requirement, approaches to good character assessments of regulators of the legal profession outside Canada and of regulators of other professions, and academic criticism of good character assessments. It has also reviewed case law and hearing panel decisions from a number of Canadian jurisdictions.

8. This report first sets out the underlying rationale for continuing to have a good character requirement, although the Working Group recommends moving away from "character" to "suitability" and focusing not on personal attributes, but rather on the behaviour that is required of all members of the legal profession. This concept is discussed in detail below.

9. Next, the report describes four categories of conduct that the Working Group believes are relevant – respect for the rule of law and the administration of justice, honesty, governability and financial responsibility – and discusses the specific factors in each category that the Working Group thinks are relevant to an assessment of the applicant's conduct and suitability.

10. The report concludes with a description of the recommended process for conducting an assessment of an applicant's suitability to practise law, including the gathering of information and the conduct of hearings.

RATIONALE

11. Canada's law societies are mandated by statute to regulate the legal profession in the public interest. Included in this statutory mandate is a duty to take reasonable measures to protect the public. Protection of the public requires regulators to endeavour to ensure that members of the profession are suitable to practise and will conduct themselves in a manner expected of them, both on admission and throughout their careers.

12. Public confidence in the legal profession is important to the effective administration of justice. Clients repose tremendous trust in the legal professionals they engage to assist them. The reputation of the profession is important to the maintenance of that trust. All reasonable efforts must be taken by the regulators to ensure that those they admit to the profession will conduct themselves in accordance with the high ethical standards required of legal professionals.

13. Candidates for licensing are expected to satisfy a number of requirements before law societies will admit them. These requirements establish a "point-in-time" assessment of candidates' qualifications. Licensing examinations and good character assessments are the two most prevalent point-in-time assessments on which law societies rely at the admission stage, measuring competence and suitability to practise.

14. Continued use of good character assessments has been criticized on the basis that they have limited predictive value. But it is not only predictive regulatory activities that are useful to protect the public. The purpose of good character assessments, as with licensing examinations, is to assess an applicant's suitability to practice at the time of application, not to predict the applicant's future conduct. They are a baseline that provides law societies with an initial measurement, but are by no means the end of the law society's monitoring of the member's character and competence. Good character assessments are but one of a number of tools at the disposal of regulators to monitor suitability throughout a lawyer's career. Practice and trust account audits, members' annual reporting requirements, complaints, and disciplinary investigations and proceedings are all used by law societies to assess suitability and competence over the course of the career of a legal professional.

15. As discussed above, the statutes or regulations governing the legal profession in every jurisdiction in Canada require applicants to the profession to be of good character. The Working Group has concluded that good character assessments represent an important first opportunity for law societies to review the conduct of applicants to determine whether they are suitable for the practice of law.

16. The Working Group is of the view that a good character assessment is a useful regulatory tool, however it agrees that there is room to improve both the definition and

the application of the standard. Appropriately refined, good character assessments can assist law societies in meeting the important goals of protecting both the public and the reputation of the profession. The Working Group's ideas for refining and improving both the standard against which applicants are assessed and the process for conducting the assessment are explored in the following section.

ELEMENTS OF A COMMON STANDARD

17. The Working Group recognizes that the elements of the standard that applicants must meet should be firmly rooted in the realities of ethical legal practice and should be as clear as possible. In an effort to bring greater clarity to both the standard and the assessment process, the Working Group recommends replacing the concept of "character'" with one of "suitability to practise" and focusing not on character traits, but rather on the behaviour that is required of all members of the profession.

18. Although precise descriptions vary, the following definition of good character from one Nova Scotia Barristers' Society decision is representative: "good character refers to the character traits of an ethical lawyer."[5] Others have described character as "the combination of qualities or features distinguishing one person from another."[6]

19. Critics have suggested that such definitions are vague, potentially subjective, and, as a result of their lack of precision, provide little concrete guidance to applicants on the standard they have to meet. The Working Group sees some merit in these criticisms. In its view, however, by focusing on suitability and identifying conduct directly related to the practice of law, the standard can be made clearer and fairer.

20. To identify the conduct that is relevant to the practice of law and therefore the determination of an applicant's suitability, the Working Group began with an examination of the general requirements of practice. It notes that the practice of law requires that practitioners adhere to high ethical standards, exercise good judgment, uphold the rule of law and the administration of justice, be accountable, comply with the legal and regulatory obligations imposed on members of the legal profession, provide honest and candid advice to clients, accept responsibility for their decisions and conduct, and handle client money reliably and responsibly. This means that members of the profession must act with integrity, candour, honesty, and trustworthiness.

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[5] *Christopher Ian Robinson v. The Nova Scotia Barristers' Society*, 2008 NSBS 4 (CanLII) at para 52.

[6] *Re P (DM),* decision of a panel of the Law society of Upper Canada [1989] O.J. No. 1574 at 22, cited in Alice Woolley, "Tending the Bar: "The "Good Character" Requirement for Law Society Admission" (2007) 30 Dalhousie L.J. 27at 36.

21. The Working Group considers that in assessing whether an applicant is likely to meet these expectations and so be suitable for the practise of law information on an applicant's conduct in the following areas is relevant:

    i. Respect for the rule of law and the administration of justice
    ii. Honesty
    iii. Governability
    iv. Financial responsibility

i. Respect for the rule of law and the administration of justice

22. The rule of law is a central characteristic of a just society. Members of the legal profession are key participants in a justice system that advances the rule of law and should therefore be expected to uphold and demonstrate respect for the rule of law and the administration of justice by acting in accordance with the law. Public confidence in the legal profession would suffer if an applicant who does not show this respect were to be admitted to the practice of law.

23. Evidence of criminal convictions, failure to comply with court orders, abuse of court processes, contempt of court, or participation in an organization that advocates violence or unlawful discrimination may demonstrate that an applicant lacks the required respect for the rule of law and the administration of justice.

24. Participation in offences involving dishonesty, fraud, perjury, bribery, and obstruction of justice are of particular concern as they demonstrate that the applicant has engaged in conduct that demonstrates that the applicant lacks the required ability to act with the honesty and integrity necessary to practise law.

25. Although past conduct may not predict future conduct, evidence of past misconduct does merit further inquiry as it inevitably raises questions about the applicant's understanding of the conduct required of a member of the profession. The circumstances of the past misconduct, the applicant's actions since the misconduct, and the applicant's insight into the incident should all be considered in determining whether, notwithstanding the past misconduct, the applicant is currently suitable to practise law.

26. In determining the relevance of past misconduct to the applicant's current suitability, law societies should consider the following:

    a) the nature and seriousness of the misconduct including its relevance to the practice of law;
    b) the age of the applicant at the time of the conduct;
    c) number of offences or incidents of the misconduct;

d) the length of time between the conduct in question and the application;
e) evidence of remorse;
f) evidence of rehabilitation including but not limited to acknowledgments that the conduct was wrong and acceptance of responsibility for the conduct; treatment and/or counselling; compliance with any disciplinary sanctions, sentences, or court orders; conduct since the offences or misconduct, including evidence of positive social contributions through employment, community or civic service;
g) evidence of the applicant's current understanding that the conduct was wrong.

ii. Honesty

27. Members of the legal profession are in a position of trust and are expected to conduct themselves honestly in their dealings with and representation of their clients. Failure to demonstrate the required honesty will undermine the confidence a client has in her legal counsel, public confidence in the profession, and the effective administration of justice.

28. Evidence that an applicant has engaged in dishonest conduct, including crimes of dishonesty, professional or academic misconduct, and breach of trust, requires further investigation. As in the case of misconduct that calls into question an applicant’s respect for the rule of law and the administration of justice, the circumstances, intervening conduct, and insight into the dishonest conduct are all relevant considerations.

29. A pattern of dishonest behaviour may indicate that an applicant does not possess the required honesty to practise law, but is not necessarily an automatic bar to admission. As in the case of all other misconduct it is the applicant's current suitability that is at issue. In assessing the relevance of past dishonest behaviour to current suitability the following should be taken into consideration:

a) the applicant's age at the time of the conduct;
b) whether the dishonest acts were committed to achieve personal gain or advantage;
c) the impact on others of the dishonest behaviour;
d) evidence of the applicant's understanding of the matter and acceptance of responsibility;
e) compliance with any sanctions for the dishonest conduct;
f) evidence of rehabilitation;
g) the passage of time since the dishonest acts and the applicant's conduct in the interim.

30. Failure to disclose all relevant information or a lack of candour in the admission process is also relevant to the assessment of the ability of the applicant to conduct themselves with honesty. Not every inaccuracy, however, will be a bar to admission. In determining

the relevance of any misrepresentation or lack of candour, the following should be taken into consideration:

a) whether the applicant has deliberately provided false or misleading information, or has demonstrated recklessness or wilful blindness in relation to the information provided;
b) whether the information in question is material to the application for admission.

iii. Governability

31. The regulators of the legal profession are charged with ensuring that the public interest is protected. Applicants for admission to the legal profession must demonstrate a willingness to accept the authority of the law society, and an understanding of the importance of effective governance of the profession to the protection of the public. They must be prepared to comply with the regulations in place to protect clients, the administration of justice, and the public, and must respond to the law society appropriately and in a timely manner in order to facilitate effective and efficient regulation.

32. Information about the regulatory history of an applicant who has previously been subject to professional regulation in another profession or jurisdiction is relevant to a determination of whether the applicant has demonstrated the required willingness to comply with professional regulation. Evidence that an applicant has been the subject of a serious disciplinary finding, sanction or action by a regulatory body or that an applicant has been refused registration by a regulatory body may raise questions about the applicant's willingness to accept the authority of the regulator. The circumstances of any regulatory sanction or refusal to license must be examined. Matters relevant to an assessment of the relevance of such actions to the determination of the applicant's suitability to practise include:

a) when the sanction or other action or the refusal to license occurred;
b) whether the applicant accepted responsibility for the underlying conduct;
c) the seriousness of the underlying conduct;
d) evidence of rehabilitation;
e) evidence of subsequent compliance with regulatory authority.

iv. Financial responsibility

33. Evidence of lack of financial responsibility is relevant to the assessment of suitability to practise in a number of ways. Lawyers and Quebec notaries act as fiduciaries for their clients and may be entrusted with significant amounts of money. Once money has been deposited into a lawyer's or a notary's trust account clients have little or no direct control

over the money they have entrusted; they must rely on their legal counsel to handle their money with integrity and in accordance with their instructions. It is essential that members of the legal profession be honest in dealing with client funds and that they handle the funds in a professional and responsible manner consistent with their fiduciary role.

34. Public confidence in the handling of client funds by lawyers and Quebec notaries may also be undermined if members of the profession demonstrate an inability to handle their personal finances. An applicant's ability to handle client funds responsibly may be called into question if the applicant has been wilfully financially irresponsible in the past. Serious financial difficulties may also present a risk that an applicant will misuse client funds.

35. Evidence of financial problems, mismanagement or neglect of financial responsibilities including, for example, unpaid court judgments or liens, failure to make child support payments, defaulting on debts or bankruptcy raise questions about an applicant's financial responsibility. In order to determine whether an applicant is guilty of deliberate financial mismanagement or avoidance of financial responsibility or is simply an honest, but unfortunate debtor it is essential to examine information on the details surrounding any bankruptcy or other financial problems. Factors to consider include the following:

    a) the circumstances surrounding any bankruptcy or other financial problems, including, in particular, any evidence of wilful financial mismanagement or exceptional circumstances beyond the control of the applicant that could not have reasonably been foreseen;
    b) the nature of the debt at the time of bankruptcy or other financial difficulty;
    c) actions, if any, taken to discharge debts;
    d) the applicant's financial situation since the bankruptcy or other financial problems including the applicant's recent credit history;
    e) the passage of time since the bankruptcy or other financial difficulty; and
    f) evidence, if any, of the handling of funds for others since the bankruptcy or other financial problems.

GUIDELINES FOR APPLYING THE STANDARD

36. The Working Group recognizes the value in bringing greater consistency to the assessment of suitability to practise. Identifying both a common process for the assessments and a set of common factors that should be considered is likely to promote consistency both within individual jurisdictions and between jurisdictions. The latter aspect is particularly important in this era of ever-increasing mobility of members of the profession between jurisdictions.

37. The assessment process can be divided into the following possible stages: preliminary gathering and verifying information, further investigation, assessing information, hearings, and appeals. The following sections describe a template for the different stages.

Gathering and verifying information

38. Law societies currently employ a variety of means of gathering information from which to assess whether an applicant has demonstrated that they are suitable to practise. Self-reporting by applicants through a series of questions on the admission application is a common element and one that the Working Group believes should be preserved. The Working Group has drafted a proposed standard questionnaire (attached as Appendix "A") that includes questions relating to the four categories of conduct discussed above: respect for the administration of justice and the rule of law; honesty; governability; and financial responsibility. The draft standard questionnaire also includes the rationale for the questions and guidance for assessing the answers. Using a common questionnaire will promote consistency in suitability assessments both within and across jurisdictions.

39. Independent verification of the information provided by applicants is not now carried out in all jurisdictions, and where it is, it is not done consistently. The Working Group suggests that obtaining information from independent sources – for example criminal records checks, court registry databases, certificates of standing and reports of disciplinary history from other regulatory bodies, references from third parties, and reports or certificates from articling principles – is important and recommends that such independent verification be included in the standard and undertaken by all jurisdictions.

Further Investigation

40. For the majority of applicants the inquiry into suitability will end with the answers to the questions on the application form and a review of the independently obtained information. In some cases, however, the information provided about the applicant's past conduct will trigger further inquiry. This further investigation may be undertaken by law society staff or by independent investigators retained by the law society. The scope of any additional investigation will vary according the facts of each case, but in all cases it should involve gathering additional information, either from the applicant directly, through further independent verification, or both. Information should be obtained about the circumstances of any past misconduct revealed on the application, the applicant's intervening conduct, and the applicant's current understanding of the incident(s) to determine whether, at the time of application, they are suitable to practise law.

Assessing Information

41. Following the preliminary gathering and verification of information and any further investigation an assessment of the applicant's suitability to practise (good character) must be made. Practices vary between law societies – in some staff are mandated to undertake this assessment while in others the assessment is made by a committee comprised of benchers or members of council. In each case, it is important that the information be assessed against the factors discussed above, including the nature and seriousness of the conduct at issue, the passage of time since the conduct, and the applicant's current understanding of the conduct.

Hearings and Appeals

42. In the event of a negative assessment of an applicant's suitability, procedural fairness requires that the applicant be given an opportunity to be heard. A negative assessment triggers a right to a hearing and applicants who are unsuccessful at the hearing must also have a right of appeal or review.

43. The applicant must be provided with written reasons for the negative assessment and the law society must disclose all information that it intends to rely on at a hearing into the applicant's suitability.

44. At the hearing the law society must prove on a balance of probabilities that there is a factual basis for questioning the applicant's suitability, for example evidence of misconduct that bears on the likelihood that the applicant will conduct themselves appropriately if admitted to the practise of law. Where this factual basis has been established, the onus is on the applicant to rebut (on a balance of probabilities) the presumption that they are not suitable to practise law.

45. Written reasons of the hearing or appeal decision must be provided.

CONCLUSION

46. The screening of applicants for licensing as lawyers or Quebec notaries – whether to determine their character or their suitability to practise law – raises a number of important and challenging issues. In its suggested approach to a common standard the Working Group has endeavoured to respond to the major criticisms of the current approach by proposing criteria and processes that can be applied consistently across the country.

47. The final determination of how to address suitability or character assessments cannot be made without your feedback. We encourage you to comment on any of the issues raised in the report.

Appendix "A"

DRAFT STANDARD QUESTIONNAIRE

To the Applicant:

Law societies regulate the legal profession in the public interest. One of the most important decisions that law societies make is who they license to practise law. The public interest requires that all applicants prove they are suitable to practise.

Law societies assess the suitability of applicants in many ways, but the following factors are particularly relevant and important:

- Respect for the rule of law and administration of justice
- Honesty
- Governability
- Financial responsibility

The questions in the following questionnaire are one of the primary ways in which law societies obtain the information necessary to assess an applicant's suitability.

The questions that follow are arranged under headings based on the factors set out above. In general, all positive answers to the questions set out in the sample questionnaire will be investigated. A positive answer does not necessarily mean that the applicant will be refused admission to the law society. Follow-up questions or further investigation may be pursued, and the applicant may, in certain circumstances, be entitled to a hearing into the issues raised by their answers.

In answering the questions, the applicant must disclose all material information relating to their application, including any matters that have occurred in Canada and elsewhere. Law societies regard failure to disclose material information as prima facie evidence of dishonest behaviour.

All records or required information must be provided along with the licensing application or the application will be considered incomplete.

Criminal background check: you must submit with this application, the result of a criminal record search conducted by a municipal, regional, provincial, or federal police force issued within the past 90 days

Respect for the Rule of Law and the Administration of Justice

Respect for the rule of law and the administration of justice is essential to a free and democratic society. Although all members of such a society should show this respect, it is particularly important that those who work in the justice system do so. Information about past conduct that raises questions about an applicant's respect for the justice system warrants further

investigation to determine if the applicant will conduct themselves with honesty and integrity and will comply with the ethical rules governing members of the legal profession.

The questions below seek to identify conduct that may suggest a lack of respect for the justice system. There will be overlap with other categories, such as honesty and governability.

1. Have you, or has any business that you control, ever been found in contempt of an order of a court or an administrative tribunal?

2. Have you, or any business that you control, ever violated an order of a court or an administrative tribunal?

3. Has a court ever made a finding:
    a. That you, or any business that you control, is a vexatious litigant?
    b. That you, or any business that you control, has abused the process of the court?

4. Have you ever failed to respond to a warrant or subpoena?

5. Has there ever been a conviction or finding of liability against you, or any business that you control, involving a breach of trust, fraud, perjury, misrepresentation, deceit, forgery, dishonesty, or undue influence in any civil, criminal, or administrative proceeding?

6. Has a court or an administrative tribunal ever determined that your evidence was not credible?

7. Are there any outstanding warrants, judgments or court orders against you or any business that you control?

8. Have you, or any business that you control, ever been the subject of an order enjoining you from the unauthorized practice of law, or are there any outstanding allegations of unauthorized practice of law outstanding against you or any business that you control?

9. Have you ever been charged in Canada or anywhere else with a crime, offence, or delinquency under any statute, regulation, ordinance or law?

10. Are you a member of an organization that advocates violence or unlawful discrimination?

Honesty

The administration of justice, in which members of the legal profession pay an integral part, can operate effectively only if those who function within it do so with a commitment to honesty and integrity.

Appendix "A"

The public, the courts, and the regulators require members of the profession to be free of deceit. It is essential that they be able to rely upon representations made by a member of the profession as truthful.

Lawyers and Quebec notaries have a professional obligation to give honest and candid advice. If a client has any doubt about the honesty or trustworthiness of their legal advisor an essential element of the solicitor/client relationship is missing.

A lawyer is an officer of the court. As such, a lawyer has special responsibilities to the administration of justice, including the duty to be candid and the prohibition against deceiving or misleading the court.

Dishonest conduct on the part of a member of the legal profession brings discredit upon the profession and the administration of justice.

1. Have you ever been refused admission to any post-secondary institution or similar institution for the stated reason of dishonesty or other misconduct?

2. Have you ever been suspended, expelled or penalized for misconduct (including warning, placed on probation, permitted or advised to resign in lieu of discipline) while attending a post-secondary institution?

3. Are you currently the subject of any allegations or misconduct by a post-secondary institution?

4. Have you ever been refused admission as a student-at-law, articled clerk, or similar position in any other professional body?

5. While undertaking studies for the purpose of admission to a professional body (law or other) have you ever been suspended or expelled or penalized for misconduct (including warning, placed on probation, permitted or advised to resign in lieu of discipline)?

6. Have you ever been discharged, suspended, disciplined, or permitted to resign from employment in lieu of discipline due to allegations of misconduct? Misconduct includes dishonesty or human rights code violation or other inappropriate conduct.

7. Have you ever been a member of a group that advocates conduct that violates the Criminal Code, human rights or privacy legislation? If you answer yes, please provide the name of the group and describe the extent of your participation in it.

Appendix "A"

Governability

The regulators of the legal profession are charged with insuring the public interest is protected. Members of the profession must demonstrate respect for the authority of the regulator and a willingness to comply with the professional standards in place to protect clients, the administration of justice, and the public. Lawyers and Quebec notaries must respond to the regulator appropriately and in a timely manner in order to facilitate effective and efficient regulation. They must demonstrate that, if they have previously been subject to professional regulation, they respected and complied with such regulation, despite any personal differences or disagreements they may have had with their regulatory body.

The following questions seek information as to whether or not the applicant will accept governance by their regulator. Law societies ask questions about the regulatory history of applicants to assess whether the applicant has demonstrated the required willingness to comply with professional regulation. Law societies must also know if the applicant has been refused entry into a regulated profession due to good character concerns. Evidence of failure to comply with professional regulatory requirements or denial of admittance to any profession may call the applicant's suitability to practise or governability into question.

1. Have you ever been suspended, disqualified, censured or disciplined as a member of any profession or organization or as the holder of a public office?

2. Have you ever been denied a licence or had a licence revoked for any business, trade or profession?

3. Have you ever been or are you currently the subject of any charges, complaints, grievances (formal or informal), investigations, findings, proceedings, or concerns regarding your conduct as a member of any profession or organization or as the holder of a public office?

4. Have you ever been cautioned, warned, or your conduct subject of a regulatory advisory by a Canadian law society?

5. Have you ever applied for and been refused a licence from a regulatory body where proof of good moral character or fitness to practise was required?

Financial Responsibility

There are two reasons it is important that applicants demonstrate that they are financially responsible.

The first is that clients entrust their legal advisors with significant amounts of money. Additionally, clients do so under circumstances in which they have little direct control over the

Appendix "A"

money they have entrusted. It is therefore essential that members of the legal profession deal with client's funds honestly and in a professional manner.

The second reason is that the public expects members of the legal profession to be business-like and financially responsible in their own affairs. An inability to manage personal finances may be indicative of an inability to appropriately manage client's funds.

Wilful financial irresponsibility raises serious concerns about an applicant's ability to handle client funds responsibly. Serious financial difficulties may also present a risk that an applicant will misuse client funds.

Bankruptcy will not automatically disqualify an applicant, but will require an investigation of the circumstances to determine, for example, whether the applicant is an honest but unfortunate debtor, or is deliberately avoiding responsibilities for their debts. Either way, it is important for law societies to ascertain the circumstances as they may go beyond financial mismanagement to ethical breach.

1. Are you now, or have you ever been a bankrupt, made a proposal under the *Bankruptcy and Insolvency Act*, or made any other formal declaration of insolvency?

2. Has any corporation, partnership, or business entity over which you have or had control become bankrupt or made a proposal under the *Bankruptcy and Insolvency Act,* or made any other formal declaration of insolvency?

3. Have you, in the last two years, been in default, or are you currently in default of any financial obligation, including any loan, debt or credit?

4. Have you ever misused your position to obtain financial advantage, or misused your position of trust in relation to vulnerable people?

FOR INFORMATION

REPORT ON JUDICIAL COMPLAINTS

5. Attached as **Tab 4.2.1** for Convocation's information is a report prepared by the Director of the Professional Regulation Division on judicial complaints received by the Law Society regarding lawyers and paralegals.

REPORT OF THE DIRECTOR OF PROFESSIONAL REGULATION REGARDING JUDICIAL COMPLAINTS

INTRODUCTION

1. This report provides a brief analysis of the judicial complaints received by the Law Society since the implementation of the Civility Complaints Protocols between the Society and the Ontario Courts (the "Protocols") to 31 July 2013.

2. The Protocols were developed by the Law Society in consultation with the Chief Justices of the Court of Appeal, the Superior Court of Justice and the Ontario Court of Justice. Formalized in September 2009, the Protocols set out a procedure for trial judges and justices of the peace to refer incidents of misconduct to the Law Society. They also provide for a process whereby judges can request that lawyers receive mentoring from a panel of senior members of the bar.

NUMBER OF COMPLAINTS RECEIVED

3. While the Protocols were not finalized until in and around 31 March 2010, the Law Society and the Courts began following these Protocols in the late summer, early fall of 2009. Hence, complaints from judges which were received after 1 September 2009 are considered to be part of this joint endeavour and are the focus of this memorandum.

4. Between 1 September 2009 and 31 July 2013, the Law Society received **94 complaints** from judges in various courts ("judicial complaints"): 5 were received in 2009; 32 were received in 2010, 20 were received in 2011, 21 were received in 2012 and 16 have been received in 2013, as at 31 July. The following chart sets out the number of judicial complaints received in Professional Regulation, by calendar year, since 2000.[1]

[1] In and around September 2009, when the Protocols were developed, a unique way to identify these complaints was developed in Professional Regulation's case management system. However, prior to that time, there was no ability to identify complaints received from judges. For this memorandum, complaints opened between 1 January 2000 and 1 September 2009 were identified as judicial complaints if the complainant or additional complainant in the case was identified as a judge. Those complaints which were lodged by someone on behalf of a judge have not been included as there is no way they could be identified.

YEAR	NUMBER OF COMPLAINTS
2000	1
2001	3
2002	2
2003	3
2004	13
2005	10
2006	1
2007	3
2008	5
2009*	18
2010	32
2011	20
2012	21
2013**	16

* Note that 13 complaints were received prior to the implementation of the Protocols
** as at 31 July 2013

ANALYSIS OF THE JUDICIAL COMPLAINTS RECEIVED POST-IMPLEMENTATION OF THE PROTOCOLS

5. An analysis of the 94 judicial complaints received since 1 September 2009 reveals the following information.

6. **Types of Licensees**

(a) 64 complaints were made against 56 lawyers;

(b) 20 complaints were made against 18 paralegal licensees;

(c) 1 complaint was made against 1 paralegal applicant;

(d) 1 complaint was made against 1 lawyer applicant; and

(e) 8 complaints were made against 8 non-licensees.

7. **Originating Court and Process Followed**

Originating Court	**Complaints Received in the Law Society**		
	Total #	**# Received through the CEO's Office**	**# Received Directly from the Judge**
Ontario Court of Justice *In Toronto* *Jurisdictions outside Toronto*	**27** *16* *11*	11	16
Superior Court of Justice *In Toronto* *Jurisdictions outside Toronto*	**62** *29* *33*	23	39
Divisional Court	**1**	0	1
Court of Appeal for Ontario	**1**	1	0
Federal Court of Canada	**2**	2	0
Manitoba Court of Queen's Bench	**1**	1	0
TOTAL	**94**	38	56

8. **Mentoring**

Six licensees (involving 6 cases) have been referred for mentoring.

(a) In 11 cases, a request was made for mentoring:

(i) in 7 cases, it was determined that mentoring was not appropriate;

(ii) in 4 cases, it was determined that mentoring was appropriate.

(b) In 2 other cases, it was also determined that mentoring was appropriate, although a formal request for mentoring was not made by the referring court.

9. **Open/Closed**

Process	**# of open complaints**	**# of complaints in abeyance**	**# of closed complaints**
Intake	1	0	8
Investigations	17	2	37
Discipline	19 (re 16 licensees)	0	7 (re 6 licensees/applicants)
Director's Office – Prosecutions	1 (unauthorized practice)	0	2
TOTAL	**38 complaints**	**2 complaints**	**54 complaints**

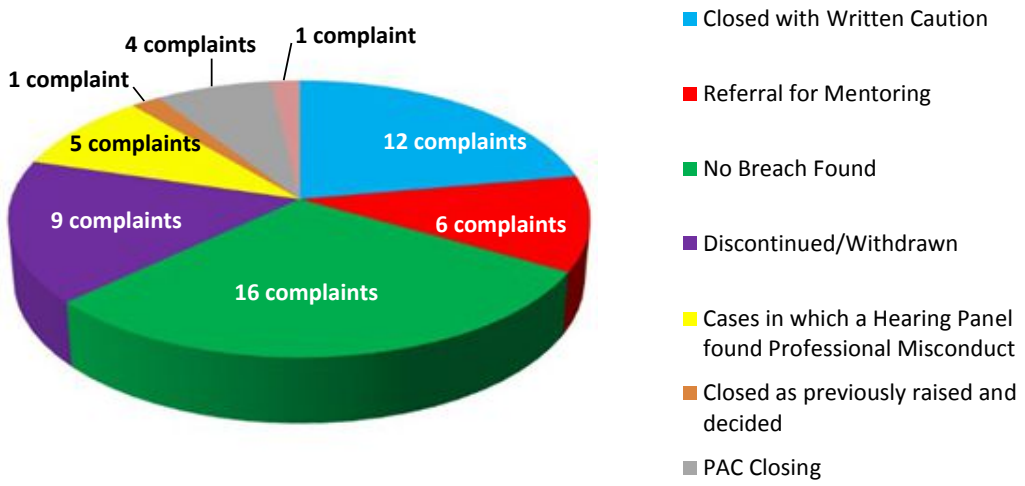
10. Of the 16 licensees currently in Discipline:

(a) 3 are subject to interlocutory suspension orders;

(b) 1 is subject to an undertaking not to practice law;

(c) 7 are not entitled to practise for other reasons (e.g. current discipline or administrative suspension, retired, etc.)

The following chart provides a breakdown of the dispositions for the 54 complaints that have been closed:



11. **Timeliness**

(a) Closed Cases

With respect to the judicial complaints that have been closed:

(i) The average age of the 8 cases closed in Intake was 81 days. With respect to the six cases in which the licensee was referred for mentoring, the age at closure ranged from 34 days to 151 days and averaged 104 days.

(ii) The average age of the 37 cases closed in Investigations was 272 days. The oldest case took 813 days from initiation to closure; the youngest took 34 days.

(iii) The average age of the 7 cases closed in Discipline was 855 days at the time of closure. The average length of the investigation in these cases was 388 days. The average age from the time the case came into Discipline until the matter was completed was 518 days.

(b) Active Cases

With respect to active cases as at 31 July 2013:

(i) There is 1 active case in the Intake Department, in which mentoring is being arranged. It is 55 days old.

(ii) The average age of the 19 active cases currently in Investigations is 217 days (i.e. from date of case creation). The breakdown of these cases is as follows:

0 to 90 days	=	6 cases
90 to 180 days	=	3 cases
180 to 240 days	=	2 case
240 to 540 days	=	7 cases
> 540 days	=	1 case

(iii) The average age of the 19 active cases in Discipline (from date of case creation) is 915 days. Further,

- the average length of the investigation of these cases was 321 days; and the average length of time between the date the case was transferred into Discipline to 31 July 2013 was 593 days.

(iv) With respect to the 16 licensee/applicant matters in Discipline,

- 1 matter is pending at PAC;
- 13 matters (8 lawyer conduct, 3 paralegal conduct and 3 lawyer capacity) are in the hearings process;
- In 2 matters, the hearing has concluded and appeals have been launched by the licensee/applicant. In 1 matter, the licensee's appeal to the Appeal Panel was dismissed and he has now appealed to Divisional Court. In the other matter, the applicant is appealing the Hearing Panel's cost order to the Appeal Panel (ordered in an abandoned licensing matter)

12. **Area of Law**

The following chart breaks down the 94 judicial complaints by area of law:

Area of Law	# of Complaints	% of Judicial Complaints
Civil Litigation	37	40%
Criminal/Quasi-Criminal	34	36%
Matrimonial/Family Law	18	19%
Estates/Wills	2	2%
Administrative/Immigration	3	3%

13. **Types of Complaints**

In 91 of the 94 judicial complaints received, there have been a total of 173 allegations raised.[2] The following graph shows the number of allegations by case type (Governance Issues, Integrity issues, Service issues and Special Applications) that have been received:

[2] Note that, in three cases, case types/allegations were not identified as of 31 May 2013.

(a) With respect to the 89 allegations which raised Integrity issues:

  (i) 42 allegations (47%) were for counseling/behaving dishonourably;

  (ii) 17 allegations (19%) raised civility issues.

(b) With respect to the 44 allegations which raised Service issues, 34 allegations (77%) were for failing to serve his/her client

(c) With respect to the 31 allegations which raised Governance issues:

  (i) 10 allegations (32%) were for practicing under suspension;

  (ii) 9 allegations (29%) concerned the unauthorized practice by a non-licensee

(d) With respect to the 9 Special Application allegations, 8 allegations (89%) raised capacity issues.

President's Report to the Law Societies

November 2013

From: **Gérald R. Tremblay, C.M., O.Q., Q.C., Ad.E, President**
Federation of Law Societies of Canada

To: **All Law Societies**

Date: **November 6, 2013**

INTRODUCTION

1. On October 17, 2013, I presided over my last Council meeting as President of the Federation. This is my report of that meeting.

2. On November 15, 2013, my duties will formally come to an end when I pass the proverbial "baton" to my very able successor, Bâtonnier Marie-Claude Bélanger-Richard, Q.C. of New Brunswick. It has been a privilege to serve the Federation, its members, and indeed all of Canada's legal profession in this capacity over the last year. I am immensely proud of what we have accomplished together. Looking forward, I have no doubt that the Federation will move from strength to strength as it plays its crucial leadership role among national stakeholders in Canada's justice system.

3. The Federation proves its worth every day. Whether as facilitator of national standards in the areas of legal ethics, admissions and discipline, as advocate for the preservation and advancement of core values such as the independence of the bar, or as the driving force behind national initiatives such as CanLII and top-drawer CLE programs in criminal and family law, the Federation is sustained by the support of all of its member law societies for whom the public interest is paramount.

4. In St. John's, Newfoundland and Labrador, just two weeks ago, the best of law society leadership was on display. The law societies came together in two very important ways.

5. First, they participated in a stimulating two-day conference that reflected on whether it is time to re-examine the foundations of how legal regulation is carried out in Canada. I believe there was a great deal of open-minded discussion that will provoke even more reflection about how we can discharge our duties in ways that increase public confidence in what law societies do. If nothing else, it has become apparent that legal regulation needs to adapt to our times and evolve by taking into account the great changes that are afoot in society generally and in our profession in particular. And no reflection of this sort can usefully occur without attention to improving access to justice. Separate Federation reports will provide additional detail about this work.

6. On October 17th, the provincial law societies formally signed a new national mobility agreement that bridges both of Canada's two legal traditions, the common law and the civil law. I count the signing of this agreement among my proudest moments as President.

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7. On that day we formally declared what has been known for so long by so many in the profession - that there are more similarities in legal training and in daily practice in these two legal traditions than there are differences. That in acknowledging this fact we agree that crossing borders, even the ones that separate Quebec from its neighbours, ought to be as easy and as seamless as moving between Alberta and Saskatchewan, or Nova Scotia and New Brunswick. That in creating this type of mobility regime, lawyers can more easily choose where to best serve their clients, with the clients they serve being just as well protected as they would be if their lawyer remained licensed in his or her original jurisdiction. All of the eleven provincial law societies have agreed to this new mobility regime, and over the next few months, this arrangement is expected to be agreed by all law societies to apply to the three northern territories as well.

COUNCIL MEETING

8. The Council of the Federation meets no less than four times each year – twice in conjunction with major national conferences that bring together the top leadership of the law societies including Presidents, Vice Presidents and senior staff. If necessary, it also meets by teleconference.

Strategic Planning and Priorities

9. The Federation Council, in consultation with member law societies, sets the strategic direction and priorities for the Federation. In 2012, the Council approved a Strategic Plan for 2012-2015. It is reviewed annually as part of a priority setting exercise. At this meeting, the Council agreed that the Federation should continue to focus its energies on the national standards initiatives that are underway, as well as to review how best for the law societies and the Federation to address the challenge of improving access to legal services.

National Standards Initiatives – Core Projects

10. **National Admission Standards Project**. The first phase of the project, the adoption of a National Competency Profile for admission to the legal profession, was completed last year and adopted by all law societies. We are now in the process of examining how a consistent approach to implementation might be achieved. Elected leaders and staff at all law societies are engaged in this process with the objective of arriving at a consensus over the next year. At the same time, consultations are underway with respect to a good character standard.

11. **National Discipline Standards Project**. A pilot project involving thirteen of Canada's law societies began in April 2012 to test standards in the areas of timeliness, fairness, transparency, public participation and accessibility in matters dealing with complaints about and discipline for members of the legal profession. This coming spring, the pilot project will be complete and law societies will be engaged in a process of arriving at a consensus on what the standards should be going forward, as well as how to make sure they are working to meet those standards.

12. **Model Code of Professional Conduct**. The Standing Committee on the Model Code of Professional Conduct continues to work through a number of issues it has identified as priorities. A central feature of how it accomplishes its task is through a thorough consultative process with the law societies, key stakeholders and legal academics. Current consultations include matters relating to aspects of the rule on conflicts of interest, as well as draft rules addressing official language rights.

Access to Legal Services

13. The Federation has identified improving access to legal services as a continuing priority for this year. The Federation plays a coordinating role among law societies and serves as a vehicle for exchanging information. It is also a key stakeholder in the Action Committee on Access to Justice in Civil and Family Matters, led by Justice Thomas Cromwell of the Supreme Court. The Action Committee has issued its final report. At this meeting, the Federation Council amended the terms of reference of the Standing Committee on Access to Legal Services to specifically consider, in consultation with Canada's law societies, any reports issued by the Action Committee and other justice system stakeholders that deal with access to legal services for the purpose of determining whether and in what manner the Federation and the law societies should address specific recommendations arising from such reports.

National Mobility

14. The signature of the new National Mobility Agreement is referenced above. In order for the new regime to be extended to the northern territories, a revision to the Territorial Mobility Agreement is required in order to import the new provisions of the NMA that deal with permanent mobility between members of the Barreau du Québec and those in common law jurisdictions. The Federation Council approved a draft revision of the TMA for this purpose and referred it to the law societies for consideration and eventual approval.

Core Operations

15. **National Committee on Accreditation**. The NCA assesses the international legal credentials of a growing number of applicants who wish to practice law in Canada. There were 1,316 applications this year, an increase of 5% over last year's total. The NCA administered over 5,000 challenge examinations, and 730 Certificates of Qualification were issued to applicants wishing to apply to Canadian law society bar admission programs.

16. **Law School Common Law Program Approvals**. The Federation's Common Law Program Approval Committee has the mandate to monitor compliance by Canada's law schools with the national requirement for law school programs which was adopted by Canada's law societies in 2011. The national requirement will need to be met for individuals who graduate from Canadian law schools in 2015. The Committee is making excellent progress in its dealings with the law schools in this regard. The Committee also verifies whether any proposed law school program offered by a Canadian university meets the national requirement. Trinity Western University has applied and the Committee is reviewing the application. In April, the Federation Council struck a Special Advisory Committee on TWU to look at issues that fall outside the Approval Committee's mandate. The Federation Council has asked that the reports of both of these committees be released publicly at the same time, once the work has been completed.

Other Projects and Initiatives

17. **CanLII**. The Council heard from the President and CEO of CanLII, Colin Lachance. CanLII is one of the Federation's and the law societies' great success stories. This year the free, online search engine for legal information unveiled a new user interface and embarked on a number of projects to grow its database of case law.

18. **Continuing Legal Education Programs**. Support continues to be provided by the Federation for two top-end CLE programs in criminal law and in family law. The National Criminal Law Program reached a milestone with its 40th edition this past summer in Ottawa with a record 691 attendees. By all accounts, the program was a great success. Next year, it will be held in Halifax. The National Family Law Program is presented every two years. In 2014 it will be held in Whistler, B.C.

Law Society and External Relations, Administration and Leadership

19. **Outreach**. An important part of my responsibilities has been to be the Federation's ambassador, both within Canada and beyond its borders, to explain the work of our organization and its focus on the public interest. I reported to Council about my many visits to law societies throughout the year, whether for meetings with Benchers or other events such as openings of the legal year. I have visited and spoken with the leadership of eleven of the Federation's member law societies at least once.

20. I have also worked to maintain strong relationships with key partners and stakeholders in Canada's justice system through meetings with the Canadian Bar Association, the Department of Justice, the Public Prosecution Service of Canada, as well as the Chief Justice of the Supreme Court of Canada.

21. Internationally, I participated in two meetings of the International Bar Association, attended the annual meeting of the American Bar Association and led a panel on the future of the legal profession for the Union internationale des avocats. The Federation was also well-represented at a meeting of International Legal Regulators in the summer. The Federation is very highly regarded internationally as a defender of core values including the independence of the bar and solicitor-client provilege, as a result of its leadership in how it and the law societies have dealt with anti-money laundering legislation before the Courts.

22. **Administration**. The Federation operated within the approved budget for 2012-2013 and finished the year with an unqualified audit. Council approved the Federation's budget for 2014-2015 which is based on an annual law society levy of $25 per FTE, unchanged for the third consecutive year.

23. **Leadership.** The Council elected new executive officers who begin their one-year terms on November 15, 2013. Our new President will be Marie-Claude Bélanger-Richard, Q.C. Marie-Claude is currently Vice President of the Federation and is a former Bâtonnier of the Law Society of New Brunswick. Thomas Conway, the current Treasurer of the Law Society of Upper Canada, continues for another year as Vice President and President-elect. In accordance with our regional rotation policy, the next Vice President to join the Executive ladder was selected from among the Council members who represent the Western law societies. For 2013-2014, the new Vice President will be Jeff Hirsch, the representative of the Law Society of Manitoba. Jeff has been deeply involved in the work of the Federation for several years and is a Past-President of the Law Society of Manitoba.

CONCLUSION

24. I wish to thank the Council of the Federation and indeed all of Canada's law societies for the trust they have placed in me this past year. It is been an honour to serve the interests of the Canadian public in this way and I look forward to the coming year as I assume my new role as Federation Past-President.

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

TAB 6

Report to Convocation
November 21, 2013

Audit & Finance Committee

Committee Members
Christopher Bredt (Co-Chair)
Carol Hartman (Co-Chair)
John Callaghan (Vice-Chair)
Adriana Doyle
Paul Dray
Susan Elliott
Seymour Epstein
Janet Leiper
James Scarfone
Alan Silverstein
Catherine Strosberg
Robert Wadden
Peter Wardle

Purpose of Report: Decision and Information

Prepared by the Finance Department
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca

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COMMITTEE PROCESS

1. The Audit & Finance Committee ("the Committee") met on November 6, 2013. Committee members in attendance were Chris Bredt (co-chair), Carol Hartman (co-chair), John Callaghan (Vice-Chair), Adriana Doyle, Paul Dray, Susan Elliott (phone), Seymour Epstein, Janet Leiper (phone), James Scarfone (phone), Alan Silverstein, Catherine Strosberg, and Peter Wardle.

2. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Fred Grady and Brenda Albuquerque-Boutilier.

TAB 6.1

FOR DECISION

2014 LIBRARYCO INC BUDGET

Motion

3. **That Convocation approve LibraryCo Inc.'s 2014 budget, incorporating Law Society funding of $7.5 million or $202 per lawyer.**

4. The LibraryCo board originally submitted their 2014 budget requesting Law Society funding of $7.7 million or $206 per lawyer. On October 25, 2013, as part of the Law Society's budget, Convocation approved the Law Society's funding of LibraryCo in 2014 at $7.5 million or $202 per lawyer.

5. Under the Unanimous Shareholders Agreement with LibraryCo "if LSUC does not approve the Budget as presented, the Board and LSUC shall cooperate in good faith to resolve any disputes with a view to developing a Budget that is mutually acceptable, prior to the commencement of the Fiscal Year."

6. LibraryCo held a special meeting of their Board to redraft their budget, based on funding of $7.5 million from the Law Society. In addition, at the time the LibraryCo Board approved their original budget for submission to the Law Society, the Law Foundation of Ontario ("LFO") had not confirmed the amount of their grant for the purchase of electronic products. Since that time, the LFO has confirmed the amount of the grant at $542,000. This is lower by $72,000 than the $614,000 used in the submitted budget and LibraryCo has incorporated this additional reduction into their revised budget.

7. The revised LibraryCo budget allocates additional funding of $175,000 from the General Fund balance reducing this projected balance to zero. The revised budget also reduces the budget for Capital & Special Needs and Administrative & Centralized expenses by $55,000 and $22,000 respectively.

8. The attached 2014 budget includes the changes described above.

LIBRARYCO INC. 2014 BUDGET

	2014 Budget	2013 Budget
Expenses	**$**	**$**
Library Grants (Schedule 1)	6,278,429	6,187,354
Capital and Special Needs Grants	44,500	100,000
Electronic Products	740,000	892,519
Administrative and Centralized Services	1,254,000	1,259,000
Total Expenses	8,316,929	8,438,873
Revenue		
Law Society Fee Levies	7,498,519	7,498,519
Law Foundation - Electronic Resources	542,000	722,500
Use of General Fund	276,410	217,854
Total Revenue	8,316,929	8,438,873
Surplus / (Deficit)	-	-
Full Fee Paying Equivalent Lawyers	37,200	36,600
LibraryCo Levy per Lawyer	202	205

LIBRARYCO INC.
BUDGET ANALYSIS BY LIBRARY 2014

Schedule 1

	Grants 2014	Actual Grants 2013	% Grant Change 2013/2014
Algoma District Law Association	132,937	130,972	**1.5%**
Brant Law Association	98,754	97,295	**1.5%**
Bruce Law Association	55,079	54,265	**1.5%**
Carleton Law Association	608,596	599,602	**1.5%**
Cochrane Law Association	47,848	47,141	**1.5%**
Dufferin Law Association	45,890	45,890	**0.0%**
Durham County Law Association	128,161	126,267	**1.5%**
Elgin Law Association	75,244	74,132	**1.5%**
Essex Law Association	276,862	272,770	**1.5%**
Frontenac Law Association	129,263	127,353	**1.5%**
Grey Law Association	65,220	64,256	**1.5%**
Haldimand Law Association	29,445	29,010	**1.5%**
Halton Law Association	137,400	135,369	**1.5%**
Hamilton Law Association	442,317	435,780	**1.5%**
Hastings Law Association	83,540	82,305	**1.5%**
Huron Law Association	74,745	73,640	**1.5%**
Kenora Law Association	85,951	84,681	**1.5%**
Kent Law Association	69,402	68,376	**1.5%**
Lambton County Law Association	73,798	72,707	**1.5%**
County of Lanark Law Association	38,683	38,111	**1.5%**
Leeds & Greenville Law Association	70,734	69,689	**1.5%**
Lennox & Addington Law Association	26,196	25,809	**1.5%**
Lincoln Law Association	175,778	173,180	**1.5%**
Manitoulin Law Association	0	0	**0.0%**
Middlesex Law Association	356,979	351,703	**1.5%**
Muskoka Law Association	63,561	62,622	**1.5%**
Nipissing Law Association	84,918	83,663	**1.5%**
Norfolk Law Association	69,424	68,398	**1.5%**
Northumberland County Law Assoc.	75,747	74,628	**1.5%**
Oxford Law Association	70,071	69,035	**1.5%**
Parry Sound Law Association	38,791	38,218	**1.5%**
Peel Law Association	292,852	288,524	**1.5%**
Perth Law Association	53,966	53,168	**1.5%**
Peterborough Law Association	130,629	128,699	**1.5%**
Prescott & Russell Law Association	13,698	13,496	**1.5%**
Rainy River Law Association	26,566	26,173	**1.5%**
Renfrew County Law Association	122,323	120,515	**1.5%**
Simcoe Law Association	138,304	136,260	**1.5%**
Stormont,D.& G. Law Assoc.	76,404	75,275	**1.5%**
Sudbury District Law Association	184,535	182,840	**0.9%**
Temiskaming Law Association	42,563	41,934	**1.5%**
Thunder Bay Law Association	167,776	165,297	**1.5%**
Toronto Lawyers Association	579,321	570,760	**1.5%**
Victoria Haliburton Law Association	86,300	85,025	**1.5%**
Waterloo Law Association	236,095	232,606	**1.5%**
Welland Law Association	92,447	91,081	**1.5%**
Wellington Law Association	74,600	73,498	**1.5%**
York Region Law Association	228,716	225,336	**1.5%**
	6,278,429	**6,187,354**	**1.5%**

TAB 6.2

REPORTS FOR INFORMATION

TAB 6.2.1

FOR INFORMATION

LAW SOCIETY OF UPPER CANADA, INTERIM FINANCIAL STATEMENTS FOR THE THIRD QUARTER ENDING SEPTEMBER 30, 2013

9. **The Committee recommends that the third quarter financial statements for the Law Society be received by Convocation for information.**

Law Society of Upper Canada
Financial Statements
For the nine months ended September 30, 2013

Financial Statement Highlights
General Fund

10. The General Fund is performing favourably compared to the 2013 budget. At the end of September, the lawyer and paralegal General Funds have surpluses of $1.97 million and $785,000 respectively for a total surplus of $2.8 million year to date. The 2013 budget incorporated funding from accumulated fund balances and accumulated surplus investment income from the E&O Fund, effectively budgeting for a deficit of $6.6 million for the year. The difference between actual and budget is primarily attributable to professional development and competence revenues exceeding budget and almost all major expense categories being under budget.

11. General Fund revenues to date total $55.9 million with licensing process and continuing professional development revenues on track to exceed budget. Continuing professional development revenues in the 2014 budget have been adjusted to reflect this increasing trend from recent years.

12. General Fund expenses to date total $53 million. Most expense categories are expected to meet or be under budget with the exception of the contingency account which has financed the changes brought about by the operational review. Significant individual positive variances (under budget) are in outside counsel expenses, adjudicator and bencher remuneration, and the Member Assistance Plan. These trends have all been factored into budget estimates for 2014.

Compensation Fund

13. Claims results are favourable meaning the lawyer Compensation Fund is showing a surplus of $562,000 and the paralegal Compensation Fund is effectively breaking even.

The 2013 budget incorporated funding of $1.8 million and $40,000 from accumulated fund balances in the lawyer and paralegal Compensation Fund respectively.

14. A detailed discussion of the September 30, 2013 interim financial statements follows.

Background

15. The Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit organizations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.

16. The Financial Statements for the nine months ended September 30, 2013 comprise the following statements:

- Balance Sheet
- Statement of Revenues and Expenses and Change in Fund Balances.
- Schedule of Restricted Funds

17. Supplemental schedules include Schedules of Revenues and Expenses for the Lawyer and Paralegal General Funds, and Statement of Revenues and Expenses and Change in Fund Balances for the Compensation Fund and the Errors and Omissions Insurance Fund.

18. The Statement of Revenues and Expenses has been recategorized to reflect the operational structure introduced in the documents presented for the operational review and used in the 2014 budget presentation.

Balance Sheet

19. Asset balances at the end of September 2013 are relatively unchanged from a year ago. Most of the prepaid expense balance relates to annual E&O insurance premiums paid or payable for the year, which are expensed over the full year.

20. The Investment in LAWPRO totaling $35.6 million is made up of two parts. The investment represents the share capital of $4,997,000 purchased in 1991 when LAWPRO was established, plus contributed capital of $30,645,000 accumulated between 1995 and 1997 from a special capitalization levy by the Law Society.

21. Portfolio investments are shown at fair value of $75.4 million, compared to $69.2 million in 2012, in line with realized and unrealized returns over the period. Approximately 13% of the portfolio is held in equity investments. Investments are held in the following funds:

Fund ($ 000's)	Sep. 30, 2013	Sep. 30, 2012
Errors & Omissions Insurance	29,075	26,871
Compensation Fund	32,170	29,505
General Fund	14,207	13,018
Total	**75,452**	**69,394**

22. Liability balances at the end of September 2013 are also relatively unchanged from a year ago totaling $81.5 million, about half of which is made up of deferred fee and premium revenue which will be recognized over the remainder of the year.

23. The amount due to LAWPRO has increased to $19.5 million from $16.6 million. The payable will decline by year-end as insurance premiums and levies collected are paid to LAWPRO. Any balance owing to LAWPRO at year end is paid by March 31 of the following year.

24. The provision for unpaid grants / claims comprises the provision for unpaid grants – Compensation Fund and the provision for unpaid claims – E&O Fund with balances at the end of September 2013 of $9.6 million and $446,000 respectively compared to prior year balances of $11.2 million and $660,000. The provision for unpaid grants in the Compensation Fund represents the estimate for unpaid claims and inquiries against the Compensation Fund, supplemented by the costs for processing these claims. The provision for unpaid claims in the E&O Fund represents claims liabilities for 1995 and prior.

25. The Law Society Act permits a member who has dormant trust funds, to apply for permission to pay the money to the Society. Money paid to the Society is held in trust in

perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. At the end of June, unclaimed money held in trust amounts to $3.2 million, compared to $2.7 million in the prior year.

Statement of Revenues and Expenses and Change in Fund Balances

26. The Lawyer General Fund incurred a surplus of $1.97 million at the end of the third quarter of 2013, compared with a surplus of $498,000 in the first nine months of 2012. As noted in the highlights, the reasons for this improved financial performance are spread across a number of revenue and expense categories. The budgets for the two years envisaged similar use of the General Fund balance ($2.75 million over the year). Actual use of these funds is contingent on results for the year.

27. $3 million in accumulated surplus investment income from the E&O Fund has been transferred as budgeted to the General Fund.

28. The Paralegal General Fund had a surplus of $785,000 versus a surplus of $78,000 last year. The budgets for the two years envisaged similar use of the General Fund balance ($810,000 over the year). Actual use of these funds is contingent on results for the year.

29. Consolidated net General Fund expenses were budgeted to increase by 4% but have increased by less than 2% year to date with most expense categories contributing to this restraint.

30. The Society's restricted funds report a deficit of $1.7 million for the period (2012: surplus of $1.2 million). There are relatively nominal surpluses and deficits in the Compensation, Errors & Omissions, Capital Allocation, County Library and other restricted Funds with the deficit primarily attributable to amortization in the Invested in Capital Assets Fund.

31. Annual fee revenue is recognized on a monthly basis. Total annual fees recognized in the first three quarters have increased across the board due to increases in the Lawyer

General Fee ($14), Capital levy ($10) and Paralegal General Fee ($65), offset by the decrease in the Paralegal Compensation Fund fee ($61) and because of the increased number of lawyer and paralegal members billed. 36,600 full time equivalent lawyers were used as the basis for the number of members in the 2013 budget, an increase of 600 from 2012, and paralegals increased by 650 to 4,050. Annual fee revenues in total have increased from $50.7 million to $53.2 million.

32. LAWPRO's base premium of $3,350 has not changed from 2012, leading to relatively static premium and levy revenue at just over $75 million.

33. Licensing Process revenues from lawyer and paralegal candidates have increased from $7 million in the first three quarters of 2012 to $7.2 million in the same period of 2013 due to a higher number of candidates. Continuing professional development revenues have increased from $4.6 million to $5 million. The number of registrations has increased from 52,149 in 2012 to 55,684 in the current year. The proportion of registrations for free courses is the same at 59%. The 2014 budget incorporated an increase in CPD revenues to acknowledge the trends over the initial years of mandatory CPD and also brought in a nominal charge for previously free courses.

34. At $3 million, total investment income is exceeding the 2012 third quarter amount of $2.2 million primarily attributable to appreciation in the market value of equities.

35. Other income primarily comprises catering, Ontario Reports and the LibraryCo administration fee.

36. Total regulatory, tribunal and compliance expenses of $19.1 million are marginally higher than the same period in 2012 by $100,000. Expenditures on outside counsel and non-bencher adjudicators are currently $1.1 million under budget, contributing to a positive variance from budget, but these costs do not follow a consistent pattern.

37. Professional development and competence expenses are $431,000 less than the same period in 2012 at a total of $15.5 million. The 2013 budget incorporated an increase of less than 1% in these expenditures.

38. Corporate services expenses include Finance & the CEO, Facilities, the Client Service Centre, Information Systems and Human Resources and have increased from $15.1 million to $15.9 million. The main reason for the year-on-year increase is the severance costs arising from the operational review. Savings in other areas means corporate service expenses are tracking close to budget.

39. Convocation, policy and outreach expenses primarily comprise the Policy Secretariat, bencher expenses, Communications, Public Affairs and Equity and total $5.5 million compared to $5.8 million in 2012. The main reason for the decrease from 2012 and a favourable budget variance is bencher remuneration and expense reimbursements which are well below budget but these costs do not follow a consistent pattern.

40. Service to members and the public expenses primarily comprise the Lawyer Referral Service, Catering, CANLII and the Member Assistance Plan and total $3.1 million (2012: $2.6 million). The Member Assistance Plan costs are trending at about half of budget which was set conservatively for the first year of the program.

Schedule of Restricted Funds

41. Compensation Fund expenses have increased from $6.4 million to $ 7.2 million because of the net change in the provision for unpaid grants in the first three quarters of 2013, reducing the combined lawyer and paralegal Compensation Funds surplus from $1.1 million in 2012 to $563,000 in 2013. The provision is adjusted monthly based on the number of new inquiries and open claims and cases closed.

42. Expenses in the Errors and Omissions Insurance Fund primarily represent premiums incurred and have increased from $73.6 million to $75.8 million based on more lawyers and higher volumes of transaction levies and claims history surcharges.

43. County Libraries Fund expenses have increased marginally from $5.5 million to $5.6 million in line with the budgeted small increase in grants.

44. Included in Other Restricted Funds are expenses for the Parental Leave Assistance Plan of $289,000, up from the same period last year of $218,000, but still in line with the budget for the whole of 2013 of $400,000. At September 30, 2013, the balance of the fund was $377,000.

THE LAW SOCIETY OF UPPER CANADA

Balance Sheet

Unaudited
Stated in thousands of dollars
As at September 30

		2013	2012
	Assets		
	Current Assets		
1	Cash	**25,375**	**28,743**
2	Short-term investments	**19,123**	**15,424**
3	Cash and short-term investments	**44,498**	**44,167**
4	Accounts receivable	**16,965**	**15,674**
5	Prepaid expenses	**27,437**	**26,698**
6	**Total current assets**	**88,900**	**86,539**
7	**Investment in subsidiaries**	**35,642**	**35,642**
8	**Portfolio investments**	**75,452**	**69,212**
9	**Capital assets**	**12,311**	**13,165**
10	**Total Assets**	**212,305**	**204,558**
	Liabilities and Fund Balances		
	Current Liabilities		
11	Accounts payable and accrued liabilities	**6,752**	**6,699**
12	Deferred revenue	**42,026**	**40,141**
13	Due to LawPro	**19,457**	**16,640**
14	**Total current liabilities**	**68,235**	**63,480**
15	Provision for unpaid grants/claims	**10,088**	**11,911**
16	Unclaimed trust funds	**3,182**	**2,708**
17	**Total Liabilities**	**81,505**	**78,099**
	Fund Balances		
	General funds		
18	Lawyers	**22,224**	**18,266**
19	Paralegals	**1,632**	**1,058**
	Restricted funds		
20	Compensation - lawyers	**25,896**	**24,261**
21	- paralegals	**381**	**343**
22	Errors and omissions insurance	**63,364**	**64,171**
23	Capital allocation	**3,719**	**4,142**
24	Invested in capital assets	**12,311**	**13,164**
25	Other	**1,273**	**1,054**
26	**Total Fund Balances**	**130,800**	**126,459**
27	**Total Liabilities and Fund Balances**	**212,305**	**204,558**

THE LAW SOCIETY OF UPPER CANADA
General Fund
Statement of Revenues and Expenses and Change in Fund Balances

Unaudited
Stated in thousands of dollars
For the nine months ended September 30

	2013	2012	2013	2012	2013	2012	2013	2012
	General Fund Lawyer		General Fund Paralegal		Restricted Funds		Total	
Revenues								
1 Annual fees	**35,929**	34,529	**2,301**	1,742	**14,992**	14,403	**53,222**	50,674
2 Insurance premiums and levies	**-**	-	**-**	-	**75,282**	75,056	**75,282**	75,056
3 Licensing process	**5,579**	5,615	**1,668**	1,375	**-**	-	**7,247**	6,990
4 Continuing professional development	**4,588**	4,652	**370**	-	**-**	-	**4,958**	4,652
5 Investment income	**741**	615	**61**	-	**2,217**	1,591	**3,019**	2,206
6 Other	**4,339**	4,278	**306**	78	**178**	202	**4,823**	4,558
7 **Total revenues**	**51,176**	49,689	**4,706**	3,195	**92,669**	91,252	**148,551**	144,136
Expenses								
8 Professional regulation, tribunals and compliance	**17,729**	17,440	**1,378**	1,601	**-**	-	**19,107**	19,041
9 Professional development and competence	**14,180**	15,180	**1,321**	752	**-**	-	**15,501**	15,932
10 Corporate services	**14,740**	14,276	**1,165**	797	**-**	-	**15,905**	15,073
11 Convocation, policy and outreach	**5,192**	5,468	**350**	360	**-**	-	**5,542**	5,828
12 Services to members and public	**2,944**	2,539	**145**	21	**-**	-	**3,089**	2,560
13 Restricted (schedule of restricted funds)	**-**	-	**-**	-	**94,393**	90,038	**94,393**	90,038
14 Total expenses	**54,785**	54,903	**4,359**	3,531	**94,393**	90,038	**153,537**	148,472
15 Less: Expenses allocated to Compensation Fund	**(5,583)**	(5,712)	**(438)**	(414)	**-**	-	**(6,021)**	(6,126)
16 **Net expenses**	**49,202**	49,191	**3,921**	3,117	**94,393**	90,038	**147,516**	142,346
17 **Surplus (Deficit)**	**1,974**	498	**785**	78	**(1,724)**	1,214	**1,035**	1,790
18 **Fund balances, beginning of year**	**17,385**	17,875	**847**	916	**111,533**	105,878	**129,765**	124,669
19 **Interfund transfers**	**2,865**	(24)	**-**	64	**(2,865)**	(40)	**-**	-
20 **Fund balances, end of period**	**22,224**	18,349	**1,632**	1,058	**106,944**	107,052	**130,800**	126,459

THE LAW SOCIETY OF UPPER CANADA

Schedule of Restricted Funds

Unaudited
Stated in thousands of dollars
For the nine months ended September 30

		2013								2012
		Compensation Fund		Errors and ommissions insurance	Capital allocation	Invested in capital assets	County libraries	Other restricted	Total Restricted funds	Total
		Lawyer	Paralegal							
1	**Fund balances, beginning of year**	**25,331**	**383**	**65,910**	**4,055**	**14,744**	**-**	**1,110**	**111,533**	**105,878**
	Revenues									
2	Annual fees	**6,010**	**447**	**-**	**2,560**	**-**	**5,575**	**400**	**14,992**	**14,403**
3	Insurance premiums and levies	**-**	**-**	**75,282**	**-**	**-**	**-**	**-**	**75,282**	**75,056**
4	Investment income	**1,196**	**-**	**1,021**	**-**	**-**	**-**	**-**	**2,217**	**1,591**
5	Other	**91**	**-**	**-**	**80**	**7**	**-**	**-**	**178**	**202**
6	**Revenues**	**7,297**	**447**	**76,303**	**2,640**	**7**	**5,575**	**400**	**92,669**	**91,252**
7	**Expenses**	**6,732**	**449**	**75,849**	**2,983**	**2,433**	**5,624**	**323**	**94,393**	**90,038**
8	**(Deficit) Surplus**	**565**	**(2)**	**454**	**(343)**	**(2,426)**	**(49)**	**77**	**(1,724)**	**1,214**
9	**Interfund transfers**	**-**	**-**	**(3,000)**	**7**	**(7)**	**49**	**86**	**(2,865)**	**(40)**
10	**Fund balances, end of period**	**25,896**	**381**	**63,364**	**3,719**	**12,311**	**-**	**1,273**	**106,944**	**107,052**

THE LAW SOCIETY OF UPPER CANADA
Lawyers and Paralegals General Fund
Schedule of Revenues and Expenses

Unaudited
Stated in thousands of dollars
For the nine months ended September 30

		2013 Actual	YTD Budget	Annual Budget
	REVENUES			
1	Annual fees	38,230	38,513	51,403
2	Licensing process	7,247	5,695	7,334
3	Continuing professional development	4,958	3,623	6,808
4	Investment income	802	579	700
5	Ontario reports revenue	1,291	1,199	1,600
6	Payment plan admin fee	357	340	340
7	Lawyer referral fees	249	238	325
8	Other	2,748	2,658	3,717
9	**Total revenues**	**55,882**	**52,845**	**72,227**
	EXPENSES			
10	Professional regulation, tribunals and compliance	19,107	20,757	28,024
11	Professional development and competence	15,501	16,145	22,027
12	Corporate services	15,905	16,144	22,674
13	Convocation, policy and outreach	5,542	6,771	9,674
14	Services to members and public	3,089	3,521	4,981
15	**Total expenses**	59,144	63,338	87,380
16	Less: Expenses allocated to Compensation Fund	(6,021)	(6,445)	(8,593)
17	Net expenses	53,123	56,893	78,787
18	**Surplus (Deficit)**	**2,759**	**(4,048)**	**(6,560)**

THE LAW SOCIETY OF UPPER CANADA
General Fund - Lawyers
Schedule of Revenues and Expenses

Unaudited

Stated in thousands of dollars

For the nine months ended September 30

		2013 Actual	YTD Budget	Annual Budget
	REVENUES			
1	Annual fees	35,929	36,265	48,366
2	Licensing process	5,579	4,764	6,065
3	Continuing professional development	4,588	3,242	6,299
4	Investment income	741	539	647
5	Ontario reports revenue	1,198	1,108	1,478
6	Payment plan admin fee	310	300	300
7	Lawyer referral fees	231	220	301
8	Other	2,600	2,504	3,543
9	**Total revenues**	**51,176**	**48,942**	**66,999**
	EXPENSES			
10	Professional regulation, tribunals and compliance	17,729	19,214	25,966
11	Professional development and competence	14,180	14,655	20,034
12	Corporate services	14,740	14,934	21,056
13	Convocation, policy and outreach	5,192	6,315	8,983
14	Services to members and public	2,944	3,358	4,763
15	**Total expenses**	54,785	58,476	80,802
16	Less: Expenses allocated to Compensation Fund	(5,583)	(6,040)	(8,053)
17	Net expenses	49,202	52,436	72,749
18	**Surplus (Deficit)**	**1,974**	**(3,494)**	**(5,750)**

THE LAW SOCIETY OF UPPER CANADA
General Fund - Paralegals
Schedule of Revenues and Expenses

Unaudited
Stated in thousands of dollars
For the nine months ended September 30

		2013 Actual	YTD Budget	Annual Budget
	REVENUES			
1	Annual fees	2,301	2,248	3,037
2	Licensing Process	1,668	931	1,269
3	Continuing Professional Development	370	381	509
4	Investment income	61	40	53
5	Ontario reports revenue	93	91	122
6	Payment plan admin fee	47	40	40
7	Lawyer referral fees	18	18	24
8	Other	148	154	174
9	**Total revenues**	**4,706**	**3,903**	**5,228**
	EXPENSES			
10	Professional regulation, tribunals and compliance	1,378	1,543	2,058
11	Professional development and competence	1,321	1,490	1,993
12	Corporate services	1,165	1,210	1,618
13	Convocation, policy and outreach	350	456	691
14	Services to members and public	145	163	218
15	**Total expenses**	4,359	4,862	6,578
16	**Surplus (Deficit)**	**785**	**(554)**	**(810)**

THE LAW SOCIETY OF UPPER CANADA
Compensation Fund
Schedule of Revenues and Expenses and Change in Fund Balances

Unaudited

	Stated in thousands of dollars	2013			2012		
	For the nine months ended September 30	**Lawyers**	**Paralegals**	**Total**	**Lawyers**	**Paralegals**	**Total**
	Revenues						
1	Annual fees	**6,010**	**447**	**6,457**	5,890	546	6,436
2	Investment income	**1,196**	**-**	**1,196**	876	-	876
3	Recoveries	**91**	**-**	**91**	113	-	113
4	**Total Revenues**	**7,297**	**447**	**7,744**	6,879	546	7,425
	Expenses						
5	Provision for unpaid grants	**695**	**12**	**707**	(162)	3	(159)
6	Spot audit	**2,985**	**290**	**3,275**	2,975	261	3,236
7	Share of investigation and discipline	**1,398**	**63**	**1,461**	1,340	66	1,406
8	Administrative	**1,293**	**84**	**1,377**	1,469	90	1,559
9	Salaries and benefits	**361**	**-**	**361**	320	-	320
10	**Total Expenses**	**6,732**	**449**	**7,181**	5,942	420	6,362
11	**Surplus (Deficit)**	**565**	**(2)**	**563**	937	126	1,063
12	Fund balances, beginning of year	**25,331**	**383**	**25,714**	23,324	217	23,541
13	**Fund Balances, end of period**	**25,896**	**381**	**26,277**	24,261	343	24,604

THE LAW SOCIETY OF UPPER CANADA
Errors and Omissions Insurance Fund
Schedule of Revenues and Expenses and Change in Fund Balances

Unaudited
Stated in thousands of dollars
For the nine months ended September 30

		2013 Actual	2012 Actual
	REVENUES		
1	Insurance premiums and levies	75,282	75,056
2	Investment income	1,021	715
3	Other income	-	-
4	**Total revenues**	**76,303**	**75,771**
	EXPENSES		
5	Claims	91	(9)
6	Insurance	75,758	73,581
7	**Total expenses**	75,849	73,572
8	**Surplus (Deficit)**	**454**	**2,199**
11	Interfund transfers	**(3,000)**	**-**
12	Change in fund balance	**(2,546)**	**2,199**
12	Fund balance, beginning of year	**65,910**	**61,972**
13	Fund balance, end of period	**63,364**	**64,171**

TAB 6.2.2

FOR INFORMATION

INVESTMENT COMPLIANCE REPORTING

45. Convocation is requested to receive the Compliance Statements for the General Fund, Compensation Fund, and Errors & Omissions Insurance Fund investment portfolios as at September 30, 2013 for information.

STATEMENT OF INVESTMENT COMPLIANCE
SHORT TERM
As at September 30, 2013

Investment Parameters	Guidelines for Both	COMPENSATION FUND Compliance	GENERAL FUND Compliance
1. Asset Mix			
Federal & provincial treasury bills	Allowed	Yes	Yes
Bankers acceptances	Allowed	Yes	Yes
Commercial paper	Allowed	Yes	Yes
Investment manager Money Market Fund	Allowed	Yes	Yes
Premium Savings Account	Allowed	Yes	Yes
FGP S/T Invest Fund	Allowed	Yes	Yes
2. Quality Requirements			
Commercial paper rating	Min. R1	N/A	N/A
Liquidity	Max. term to maturity of 365 days	Yes	Yes
3. Quantity Restrictions			
Commercial paper of a single corporate issuer	Max. 8% of Fund	Yes	Yes
4. Other Restrictions			
Equity securities	None	Yes	Yes
Direct investments in:			
resource properties	None	Yes	Yes
mortgages and mortgage-backed securities	None	Yes	Yes
real estate	None	Yes	Yes
venture capital financings	None	Yes	Yes
Derivatives	None	Yes	Yes

Fred Grady
Manager of Finance

STATEMENT OF INVESTMENT COMPLIANCE
LONG TERM
As at September 30, 2013

Investment Parameters	Guidelines	COMPENSATION FUND Compliance	GENERAL FUND Compliance	E & O FUND Compliance
1. Asset Mix				
Cash and Short-Term	0 - 15%	Yes	Yes	Yes
Equity investments	5 - 25%	Yes	Yes	Yes
Bonds	75 - 95%	Yes	Yes	Yes
2. Quality Requirements				
Bonds	Min. BBB	Yes	Yes	Yes
3. Quantity Restrictions				
Equities:				
single holding	Max. 10%	Yes	Yes	Yes
weight in portfolio > weight in S&P/TSX Composite Index	Varies	Yes	Yes	Yes
derivatives etc.	None	Yes	Yes	Yes
Non-Canadian	None	Yes	Yes	Yes
Bonds:				
single security or issuer (non-government)	Max. 10%	Yes	Yes	Yes
corporate issues	Max 50%	Yes	Yes	Yes
provincial govt. issues	Max 60%	Yes	Yes	Yes
municipal issues	Max 10%	Yes	Yes	Yes
foreign issues	Max 10%	Yes	Yes	Yes
BBB issues	Max. 10%	Yes	Yes	Yes

Fred Grady
Manager of Finance

The Law Society of Upper Canada
Compensation Fund
Manager: Foyston, Gordon & Payne Inc.
Compliance Report
(Period ending September 30, 2013)

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
Total Fixed Income	**75%**	**85%**	**95%**	**Y**
Canadian Equity	**5%**	**15%**	**25%**	**Y**
Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.				**Y**
Max. 10% in BBB rated bonds.				**Y**
Max. 100% in Government of Canada or Government of Canada guaranteed bonds.				**Y**
Max. 60% in Provincial government and Provincial government guaranteed bonds.				**Y**
Max. 10% in Municipal bonds.				**Y**
Max. 50% in Corporate issues.				**Y**
Max. 10% in non-Government issuers.				**Y**
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer in a foreign currency.				**Y**
Bond portfolio duration 1 to 5 years.				**Y**

Investment policy revised April 2013.

*If policy not complied with, comment on specifics.

10/15/13
Date:

Stephen P. Copeland
Senior Vice President Investments
& Private Client Services

The Law Society of Upper Canada
General Fund
Manager: Foyston, Gordon & Payne Inc.
Compliance Report
(Period ending September 30, 2013)

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
Total Fixed Income	**75%**	**85%**	**95%**	**Y**
Canadian Equity	**5%**	**15%**	**25%**	**Y**
Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.				Y
Max. 10% BBB rated bonds.				Y
Max. 100% in Government of Canada or Government of Canada guaranteed bonds.				Y
Max. 60% in Provincial government and Provincial government guaranteed bonds.				Y
Max. 10% in Municipal bonds.				Y
Max. 50% in Corporate issues.				Y
Max. 10% in non-Government issuers.				Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer in a foreign currency.				Y
Bond portfolio duration 1 to 5 years.				Y

Investment policy revised April 2013.

*If policy not complied with, comment on specifics.

Date: 10/15/13

Stephen P. Copeland
Senior Vice President Investments
& Private Client Services

FOYSTON, GORDON & PAYNE INC.

INVESTMENT COUNSEL

October 2013

Ms. Wendy Tysall
Chief Financial Officer
Osgoode Hall
Finance Dept., 1st Floor
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Wendy:

Re: Manager Compliance Reporting

For the Law Society of Upper Canada Errors and Omissions Insurance Fund, we wish to confirm that the portfolio being managed by Foyston, Gordon & Payne Inc. was in compliance with the Fund's Investment Policy Statement in effect (latest revision April 2013), for the quarter ending September 30, 2013.

Yours truly,

Stephen P. Copeland
Senior Vice President Investments
& Private Client Services

P.O. Box 200, 1 Adelaide Street East, Suite 2600, Toronto Ontario M5C 2V9
TEL 416.362.4725 FAX 416.367.1183 www.foyston.com

TAB 6.2.3

FOR INFORMATION

OTHER COMMITTEE WORK

46. The Committee reviewed the Audit Planning Report for the 2013 financial year end from Deloitte & Touche LLP.

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

Tab 7

Report to Convocation

November 21, 2013

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

Committee Members
Howard Goldblatt, Chair
Julian Falconer, Vice-Chair
Susan Hare, Vice Chair
Raj Anand
Constance Backhouse
Mary Louise Dickson
Avvy Go
Michelle Haigh
Janet Minor
Judith Potter
Susan Richer
Paul Schabas
Baljit Sikand
Beth Symes

Purposes of Report: Decision and Information

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

TABLE OF CONTENTS

For Decision

For Information

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Equity Committee") met on November 7, 2013. Committee members Howard Goldblatt, Chair, Julian Falconer, Vice-Chair, Susan Hare, Vice-Chair, Raj Anand, Constance Backhouse, Avvy Go, Judith Potter, Susan Richer and Beth Symes participated. Staff members Josée Bouchard, Ekua Quansah and Marisha Roman also attended.

TAB 7.1

FOR DECISION

HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS

MOTION

2. **That Convocation approve the letters of intervention and public statements respecting the following:**
   a. **lawyer André Michel - Haiti – letters and public statement presented at TAB 7.1.1;**
   b. **lawyer Adam Sharief – Sudan - letters and public statement presented at TAB 7.1.2.**

MANDATE OF THE HUMAN RIGHTS MONITORING GROUP

3. The mandate of the Human Rights Monitoring Group (the "Monitoring Group") is,
   a. to review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
   b. to determine if the matter is one that requires a response from the Law Society; and,
   c. to prepare a response for review and approval by Convocation.

4. The mandate further states that where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate. In such instances, the Monitoring Group shall report on the matters at the next meeting of Convocation.

5. On September 20, 2007, Convocation approved the recommendation that the Monitoring Group explore the possibility of developing a network of organizations, and work collaboratively with them, to address human rights violations against judges and lawyers.

LAWYER ANDRÉ MICHEL - HAITI

Sources of Information

6. The following sources were used to prepare the background information for this report: Al Jazeera;[1] Associated Press;[2] Avocats sans frontières (Lawyers Without Borders Canada);[3] Front Line Defenders;[4] Institute for Justice & Democracy in Haiti;[5] Lawyers for Lawyers;[6] and Miami Herald.[7]

Background

7. The following information has been reported about lawyer André Michel.

8. On October 22, 2013, human rights lawyer André Michel was arbitrarily held for one night in police custody. While on his way home, Mr. Michel's car was stopped by police officers who attempted to carry out a search of his vehicle. Mr. Michel refused to

1 Al Jazeera English is an international news channel with over sixty bureaus around the world that span six different continents. Al Jazeera English is headquartered in Doha, Qatar.

2 Associated Press is a non-profit news cooperative owned by its American newspaper and broadcast members. Associated Press is headquartered in New York and has journalists and editors in more than 300 locations worldwide.

3 Lawyers Without Borders Canada (LWBC) is a non-governmental international development organisation, whose mission is to support the defence of human rights for the most vulnerable groups and individuals, through the reinforcement of access to justice and legal representation. LWBC seeks to contribute to the defence and promotion of human rights, uphold the rule of law, fight against impunity, reinforce the security and independence of human rights lawyers, support the holding of fair trials, and contribute to the continuing education of stakeholders within the justice system, as well as members of civil society.

4 Front Line Defenders is the International Foundation for the Protection of Human Rights Defenders. Front Line Defenders was founded in Dublin in 2001 with the specific aim of protecting human rights defenders at risk, people who work, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights (UDHR). Front Line Defenders aims to address the protection needs identified by defenders themselves.

5 We work with the people of Haiti in their non-violent struggle for the consolidation of constitutional democracy, justice and human rights, by distributing objective and accurate information on human rights conditions in Haiti, pursuing legal cases, and cooperating with human rights and solidarity groups in Haiti and abroad.

6 In conformity with international law and the *Universal Declaration of Human Rights*, the *Basic Principles on the Role of Lawyers* and the *Declaration on Human Rights Defenders* of the United Nations, L4L has committed itself to enable lawyers to practice law in freedom and independence, always and everywhere, even when that does not suit the local government, bar association or establishment.

7 The Miami Herald is a daily newspaper owned by The McClatchy Company headquartered in Doral, Florida, a city in western Miami-Dade County near Miami. Founded in 1903, it is the largest newspaper in South Florida, serving Miami-Dade, Broward County, and Monroe County. It also circulates throughout Latin America and the Caribbean.

get out of the car and would only accept the search if a justice of the peace (juge de paix) was called, a request which is in accordance with Haitian law. The search was eventually carried out with a juge de paix present and no evidence of wrongdoing was found. Despite this, the Office of the Prosecutor ordered that Mr. Michel be held in custody overnight on charges of obstructing justice, which was in violation of legal provisions that prohibit arrests after 6 p.m. except in cases of *flagrante delicto* (being arrested in the course of committing a crime). Mr. Michel was eventually released the next morning.

9. Mr. Michel is involved in legal proceedings against the wife and eldest son of Haiti's president. Since the beginning of this case, Mr. Michel has stated that he has faced intimidation and has received threats. In July 2013, an arrest warrant was issued against him for his alleged involvement in a murder. Mr. Michel's client, the complainant in the corruption case, was arrested on the same charge and remains in detention.

10. Shortly after Mr. Michel's release on October 23, 2013, a member of the Office of the Prosecutor declared to the press that the July 2013 arrest warrant, which had never been executed, would be carried out. Some reports note that a group of protestors removed Mr. Michel from the courthouse just as a judge was about to order him to go to the state penitentiary. Mr. Michel was taken to the Port-au-Prince bar association for his own protection. Mr. Michel remains at risk of arrest.

The Monitoring Group's Consideration

11. The following are issues that the Monitoring Group considered when making a decision about this case.

Sources

12. There are no concerns about the quality of sources used for this report.

Previous Intervention

13. The Law Society intervened in a case involving threats and intimidation of Mr. Michel in October 2012. Mr. Michel's treatment at that time was also as a result of action taken against the wife and son of the President of the Republic of Haiti for corruption and embezzlement of public funds.

14. According to reports, in the last two years, an increasing number of human rights lawyers have denounced being victims of intimidation, judicial harassment and arbitrary actions by police and judicial authorities.

Mandate

15. This case falls within the mandate of the Monitoring Group.

LAWYER ADAM SHARIEF

Sources of Information

16. The following sources were used to prepare the background information for this report: Amnesty International;[8] Lawyers for Lawyers; Lawyers' Rights Watch Canada.[9]

[8]Amnesty International is an independent and democratically-run organization. The movement's mission and policies, and its long-term directions, are all set by Amnesty members. Amnesty representatives from around the world gather every two years to set policy at the International Council Meeting (ICM). The Council also elects an International Executive Committee which ensures that the ICM's decisions are carried out.
Where Amnesty International is formally organized in a particular country, such as in Canada, Amnesty members set policy and key priorities within the framework of the worldwide movement. Amnesty International's work is always being assessed by its members and staff in the light of changing world circumstances. When major changes in policy and approach are needed, Amnesty members make the final decision.

9 Lawyers' Rights Watch Canada is a committee of Canadian lawyers who promote human rights and the rule of law by providing support internationally to human rights defenders in danger. It promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. Lawyers' Rights Watch Canada campaigns for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy. In addition, it also produces legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders, while working in cooperation with other human rights organizations. Lawyers' Rights Watch Canada seeks to identify illegal actions against advocates, campaign for the cessation of such actions and lobby for the implementation of effective immediate and long-term remedies.

Background

17. The following information has been reported about Adam Sharief.

18. Adam Sharief is a lawyer and the coordinator of the Darfur Bar Association in South Darfur. According to reports, he was arrested on September 26, 2013, and is currently being held without charge. Mr. Sharief has not been granted access to a lawyer.

19. Six days before his arrest, Mr. Sharief participated in an interview with independent radio station, Radio Dabanga. During this interview, Mr. Sharief criticized the Governor of South Darfur for the lack of security in Nyala, the capital of South Darfur. This criticism was linked to the protests that broke out in Nyala on September 18, 2013, after Ismail Ibrahim Wadi, a prominent local businessman and the president of the local football team, his son and nephew were killed. Protestors held militia employed by the local authorities responsible for the killings.

20. Mr. Sharief also criticized the use of live ammunition by security forces on September 19, 2013, (the date of Ismail Ibrahim Wadi's funeral) to disperse demonstrators that gathered together around the South Darfur government offices to call for the Governor to resign. According to reports, at least five people were killed by live fire during the demonstration and at least 48 people were seriously injured and required hospital treatment.

21. Amnesty International, Lawyers for Lawyers and Lawyers' Rights Watch Canada believe Adam Sharief is being detained for peacefully exercising his right to freedom of expression. Lawyers for Lawyers add that Mr. Sharief's detention results from his position as a human rights lawyer and provider of legal aid to victims of the Darfur crisis. All three organizations call for authorities to either charge Mr. Sharief with a legitimate offence or release him immediately.

The Monitoring Group's Consideration

22. The following are issues that the Monitoring Group considered when making a decision about this case.

Sources

23. There are no concerns about the quality of sources used for this report.

Previous Interventions

24. The Law Society intervened in cases of lawyers in Sudan in October 2006 and September 2012.

Mandate

25. This case falls within the mandate of the Monitoring Group.

FOR INFORMATION – RESPONSE RECEIVED

Case of Sapiyat Magomedova and Musa Suslanova

26. In July 2013, the Law Society intervened in the case of Sapiyat Magomedova and Musa Suslanov. The letter of intervention is attached at TAB 7.1.3. In October 2013, the Law Society received a response to its letter of intervention. The response and translation into English are presented at TAB 7.1.4.

TAB 7.1.1

Proposed Letters of Intervention and Public Statement

Lawyer André Michel

Note: The letters will be sent in French

Ministre de la Justice et de la Securité Publique
Jean Renel Sanon
18 avenue Charles Summer
Port-au-Prince, Haïti
Email: secretariat.mjsp@yahoo.com

Dear Minister:

Re: Arrest and Harassment of Lawyer André Michel

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the case of André Michel. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Reports indicate that on October 22, 2013, human rights lawyer André Michel was arbitrarily held for one night in police custody. While on his way home, Mr. Michel's car was stopped by police officers who attempted to carry out a search of his vehicle. Mr. Michel refused to get out of the car and would only accept the search if a justice of the peace (juge de paix) was called, a request which is in accordance with Haitian law. The search was eventually carried out with a juge de paix present and no evidence of wrongdoing was found. Despite this, the Office of the Prosecutor ordered that Mr. Michel be held in custody overnight on charges of obstructing justice, which was in violation of legal provisions that prohibit arrests after 6 p.m. except in cases of *flagrante delicto* (being arrested in the course of committing a crime). Mr. Michel was eventually released the next morning.

It is our understanding that Mr. Michel is involved in legal proceedings against the wife and eldest son of Haiti's president. Since the beginning of this case, Mr. Michel has stated that he has faced intimidation and has received threats. In July 2013, an arrest warrant was issued against him for his alleged involvement in a murder. Mr. Michel's client, the complainant in the corruption case, was arrested on the same charge and remains in detention.

Shortly after Mr. Michel's release on October 23, 2013, a member of the Office of the Prosecutor declared to the press that the July 2013 arrest warrant, which had never been executed, would be carried out. Some reports note that a group of protestors removed Mr. Michel from the courthouse just as a judge was about to order him to go to the state penitentiary. Mr. Michel was taken to the Port-au-Prince bar association for his own protection. Mr. Michel remains at risk of arrest.

The Law Society is concerned about the arrest and harassment of André Michel. In the past, the Law Society of Upper Canada has condemned threats and intimidation directed toward lawyers in Haiti. International human rights instruments, including the *Universal Declaration of Human Rights,* state that respect for humans rights are essential to advancing the rule of law.

The Law Society urges the government of Haiti to,

a. guarantee in all circumstances the physical and psychological integrity of André Michel and other human rights defenders in Haiti;

b. put an end to all acts of harassment, including at the judicial level, against human rights lawyers and other human rights defenders in Haiti;

c. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;

d. conform in all circumstances with the provisions of the United Nations *Basic Principles on the Role of Lawyers* and *the Declaration on Human Rights Defenders*; and

e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Thomas G. Conway

Treasurer

**The Law Society of Upper Canada is the governing body for some 46,100 lawyers and 5,600 paralegals in the Province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

His Excellence O. Andre Frantz Liautaud
Ambassador for Haiti
85 Albert Street, Suite 1110
Ottawa, Ontario K1P 6A4
Fax: (613) 238-2986
Email: nathaliegisselmenos@yahoo.fr

The Right Honourable Michaëlle Jean
UNESCO Special Envoy for Haiti
550 Cumberland Road, Room C-364
Ottawa, ON K1S 1Y9

Institute for Justice and Democracy in Haiti
Email: info@ijdh.org

Proposed Letter of Intervention

Commissaire du Gouvernement de Port-au-Prince
Me Francisco René
Parquet du Tribunal de Première Instance de Port-au-Prince
Palais de Justice
Blvd Harry Truman
Port-au-Prince, Haïti
Email: parquetpap@yahoo.fr

Dear Me René:

Re: Arrest and Harassment of Lawyer André Michel

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the case of André Michel. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Reports indicate that on October 22, 2013, human rights lawyer André Michel was arbitrarily held for one night in police custody. While on his way home, Mr. Michel's car was stopped by police officers who attempted to carry out a search of his vehicle. Mr. Michel refused to get out of the car and would only accept the search if a justice of the peace (juge de paix) was called, a request which is in accordance with Haitian law. The search was eventually carried out with a juge de paix present and no evidence of wrongdoing was found. Despite this, the Office of the Prosecutor ordered that Mr. Michel be held in custody overnight on charges of obstructing justice, which was in violation of legal provisions that prohibit arrests after 6 p.m. except in cases of *flagrante delicto* (being arrested in the course of committing a crime). Mr. Michel was eventually released the next morning.

It is our understanding that Mr. Michel is involved in legal proceedings against the wife and eldest son of Haiti's president. Since the beginning of this case, Mr. Michel has stated that he has faced intimidation and has received threats. In July 2013, an arrest warrant was issued against him for his alleged involvement in a murder. Mr. Michel's client, the complainant in the corruption case, was arrested on the same charge and remains in detention.

Shortly after Mr. Michel's release on October 23, 2013, a member of the Office of the Prosecutor declared to the press that the July 2013 arrest warrant, which had never been executed, would be carried out. Some reports note that a group of protestors removed Mr. Michel from the courthouse just as a judge was about to order him to go to the state penitentiary. Mr. Michel was

taken to the Port-au-Prince bar association for his own protection. Mr. Michel remains at risk of arrest.

The Law Society is concerned about the arrest and harassment of André Michel. In the past, the Law Society of Upper Canada has condemned threats and intimidation directed toward lawyers in Haiti. International human rights instruments, including the *Universal Declaration of Human Rights,* state that respect for humans rights are essential to advancing the rule of law.

The Law Society urges the government of Haiti to,

a. guarantee in all circumstances the physical and psychological integrity of André Michel and other human rights defenders in Haiti;

b. put an end to all acts of harassment, including at the judicial level, against human rights lawyers and other human rights defenders in Haiti;

c. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;

d. conform in all circumstances with the provisions of the United Nations *Basic Principles on the Role of Lawyers* and *the Declaration on Human Rights Defenders*; and

e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Thomas G. Conway

Treasurer

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The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

His Excellence O. Andre Frantz Liautaud
Ambassador for Haiti
85 Albert Street, Suite 1110
Ottawa, Ontario K1P 6A4
Fax: (613) 238-2986
Email: nathaliegisselmenos@yahoo.fr

The Right Honourable Michaëlle Jean
UNESCO Special Envoy for Haiti
550 Cumberland Road, Room C-364
Ottawa, ON K1S 1Y9

Institute for Justice and Democracy in Haiti
Email: info@ijdh.org

L'ordre des avocats du barreau de Port-au-Prince
Palais de Justice BP 150
Port-au-Prince
Haiti

Dear President,

Re: Lawyer André Michel

The Law Society of Upper Canada is the governing body for more than 46,100 lawyers and 5,600 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Monitoring Group reviews such information and determines if a response is required of the Law Society.

I write to inform you that on the advice of the Monitoring Group, the Law Society of Upper Canada sent the attached letter to the Haitian authorities expressing our deep concerns for the circumstances faced by human rights lawyer André Michel.

In view of the fact that your organization represents the interests of lawyers in Port-au-Prince, we would value the opportunity to communicate with you in regard to what problems, if any, lawyers may be experiencing in Haiti.

If you are willing and able to do so, we would be very interested in hearing from you concerning the case noted in the attached letter. In particular, if we have any of the facts in the case wrong, it would assist us in our work to know that.

Please forward any further correspondence to the attention of Josée Bouchard, Equity Advisor, Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to jbouchar@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Paul Schabas
Chair, Human Rights Monitoring Group

Proposed Public Statement

The Law Society of Upper Canada Expresses Grave Concerns about the Arrest and Harassment of André Michel in Haiti

The Law Society of Upper Canada is gravely concerned about the arrest and harassment of lawyer André Michel in Haiti.

Reports indicate that on October 22, 2013, human rights lawyer André Michel was arbitrarily held for one night in police custody. While on his way home, Mr. Michel's car was stopped by police officers who attempted to carry out a search of his vehicle. Mr. Michel refused to get out of the car and would only accept the search if a justice of the peace (juge de paix) was called, a request which is in accordance with Haitian law. The search was eventually carried out with a juge de paix present and no evidence of wrongdoing was found. Despite this, the Office of the Prosecutor ordered that Mr. Michel be held in custody overnight on charges of obstructing justice, which was in violation of legal provisions that prohibit arrests after 6 p.m. except in cases of *flagrante delicto* (being arrested in the course of committing a crime). Mr. Michel was eventually released the next morning.

It is our understanding that Mr. Michel is involved in legal proceedings against the wife and eldest son of Haiti's president. Since the beginning of this case, Mr. Michel has stated that he has faced intimidation and has received threats. In July 2013, an arrest warrant was issued against him for his alleged involvement in a murder. Mr. Michel's client, the complainant in the corruption case, was arrested on the same charge and remains in detention.

Shortly after Mr. Michel's release on October 23, 2013, a member of the Office of the Prosecutor declared to the press that the July 2013 arrest warrant, which had never been executed, would be carried out. Some reports note that a group of protestors removed Mr. Michel from the courthouse just as a judge was about to order him to go to the state penitentiary. Mr. Michel was taken to the Port-au-Prince bar association for his own protection. Mr. Michel remains at risk of arrest.

The Law Society is concerned about the arrest and harassment of André Michel. In the past, the Law Society of Upper Canada has condemned threats and intimidation directed toward lawyers in Haiti. International human rights instruments, including the *Universal Declaration of Human Rights,* state that respect for humans rights are essential to advancing the rule of law.

The Law Society urges the government of Haiti to,

a. guarantee in all circumstances the physical and psychological integrity of André Michel and other human rights defenders in Haiti;

b. put an end to all acts of harassment, including at the judicial level, against human rights lawyers and other human rights defenders in Haiti;

c. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;

d. conform in all circumstances with the provisions of the United Nations *Basic Principles on the Role of Lawyers* and *the Declaration on Human Rights Defenders*; and

e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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TAB 7.1.2

Proposed Letters of Intervention and Public Statement

Lawyer Adam Sharief

HE Omar Hassan Ahmed al-Bashir
Office of the President
People's Palace
PO Box 281
Khartoum, Sudan

Your Excellency:

Re: Detention of Lawyer Adam Sharief

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the case of Adam Sharief. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Adam Sharief is a lawyer and the coordinator of the Darfur Bar Association in South Darfur. According to reports, he was arrested on September 26, 2013, and is currently being held without charge. Mr. Sharief has not been granted access to a lawyer.

Six days before his arrest, Mr. Sharief participated in an interview with the independent radio station, Radio Dabanga. During this interview, Mr. Sharief criticized the Governor of South Darfur for the lack of security in Nyala, the capital of South Darfur. This criticism was linked to the protests that broke out in Nyala on September 18, 2013, after Ismail Ibrahim Wadi, a prominent local businessman and the president of the local football team, his son and nephew were killed. Protestors held militia employed by the local authorities responsible for the killings.

Mr. Sharief also criticized the use of live ammunition by security forces on September 19, 2013, (the date of Ismail Ibrahim Wadi's funeral) to disperse demonstrators that gathered together around the South Darfur government offices to call for the Governor to resign. According to

reports, at least five people were killed by live fire during the demonstration and at least 48 people were seriously injured and required hospital treatment.

The Law Society is concerned about the detention of Adam Sharief. In the past, the Law Society of Upper Canada has condemned the persecution and ill-treatment of lawyers in Sudan. International human rights instruments, including the *Universal Declaration of Human Rights,* state that respect for humans rights are essential to advancing the rule of law.

The Law Society urges the government of Sudan to,

a. guarantee in all circumstances the physical and psychological integrity of Adam Sharief and other human rights defenders in Sudan;

b. either release Adam Sharief immediately or charge him with a legitimate offence;

c. put an end to all acts of harassment, including at the judicial level, against human rights lawyers and other human rights defenders in Sudan;

d. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;

e. conform in all circumstances with the provisions of the United Nations *Basic Principles on the Role of Lawyers* and *the Declaration on Human Rights Defenders*; and

f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Thomas G. Conway

Treasurer

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cc:

Ibrahim Mohamed Ahmed
Ministry of Interior
PO Box 873
Khartoum, Sudan

Proposed Letter of Intervention

Mohamed Bushara Dousa
Minister of Justice
PO Box 302
Al Nil Avenue
Khartoum, Sudan

Dear Minister:

Re: Detention of lawyer Adam Sharief

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the case of Adam Sharief. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Adam Sharief is a lawyer and the coordinator of the Darfur Bar Association in South Darfur. According to reports, he was arrested on September 26, 2013, and is currently being held without charge. Mr. Sharief has not been granted access to a lawyer.

Six days before his arrest, Mr. Sharief participated in an interview with independent radio station, Radio Dabanga. During this interview, Mr. Sharief criticized the Governor of South Darfur for the lack of security in Nyala, the capital of South Darfur. This criticism was linked to the protests that broke out in Nyala on September 18, 2013, after Ismail Ibrahim Wadi, a prominent local businessman and the president of the local football team, his son and nephew were killed. Protestors held militia employed by the local authorities responsible for the killings.

Mr. Sharief also criticized the use of live ammunition by security forces on September 19, 2013, (the date of Ismail Ibrahim Wadi's funeral) to disperse demonstrators that gathered together around the South Darfur government offices to call for the Governor to resign. According to reports, at least five people were killed by live fire during the demonstration and at least 48 people were seriously injured and required hospital treatment.

The Law Society is concerned about the detention of Adam Sharief. In the past, the Law Society of Upper Canada has condemned the persecution and ill-treatment of lawyers in Sudan. International human rights instruments, including the *Universal Declaration of Human Rights,* state that respect for humans rights are essential to advancing the rule of law.

The Law Society urges the government of Sudan to,

a. guarantee in all circumstances the physical and psychological integrity of Adam Sharief and other human rights defenders in Sudan;

b. either release Adam Sharief immediately or charge him with a legitimate offence;

c. put an end to all acts of harassment, including at the judicial level, against human rights lawyers and other human rights defenders in Sudan;

d. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;

e. conform in all circumstances with the provisions of the United Nations *Basic Principles on the Role of Lawyers* and *the Declaration on Human Rights Defenders*; and

f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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cc:

Ibrahim Mohamed Ahmed
Ministry of Interior
PO Box 873

Khartoum, Sudan
Sudan Bar Association
P.O. Box 1954
Khartoum
Sudan

Dear President,

Re: Lawyer Adam Sharief

The Law Society of Upper Canada is the governing body for more than 46,100 lawyers and 5,600 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Monitoring Group reviews such information and determines if a response is required of the Law Society.

I write to inform you that on the advice of the Monitoring Group, the Law Society of Upper Canada sent the attached letter to the Sudanese authorities expressing our deep concerns for the circumstances faced by lawyer Adam Sharief.

In view of the fact that your organization represents the interests of lawyers in Sudan, we would value the opportunity to communicate with you in regard to what problems, if any, lawyers may be experiencing in your country.

If you are willing and able to do so, we would be very interested in hearing from you concerning the case noted in the attached letter. In particular, if we have any of the facts in the case wrong, it would assist us in our work to know that.

Please forward any further correspondence to the attention of Josée Bouchard, Equity Advisor, Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to jbouchar@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Paul Schabas
Chair, Human Rights Monitoring Group

Proposed Public Statement

The Law Society of Upper Canada Expresses Grave Concerns about the Detention of Adam Sharief in Sudan

The Law Society of Upper Canada is gravely concerned about the detention of lawyer Adam Sharief in Sudan.

Adam Sharief is a lawyer and the coordinator of the Darfur Bar Association in South Darfur. According to reports, he was arrested on September 26, 2013, and is currently being held without charge. Mr. Sharief has not been granted access to a lawyer.

Six days before his arrest, Mr. Sharief participated in an interview with independent radio station, Radio Dabanga. During this interview, Mr. Sharief criticized the Governor of South Darfur for the lack of security in Nyala, the capital of South Darfur. This criticism was linked to the protests that broke out in Nyala on September 18, 2013, after Ismail Ibrahim Wadi, a prominent local businessman and the president of the local football team, his son and nephew were killed. Protestors held militia employed by the local authorities responsible for the killings.

Mr. Sharief also criticized the use of live ammunition by security forces on September 19, 2013, (the date of Ismail Ibrahim Wadi's funeral) to disperse demonstrators that gathered together around the South Darfur government offices to call for the Governor to resign. According to reports, at least five people were killed by live fire during the demonstration and at least 48 people were seriously injured and required hospital treatment.

The Law Society is concerned about the detention of Adam Sharief. In the past, the Law Society of Upper Canada has condemned the persecution and ill-treatment of lawyers in Sudan. International human rights instruments, including the *Universal Declaration of Human Rights,* state that respect for humans rights are essential to advancing the rule of law.

The Law Society urges the government of Sudan to,

a. guarantee in all circumstances the physical and psychological integrity of Adam Sharief and other human rights defenders in Sudan;

b. either release Adam Sharief immediately or charge him with a legitimate offence;

c. put an end to all acts of harassment, including at the judicial level, against human rights lawyers and other human rights defenders in Sudan;

d. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;

e. conform in all circumstances with the provisions of the United Nations *Basic Principles on the Role of Lawyers* and *the Declaration on Human Rights Defenders*; and

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

Office of the Treasurer

Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

tel 416-947-3415
fax 416-947-7609

July 9, 2013

Chairman of the Investigative Committee of the Russian Federation
Aleksandr Ivanovich Bastrykin
Investigative Committee of the Russian Federation
Tekhnicheskii pereulok, d.2
105005 Moscow, Russian Federation
Fax: 1011 7 499 265 9077

Prosecutor General of the Russian Federation
Yurii Yakovlevich Chaika
Prosecutor General's Office
ul. B Dmitrovka, d.15a
125993 Moscow GSP-3
Russian Federation
Fax: 011 7 495 987 5841

Dear Chairman and Prosecutor General,

Re: Threats against Lawyers Sapiyat Magomedova and Musa Suslanov

I write on behalf of The Law Society of Upper Canada* to voice our grave concern over the ongoing imprisonment of lawyers Sapiyat Magomedova and Musa Suslanov. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Sapiyat Magomedova and Musa Suslanov are criminal defence lawyers working in the North Caucasus region of Dagestan in Russia. Both lawyers have previously worked on cases dealing with corruption and allegations of human rights violations by members of the state and law enforcement agencies, including allegations of torture, extra-judicial killings and abductions.

Ms. Magomedova and Mr. Suslanov are currently working on a high profile criminal case, representing the families of five men killed in March 2012. On May 19, 2013 Musa Suslanov received a text message from an unknown mobile phone number, telling him and his colleague to withdraw from the case if they wished to stay alive. The following day, Sapiyat Magomedova received a similar message from the same

number. In addition to the threatening text messages, both lawyers subsequently received further threats of physical violence and of arson and bomb attacks on their offices, if they do not cease their work on this case.

The threats against Sapiyat Magomedova and Musa Suslanov present imminent risks to their lives and physical security. Criminal defence lawyers in the North Caucasus region have previously been subject to human rights violations including threats, harassment and murder as a result of their work. Such events are often followed by an apparent failure by state authorities to adequately investigate the incidents and prosecute the perpetrators.

International human rights instruments, including the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *United Nations Basic Principles on the Independence of the Judiciary*, state that judicial independence and respect for humans rights are essential to advancing the rule of law.

The Law Society urges the Russian authorities to,

a. promptly, effectively and impartially investigate the death threats received by Sapiyat Magomedova and Musa Suslanov and ensure that those responsible are brought to justice;

b. ensure that lawyers Sapiyat Magomedova and Musa Suslanov are provided with protection and security in accordance with their stated needs and wishes;

c. put an end to all acts of harassment, including at the judicial level, against human rights lawyers and other human rights defenders in Russia;

d. ensure that all lawyers can carry out their peaceful and legitimate activities without intimidation, harassment, fear of physical violence or other human rights violations;

e. conform in all circumstances with the provisions of the *United Nations Basic Principles on the Role of Lawyers* and the *Declaration on Human Rights Defenders*; and

f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by Russia.

Yours truly,

Thomas G. Conway
Treasurer

**The Law Society of Upper Canada is the governing body for some 44,400 lawyers and 5,100 paralegals in the Province of Ontario, Canada and the Treasurer is the head of the Law Society. The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

His Excellency Ambassador Georgiy Enverovich Mamedov
285 Charlotte Street
Ottawa, ON
K1N 8L5

СК РОССИИ
Следственное управление
по Республике Дагестан

пр. Имама Шамиля, 70 «а»
г. Махачкала, РД, 367015

17.09.2013 № 02-182-13

Tomas G. Conway

Treasurer
Law Society of Upper Canada

Osgode Hall
130 Queen Street West
Toronto,
Ontario
M5H 2N6

16.09.2013 в следственное управление Следственного Комитета Российской Федерации по Республике Дагестан из Главного следственного управления Следственного Комитета Российской Федерации по Северо-Кавказскому федеральному округу поступило Ваше обращение в интересах адвокатов Магомедовой С. и Сусланова М., а также по другим вопросам.

Сообщаем, что обращение для организации рассмотрения Ваших доводов в соответствии с компетенцией разрешения поставленных в нем вопросов по территориальности направлено в Хасавюртовский межрайонный следственный отдел следственного управления Следственного Комитета Российской Федерации по Республике Дагестан.

О принятом решении Вам сообщат.

Инспектор отдела по приему
граждан и документационному обеспечению

лейтенант юстиции Д. К. Рашидханова

[Hand-written text in this document is shown in italics][†]

[coat of arms of the Ministry of the Interior
of the Russian Federation]

INVESTIGATIVE COMMITTEE OF RUSSIA

Investigative Directorate
for the Republic of Dagestan

pr. Imama Shamilya, 70a
367015 Makhachkala
Republic of Dagestan

[Date:] *17/09/2013* [Our Ref.:] *02-182-13*

Tomas G. Conway

Treasurer
Law Society of Upper Canada

Osgoode Hall
130 Queen Street West
Toronto,
Ontario
M5H 2N6

On 16/09/2013, through the General Investigative Directorate of the Investigative Committee of the Russian Federation for the North Caucasus Federal District, the Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Dagestan received your application in behalf of counsels S. Magomedova and M. Suslanova, as well as in regard to other matters.

Please be advised that the application to arrange for consideration of your arguments was referred, in accordance with the territorial competence to dispose of the matters raised therein, to the Khasavyurt Inter-District Investigative Department of the Investigative Committee of the Russian Federation for the Republic of Dagestan.

You will be advised of the decision taken.

[signature: illegible]

Lt (Justice) D.K. Rashidkhanova
Inspector,
Customer Service
and Document Support Division

[†] *Translator's notes are shown throughout in square brackets*

TAB 7.2

FOR INFORMATION

ADVISING CLIENTS OF THEIR FRENCH LANGUAGE RIGHTS - LAWYERS' AND PARALEGALS' RESPONSIBILITIES

BACKGROUND

27. In 2007, the Law Society released its guide entitled *Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context – Information about Lawyers Responsibilities.* The Guide presented at **TAB 7.2.1** is an update of the 2007 guide. The Guide presented at **TAB 7.2.2** applies to paralegals.

28. The updated guide for lawyers was reviewed by members of the Association des juristes d'expression française de l'Ontario, the Official Languages Committee of the Ontario Bar Association and representatives of the Office of the Commissioner of Official Languages and the Office of the French Language Services Commissioner.

Tab 7.2.1

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

Advising Clients of their French Language Rights -

Lawyers' Responsibilities

November 2013

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> "Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the *Charter of the French Language* itself indicates, a means by which the individual expresses his or her personal identity and sense of individuality."
>
> *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712 at 748-749

Introduction

The mandate of the Law Society is to govern the legal profession in the public interest by upholding its independence, integrity and honour for the purpose of advancing the cause of justice and the rule of law. Canada is an officially bilingual (French/English) country and lawyers in Ontario have the responsibility to act in the public interest and, when appropriate, to advise their clients of their French language rights.

Constitutional law and quasi-constitutional law recognize English and French as the official languages of Canada and as having equal status in all institutions of the Parliament and government of Canada. In Ontario, legislation and case law recognize the right to proceed in French before most judicial, quasi-judicial and administrative tribunals. This right is particularly important to the Francophone community as it allows its members to defend themselves in their language and encourages them to continue making the necessary efforts to prevent assimilation. It also recognizes the important role played by the Francophone community in the history of this province. Language rights are also, however of significance to those whose French is not their mother tongue but who wish to exercise their rights to proceed in French.

The Justice Paul Rouleau and Paul Le Vay report *Access to Justice in French* noted the following:

> "Over the last 35 years, successive governments have expanded the right to French language service in Ontario's court system. Those rights are broad and comprehensive. Much effort and investment has gone into

> developing and implementing them, and the courts, Ministry of the Attorney General, and other participants in the justice system, have exhibited goodwill and a commitment of resources in this regard […] The report sets out a road map to make the improvements necessary to allow the justice system to function as it is intended, and as it needs to function, if there is to be effective and meaningful access to justice in French in Ontario. The French Language Services Commissioner recently reported that there continue to be obstacles that make access to justice particularly difficult for French speakers in Ontario. Many key participants in the justice system, including judicial officials, court staff, and lawyers are unaware of these obstacles. As a result, the justice system is not as responsive as it could be in addressing the rights and needs of Ontario's French-speaking community and in ensuring meaningful access to justice in French."

The objective of this document is to describe lawyers' responsibilities to advise their clients of their language rights, to discuss when and in what circumstances that responsibility applies, and to ensure that lawyers are aware of their responsibility in this respect.

This document is not a legal opinion and is not exhaustive. It is current to the date of publication, and all members should keep abreast of legislative and jurisprudential changes.

Source

The Honourable Paul Rouleau and Paul Le Vay, *Access to Justice in French* (Toronto: French Language Services Bench and Bar Advisory Committee to the Attorney General, 2012) available at http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/full_report.pdf .

The Rules of Professional Conduct – A Lawyer's Responsibility

A Lawyer should advise clients who speak French of Language Rights

Rule 1.03 , *Rules of Professional Conduct*

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

Commentary

A lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter, including where applicable

(a) subsection 19 (1) of the *Constitution Act, 1982* on the use of French or English in any court established by Parliament,

(b) section 530 of the *Criminal Code* about the right of an accused to a trial before a court that speaks the official language of Canada that is the language of the accused,

(c) section 126 of the *Courts of Justice Act* that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and

(d) subsection 5(1) of the *French Language Services Act* for services in French from Ontario government agencies and legislative institutions.

Knowledge of the Commentary

Lawyers should be cognizant of the commentary to Rule 1.03 and take steps to find out whether their clients want to proceed in French.
Rule 1.03 also applies when other laws and case law, not mentioned specifically in the commentary, recognize language rights of clients in the judicial and quasi-

judicial context. For example, the *Official Languages Act* specifies that English and French are the official languages of the federal courts.

Competency to Provide the Services

Lawyers may not be competent to act if they are unable to provide quality legal services in French to clients who have requested such services or appear to require such services. These services include understanding clients in their official language and ensuring that relevant documents and evidence are prepared and provided in the official language of clients wherever possible.

In order to provide competent services, the communication should be effective for the client for whom it is intended. A lawyer who is incapable of effectively communicating with clients who request services, or who appear to require or to wish to receive such services, in French may not have the "ability and capacity" to deal adequately with legal matters on behalf of the client.

The lawyer who offers services in Ontario in the French language should have sufficient knowledge of the language, including sufficient knowledge of French common law terminology (as opposed to civil law), to competently act for the client. The lawyer should be able to,

- communicate effectively, orally and in writing, with the client;
- where applicable, effectively represent the client before courts, tribunals and/or quasi-judicial tribunals.

If a lawyer does not feel competent to undertake the matter for reasons described above, the lawyer should recognize his or her lack of competence for a particular task and the disservice that would be done to the client by undertaking the task. In such circumstances, the lawyer should either decline to act or obtain the client's instructions to retain, consult, or collaborate with a lawyer who is competent for that task.

Checklist

- ❑ *Ascertain whether the client speaks French*
- ❑ *Ascertain whether the client wishes to receive legal services in French*

- *Ascertain whether the client wishes to be represented in French*
- *Ascertain your clients rights by:*
    - *Considering applicable legislation and jurisprudence, if appropriate*
    - *Considering applicable rules of conduct*
- *If you are not competent to offer services to the client in French, provide assistance in finding a lawyer or paralegal who is competent to offer the services to the client in French.*

Sources

Rules of Professional Conduct, Law Society of Upper Canada, November 1, 2000, http://www.lsuc.on.ca/with.aspx?id=671

Constitutional and Quasi-Constitutional Language Rights

> "Equality does not have a lesser meaning in matters of language. With regard to existing rights, equality must be given true meaning. This Court has recognized that substantive equality is the correct norm to apply in Canadian law. Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada."
>
> *R. v. Beaulac*, [1999] S.C.R. 768

French Language in Federally Created Courts

The use of the French language is guaranteed in the courts created by the federal Parliament.

The *Official Languages Act* defines "Federal court" to mean "any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament."

"Court of Canada", as defined by the Supreme Court of Canada, means "court established by Parliament" and/or "federal court" and encompasses any federal institution that, by virtue of its organic statute, holds the authority to judge matters affecting the rights or interests of the individual and applies the principles of law. Federal courts are judicial tribunals and administrative tribunals performing quasi-judicial functions.

"Federal courts" include:

- Supreme Court of Canada;
- Federal Court of Appeal of Canada;
- Federal Court of Canada;
- Tax Court of Canada;
- Court Martial Appeal Court.

Federal tribunals are subject to the *Official Languages Act* and include the following:

- Board of Arbitration and Review Tribunal;
- Canada Industrial Relations Board;
- Canadian Artists' and Producers' Professional Relations Tribunal;
- Canadian International Trade Tribunal;
- Canadian Radio-Telecommunications Commission;
- Competition Tribunal;
- Copyright Board of Canada;
- Canadian Human Rights Tribunal;
- National Energy Board;
- National Parole Board;
- Canadian Transportation Agency;
- Immigration and Refugee Board;
- Pensions Appeal Board.

When considering language rights at the Supreme Court of Canada, section 11 of the *Rules of the Supreme Court,* [SOR/2002-156], provides for the use of English or French in oral or written communications before the Court. Services for simultaneous interpretation in both official languages are provided during hearings. In the case of motions heard by a judge or the Registrar, simultaneous interpretation is provided upon request of any party to the motion.

A Client's Constitutional and Quasi-Constitutional Language Rights

Closely linked to the constitutional language rights provided by the *Constitution Act, 1867* and the *Charter of Rights,* the *Official Languages Act* is the focal piece of legislation enacted to protect language rights in Canada. The purpose of the *Official Languages Act* is to,

> (*a*) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;
>
> (*b*) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and

(*c*) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

Part III of the Official Languages Act specifies that "English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court."

It also *imposes* obligations on the government, including,

- the duty on every federal court to ensure that a person giving evidence be heard in the official language of his or her choice;
- the duty on every federal court at the request of any party to the proceedings, to make available simultaneous interpretation of the proceedings, including evidence given and taken;
- the duty on every federal court other than the Supreme Court of Canada, to ensure that every judge or other officer who hears the proceedings is able to understand the official language of the proceeding without the assistance of an interpreter. If both languages are the languages of the proceeding, the judge or other officer must understand both languages without the assistance of an interpreter.

Any person may use either English or French in any pleading or process issuing from any federal court. Written pleadings include allegations by parties appearing for the applicant and the respondent, oral pleadings, memorandums and briefs. However, it does not cover evidence given in connection with written pleadings, since witnesses may testify in the official language of their choice.

Sources

Laws

Section 133 of the *Constitution Act, 1867,* 30 & 31 Vict, c.3
http://www.canlii.ca/en/ca/laws/stat/30---31-vict-c-3/latest/30---31-vict-c-3.html

Subsection 19(1) of the *Charter of Rights and Freedoms, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK),* 1982, c. 11
http://www.canlii.ca/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html

Part III of the *Official Languages Act*, RSC 1985, c.31 (4th Supp)
http://www.canlii.ca/en/ca/laws/stat/rsc-1985-c-31-4th-supp/latest/rsc-1985-c-31-4th-supp.html

Section 11 of the *Rules of the Supreme Court*, SOR/2002-156

http://www.canlii.ca/en/ca/laws/regu/sor-2002-156/latest/sor-2002-156.html

Other sources

Vanessa Gruben, "Bilingualism and the Judicial System" in Michel Bastarache, ed., *Language Rights in Canada*, 2nd edition (Cowansville: Les éditions Yvon Blais, 2004) at 157-158.

Official Languages Act, Annotated Version, 2001

Criminal Law

"Language rights must <u>in all cases</u> be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada."[1]

R. v. Beaulac, [1999]1 S.C.R. 768

Language rights protections in the *Criminal Code* are largely set out in Part XVII – Language of Accused, sections 530 and 530.1, Part XXVIII – Miscellaneous, and subsection 849(3) of the *Criminal Code.*

Section 530 sets out the conditions for granting an application by an accused for a judge or a jury who speak the official language of the accused. Section 530.1 enumerates the rights to which an accused is entitled once a section 530 order has been rendered.

The leading authority regarding the rights of the accused under the *Criminal Code* is the Supreme Court of Canada decision in *R. v. Beaulac,* which confirmed that section 530 confers upon the accused an absolute right, upon timely application, to be tried in his or her official language. The following provides an overview of the principles in *R. v. Beaulac.*

<u>Trial in official language</u>

- In order to be tried in the official language of his or her choice, the accused must assert his or her official language by bringing forward an application within the timelines established in section 530 of the *Criminal Code,* with some exceptions.

- The application need not be formal: see *R. v. Dow* (2009), 245 C.C.C. (3d) 368 (Que. C.A.), leave to appeal to S.C.C. refused 245 C.C.C. (3d) vi.

[1] Principle adopted in the criminal law case of *R. v. Beaulac*, *ibid.*, reiterated by the Supreme Court of Canada in the context of the New-Brunswick *Official Languages Act,* S.N.B. 2002, c. 0-0.5 (see *Charlebois* v. *City of Saint John*, [2005] 3 S.C.R. 563).

- The "language of the accused" is the official language to which the accused has a sufficient connection. The accused must be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself. The test to determine whether the accused has a right to a trial in his or her official language is whether the accused has sufficient knowledge of the official language to instruct counsel.

- The accused has a right to a trial in the official language of his or her choice even if the language chosen is not the dominant language. The ability of the accused to speak the other official language is also not relevant.

- An absolute right to a trial in one's official language exists, provided the application is made in a timely manner. The application must be made within delays established in paragraphs 530(1) a), b) and c), which vary with the type of infraction. When the accused fails to apply for an order and it is in the best interest of justice to make an order, the tribunal has the discretion to order the trial of an accused in the official language of his or her choice.

<u>Application in a "timely manner"</u>

- An accused has automatic access to a trial in one's official language when an application is made in a timely manner (within the delays established in section 530 (1) a), b) and c)). When the application is not timely, the judge has the discretion to order the trial in the official language of the accused. In exercising his or her discretion, the judge should consider factors to determine the reasons for the delay. The following questions are considered:
    - when the accused was made aware of his or her right?
    - whether he or she waived the right and later changed his or her mind?
    - why he or she changed his or her mind?
    - whether it was because of difficulties encountered during the proceedings?

- Once the reason for the delay has been examined, the trial judge should consider a number of factors that relate to the conduct of the trial, such as,
    - whether the accused is represented by counsel;
    - the language in which the evidence is available;

- the language of witnesses;
- whether a jury has been empanelled;
- whether witnesses have already testified;
- whether they are still available;
- whether proceedings can continue in a different language without the need to start the trial afresh;
- the fact that there may be one or more co-accused (which may indicate the need for separate trials);
- changes of counsel by the accused;
- the need for the Crown to change counsel; and
- the language ability of the presiding judge.

- Mere administrative inconvenience is not a relevant factor. The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling should not be considered.

Bilingual proceedings

- The accused may also have the right to a bilingual proceeding in some circumstances, such as ,
  - where counsel for the accused speaks only one official language and speaks a different language than the accused; or
  - where the official language of the accused is different from the majority of the witnesses.

Translation of Information/Indictment and other documents

- Where an order for a French or bilingual trial has been made under s. 530, "on application by the accused," s. 530.01 requires that the prosecutor provide the accused with a written translation of portions of the Information or Indictment. If the s. 530 application need not be formal, then surely the s. 530.01 application need not be either.

- While the Crown is not obligated to provide a translated version of every document in the disclosure, it may be that the Court has discretion to order that certain documents be translated in order to allow the accused to "make full answer and defence." See *R. v. Rodrigue* (1994), 91 C.C.C. (3d) 455 (Y.T.S.C.), aff'd 95 C.C.C. (3d) 129 (Y.T.C.A.), leave to appeal to S.C.C. refused 99 C.C.C. (3d) vi.

- In order to ensure an accused's right to a fair trial, a trial judge can refuse to accept into evidence a document that is written in a language other than the accused's chosen official language without the accused's consent or translation: *Boudreau v. New Brunswick* (1990), 59 C.C.C. (3d) 436 (N.B.C.A.)

Self-represented accused

- A judge or justice of the peace must inform a self-represented accused of the right to choose French or English as the language for the preliminary inquiry and trial.

Where an order is granted under section 530 directing that the accused be tried before someone who speaks the official language of Canada that is the language of the accused, section 530.1 applies. It provides as follows:

Written pleadings or documents

- The accused and his or her counsel have the right to use either official language for all purposes during the preliminary inquiry and trial of the accused, in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial.

Witnesses

- Any witness may give evidence in either official language during the preliminary inquiry or trial.

Interpreters

- The court must make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial.

- Counsel should be familiar with s. 14 of the *Charter of Rights and Freedoms* which entrenches the right to the assistance of an interpreter in the constitution. Counsel should also be familiar with jurisprudence concerning the right to *competent* interpretation and the *voir dire* procedure as to a court interpreter's qualifications: *R. v. Tran* (1994), 92 C.C.C. (3d) 218 (S.C.C.), *R. v. Rybak* (2008), 233 C.C.C. (3d) 58 (Ont. C.A.), *R. v. Dutt*, 2011 ONSC 3329 (voir dires) and *R. v. Dutt*, 2011 ONSC 5358 (mistrial due to issues of interpretation).

Judgment

- Any trial judgment, including any reasons given for it, issued in writing must be in either official languages and made available by the court in the official language of the accused.

Judges, juries, prosecutors and other court staff

- Judges, juries, prosecutors (except where the prosecutor is a private prosecutor) and other court staff must be available in either official language.

The *Criminal Code* also provides that any pre-printed portions of a form set out in Part XXVIII of the *Code*, such as warrants and summons, will be printed in both official languages.

Sources

Sections 530 and 530.1, Part XXVIII – Miscellaneous, and subsection 849(3) of the *Criminal Code,* R.S.C. 1985, c. C-46
http://www.canlii.ca/en/ca/laws/stat/rsc-1985-c-c-46/latest/

R. v. Beaulac, [1999] S.C.R. 768
http://csc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1700/index.do

Languages of the Courts of Ontario

"If linguistic duality were a person, today it would be an adult who communicates with others, participates in the democratic process, and cherishes tolerance and diversity; who travels, having acquired experience that is, in many respects, recognized and sought out around the world; who embodies one of Canada's strongest values and works with determination in a changing world. This person still faces many challenges in preserving past achievements and obtaining justice on as yet unexplored fronts."

Office of the Commissioner of Official Languages
Annual Report, Special Edition, 35th Anniversary 1969-2004, Volume 1 at 115

Courts of Justice Act – Use of French and English in proceedings before Courts of Ontario

Sections 125 and 126 of the *Courts of Justice Act* [C.J.A.] provide for the use of English and French in proceedings before the courts of Ontario.

The word "court" in the C.J.A. does not include administrative or quasi-judicial tribunals. See below for a discussion of the language requirements applying to such tribunals.

Sections 125 and 126 of the C.J.A. apply to:

- natural persons;
- corporations;
- partnerships; and
- sole proprietorships.

The following summarizes the language rights provided under sections 125 and 126 of the *Courts of Justice Act*.

<u>Right to bilingual proceeding</u>

- A party who speaks French has the right to request a bilingual proceeding including a judge or judges who speak English and French.

- The right to a bilingual proceeding is a substantive right available to individuals who speak French. However, case law provides that the court has the discretion to order a bilingual proceeding even if the party does not speak French.

- A bilingual proceeding includes the following elements:
  - that the proceeding is heard by a judge who speaks English and French;
  - a hearing held before a bilingual judge and jury is only available in the designated areas mentioned below;
  - if the bilingual hearing is held without a jury, or with a jury in an area named in the designated area below, the evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given;
  - in a proceeding that is not a bilingual hearing without a jury or with a jury in an area named in the designated area below, the court will provide interpretation of any submissions in French or any evidence given by a witness in French, into English;
  - a judge has a discretion to conduct any other part of the hearing in French if it can be conducted in that language;
  - oral evidence given in English or French in an out-of-court examination is to be received, recorded and transcribed in the language it is given;
  - the party does not necessarily have the right to file pleadings in French. For the right to file pleadings in French, see below.

<u>Designated areas for hearing before bilingual judge and jury and pleadings and other documents filed in French</u>

- The right to request a hearing before a bilingual judge and jury is, as of right, available in all areas below (this list may be subject to change from time to time). Pleadings and other documents written in French may be filed in the following areas:
  - The counties of Essex, Middlesex, Prescott and Russell, Renfrew, Simcoe, Stormont, Dundas and Glengarry.
  - The territorial districts of Algoma, Cochrane, Kenora, Nipissing, Sudbury, Thunder Bay, Timiskaming.
  - The area of the County of Welland as it existed on December 31, 1969.
  - The Municipality of Chatham Kent.

- The City of Hamilton.
- The City of Ottawa.
- The Regional Municipality of Peel.
- The City of Greater Sudbury.
- The City of Toronto.

Pleadings and other documents filed in French

- The right to file pleadings and other documents written in French may be filed in the designated areas specified above. Outside the designated areas, consent is required from the other party to file the pleadings and other documents in French.

- Opposing parties or their lawyers do not have to file their pleadings and other documents, make submissions in, or communicate with the party who requested a bilingual proceeding, in the language of that party's choice.

- At hearings before a judge and jury in the designated areas mentioned above, at a hearing without a jury, or at examinations out of court, a party or counsel who speaks English or French but not both may request, and the court will provide, interpretation of anything given orally in the other language and translation of reasons for a decision written in the other language.

- Reasons for a decision may be written in English or French. Translations of decisions, judgments or orders are not required, but when requested by a party or counsel who speaks English or French but not both, the court will provide interpretation of anything given orally in the other language at hearings and at examinations out of court, and translation of reasons for a decision written in the other language.

- Costs of translation will not be awarded against the unsuccessful party.

- A document filed by a party before a hearing in a proceeding in the Ontario Court of Justice or in the Small Claims Court may be written in French. A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

The *Provincial Offences Act*

Where a defendant is served with an "offence notice, parking infraction notice or notice of impending conviction in a proceeding under the *Provincial Offences Act*," and that defendant makes a written request that the trial be held in French, the proceeding in those cases must be conducted as a bilingual proceeding and be presided over by a judge or officer who speaks both official languages. The defendant is deemed to have exercised his right under section 126(1) of the *Courts of Justice Act*.

Sources

Sections 125 and 126 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43
http://www.canlii.ca/en/on/laws/stat/rso-1990-c-c43/latest/rso-1990-c-c43.html

Provincial Offences Act, R.S.O. 1990, c. P.33
http://www.canlii.ca/en/on/laws/stat/rso-1990-c-p33/latest/rso-1990-c-p33.html

Bilingual Proceedings, O. Reg. 53/01, s. 4. (The defendant is deemed to have exercised his right under section 126(1) of the *Courts of Justice Act*.)
http://www.canlii.ca/en/on/laws/regu/o-reg-53-01/latest/o-reg-53-01.html

Quasi-Judicial or Administrative Tribunals

> "One of the underlying purposes and objectives of the *French Language Services Act* was the protection of the minority Francophone population in Ontario; another was the advancement of the French language and promotion of its equality with English. These purposes coincide with the underlying unwritten principles of the Constitution of Canada. As already stated, underlying constitutional principles may in certain circumstances give rise to substantive legal obligations because of their powerful normative force."
>
> *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 O.R. (3d) 505

Official Languages Act

As mentioned above in the section on *Constitutional and Quasi-Constitutional Language Rights*, the *Official Languages Act* applies to federal courts (defined to include tribunals) or other bodies that carry out adjudicative functions and are established by or pursuant to an Act of Parliament.

The following summarizes the language rights of individuals appearing before a federal administrative or quasi-judicial tribunal:

<u>Official languages</u>

- English and French are the official languages of the federal tribunals and any person may use those languages in any pleading in, or process issuing from, any federal tribunal.

- A party has the right to speak and be understood by the court/tribunal in the official language of his or her choice.

<u>Judge and other officers</u>

- Every judge or every officer who hear the proceeding must understand the language chosen by the parties without the assistance of an interpreter. The same duties are imposed on the tribunal where the parties choose a bilingual proceeding. This is limited to the adjudicative functions carried out by the tribunal.

Witnesses

- Witnesses have a right to give evidence and be cross-examined in the official language of their choice.

Simultaneous interpretation

- When a party makes a request for translation, simultaneous interpretation of proceedings will be available from one official language to the other, including the evidence given and taken.

Crown

- The Crown must, when it is a party to a proceeding, use in oral and written pleadings before a federal tribunal, the official language chosen by the other party, unless reasonable notice of language chosen has not been given or where the other parties fail to choose or agree on the official language to be used in the pleadings.

Pleadings, forms, decisions

- The term "pleadings" includes oral and written arguments, but excludes evidence presented to the court.

- Pre-printed portions of any form that is used in proceedings and is required to be served by the institution that is a party to the proceedings on the other party must be in both official languages. The details in the form may be added in the official language of the issuer but must indicate that translation is available upon request.

- Every final decision, order or judgment, including reasons must be given simultaneously in both official languages where the decision, order or judgment determines a question of law of general public interest or importance or the proceedings leading to its issuance were conducted in whole or in part in both official languages. Such decisions, orders or judgments do not have to be available simultaneously in both official languages if delays prejudicial to the public interest or resulting in injustice or hardship to any party to the proceedings.

Tribunals Created by the Ontario Government

There are few obligations and very little guidance provided to administrative or quasi-judicial tribunals in the *Statutory Powers Procedure Act*, which only states

that summonses and warrants must be in the "prescribed form (in English or in French)", and that a tribunal has the obligation to make its rules available to the public in both languages. Obligations related to services offered in official languages of administrative tribunals are found under the *French Language Services Act* (the *F.L.S.A.*), supported by unwritten constitutional principles and other principles of interpretation.

The preamble to the Ontario's *French Language Services Act* sets out its underlying rationale as follows:

> Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act […]

Subsection 5(1) of the *French Language Services Act* provides a right to communicate in French with government agencies or institutions of the Legislature.

The definition of "government agency" in the *French Language Services Act* includes a board, commission or corporation the majority of whose members or directors are appointed by the Lieutenant Governor in Council. A government agency includes administrative tribunals, defined by the Ministry of the Attorney General as "an autonomous agency that is independent of the provincial government and is responsible for settling disputes between the Province of Ontario and its citizens. An administrative tribunal is also known as an agency, board or commission." There are approximately 235 administrative tribunals in Ontario.[2]

The Ministry of the Attorney General provides the following online information about French language rights before administrative tribunals:[3]

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[2] They are listed at http://www.sciencessociales.uottawa.ca/crfpp/pdf/annexes_10-2005.pdf

[3] http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/french_language_services/services/administrative_tribunals.asp

Under which Act do administrative tribunals have obligations to provide French Language Services?

Section 5. (1) of the French Language Services Act states that : "A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency […]". Section 1. (b) indicates that "government agency" means "a board, commission or corporation the majority of whose members or directors are appointed by the Lieutenant Governor in Council". Therefore, the administrative tribunals, which are boards and commissions, must offer French Language Services in accordance with the French Language Services Act.

What services do administrative tribunals have to offer in French?

The French Language Services Act requires that administrative tribunals provide French language services to the public. This responsibility includes both the services provided to the public by the administrative tribunal's secretariat and the proceedings conducted by an agency, board or commission (i.e. telephone, correspondence, brochures, websites, etc.).

Do designated areas apply to administrative tribunals?

As is the case for services provided by the Government of Ontario, administrative tribunals are required to provide their services in French in accordance with the French Language Services Act. However, the Act also states that "a person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency […]". Since, in most cases, the services of an administrative tribunal are only offered in one location, this means that French Language Services must be offered even if the tribunal is not located in a designated area, if it serves a designated area.

Who pays the costs attributable to meeting linguistic requirements?

Where there is no legal or other requirements, costs attributable to meeting linguistic requirements must be paid by agencies, boards and commissions and cannot be passed along to parties.

Must the secretariat of the administrative tribunals be able to offer French Language Services?

The secretariat of every agency, board and commission must be capable of pro-actively providing French Language Services:

Signs, literature, information and advice should be available in French,

There should be a system of filing and exchanging documents which includes, if necessary, the provision of linguistic assistance or the translation of documents into either English or French,

Agencies, boards and commissions should ensure that French-speaking staff are available on a permanent and reliable basis whether services are delivered by tribunal staff or a private sector service provider.

Why is it important to ensure that the obligations of administrative tribunals under the French Language Services Act are met?

In addition to the importance of providing equal access to tribunal services in French, procedures should reflect the principle that meeting the tribunal's obligations under the French Language Services Act is one of the components of providing a fair hearing.

What are the consequences if the administrative tribunals fail to offer French Language Services?

Failure to meet the legislative obligations could impact on the fairness of proceedings with resulting inconvenience for citizens and for the Government of Ontario, investigation by the Ombudsman, the French Language Services Commissioner or recourse to the courts. Moreover, confidence in the proceedings within the Francophone community could be undermined.

PROCEEDINGS
Do parties have the right to be heard in French?

Parties can choose to be heard in the language of their choice, English or French.

Do proceedings have to be conducted in French if the parties are not French-speaking?

Where there is a public interest, administrative tribunals will have to meet the linguistic requirements of both French and English communities who wish to avail themselves of the right to participate.

Administrative tribunals must conduct proceedings designed in whole or in part:

- *To provide opportunity for participation by individual citizens as members of a community or by organizations representing communities;*
- *To inform a community of the plans or activities of the government or of one of its agencies;*
- *To ensure that a decision process is public.*

Do parties and officials have the right to speak and to be understood in French?

Linguistic requirements will be met at proceedings where all officials and parties can both understand and be understood in either French or English. In other words, all participants – adjudicators, counsel, parties and support personnel – must be able to make the contribution required of them in linguistic comfort.

DOCUMENTS

Do notices sent to parties have to be written in French?

Parties have the right to receive notice in either English or French. Given time constraints and possible mix-ups, the most effective notification will be in both languages in the first instance. If instead, a unilingual notice is given, the English notice should advise in French that notice is also available in French, and the French notice should advise in English that notice is also available in English.

Do notices sent to the public through the media have to be available in French?

Where notice is given through the media, both the French-speaking and English-speaking public should be notified. French-speaking media should be included in the communication strategy of the administrative tribunal.

Should notices advise the parties of their right to a bilingual proceeding?

Notices should advise that participation can be in either language and should ask participants to indicate their language of choice. A mail-back form might be used.

Do the documents used during the hearings have to be available in French?

All aspects of hearings – the use of documents, the making of arguments and submissions, examination and cross-examination – should be available in French or in English. However, any hearing decision has to be conveyed in the language of choice of the client.

Do tribunals have the responsibility to translate ALL documents from the client or in the client's file (referred as Complainant or Appellant in some instances)?

No, the tribunal's responsibility is to provide a translation of any correspondence, response or hearing decisions that they are making and conveying it to the Client, which means documents that the tribunal is producing only.

Do the administrative tribunals' decisions have to be published in French?

Decisions relative to hearings held in both English and French should be published simultaneously in both languages.

Do the administrative tribunals' reports have to be published in French?

Where agencies, boards or commissions publish a report of actual decisions or a summary of decisions, publication should be in both French and English. Where decisions have an impact on the public, both the French-speaking and the English-speaking public should be advised of decisions simultaneously. If a tribunal makes its decisions available to the public by request only, it must make those decisions available in French if so requested and in a timely manner.

LINGUISTIC NEEDS

Are administrative tribunals required to have French-speaking staff?

Administrative tribunals should have appropriate support services in place throughout the entire process to facilitate the participation of French-speaking clients in hearings. This means French-speaking support staff, arbitrators, prosecutors, as well as any equipment required.

The availability of staff with linguistic competencies eliminates unnecessary translation costs and enables members of the public to understand untranslated lengthy written submissions.

When a panel makes decisions, do all of the members have to understand French?

Some members of the panel must understand the language of the proceedings, others can be assisted by interpreters.

Are there guidelines within respect to the use of linguistic assistance or interpretation services?

There are no specific guidelines in respect with the use of linguistic assistance. But, certain methods of linguistic assistance such as consecutive interpretation, simultaneous interpretation, use of professionals of various backgrounds and qualifications are recognized as being best practices. Different circumstances will require different approaches. At all times, however, linguistic assistance must enable participation by French-speaking persons without prejudice to them and it must be given by professionals. The ad hoc assistance of relatives or other participants is inappropriate and not recommended in a forum where rights are at issue.

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Statutory Powers Procedure Act

There are few language obligations and very little guidance provided to administrative or quasi-judicial tribunals in the *Statutory Powers Procedure Act*, which only states that summonses and warrants must be in the "prescribed form

(in English or in French)", and that tribunals must make their rules governing their practice and procedure available to the public in both languages.

Sources

Official Languages Act, R.S.C. 1985, c. 31 (4th Supp)
http://www.canlii.ca/en/ca/laws/stat/rsc-1985-c-31-4th-supp/latest/rsc-1985-c-31-4th-supp.html

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22
http://www.canlii.ca/en/on/laws/stat/rso-1990-c-s22/latest/rso-1990-c-s22.html

French Language Services Act, R.S.O. 1990, c. F. 32
http://www.canlii.ca/en/on/laws/stat/rso-1990-c-f32/latest/rso-1990-c-f32.html

Resources

To find a lawyer who provides legal services to clients in French, you may contact the following:

Law Society Referral Service

The Law Society Referral Service (LSRS) provides members of the public with the name of a lawyer or licensed paralegal who will provide a free consultation of up to 30 minutes to help you determine your rights and options.

If a member of the public needs a licensed paralegal or a lawyer – for anything from a traffic ticket to buying your first home – but don't know where to find one, the LSRS can help.

The new LSRS also includes number of service enhancements that ensure members of the public will have even greater access to legal service providers.

And with the Internet increasingly playing a role in making justice more widely accessible, it is possible for more people to obtain referrals online.

The service can be accessed by calling 1-800-268-8326 or 416-947-3330 (within the GTA) or by accessing the on-line request form.

The service is available from 9 am to 5 pm Monday to Friday.

The phone call, the referral process, and the initial consultation of up to 30 minutes are all free. However consultation is meant to help the client determine her or his rights and options. A lawyer or paralegal should not be expected to do any free work during this time — that is not the purpose of the LSRS. However, the member of the public can certainly ask during the consultation what it might cost to have legal work done.

On-line information about the Law Society Referral Service:
http://www.lsuc.on.ca/faq.aspx?id=2147486372

On-line information in French about the Law Society Referral Service:
http://www.lsuc.on.ca/faq.aspx?id=2147486372&langtype=1036

The Law Society's Lawyer and Paralegal Directory

The online Lawyer and Paralegal Directory is useful if a member of the public has the name of a lawyer or a paralegal and wants to know how to contact him or her. The Directory also allows to find out whether the lawyer or paralegal is capable of offering legal services in the French language.

To access the Directory in English or in French:

http://www2.lsuc.on.ca/LawyerParalegalDirectory/

Contact the Law Society of Upper Canada
General Inquiries
Toll-free: 1-800-668-7380
General line: 416-947-3300
Facsimile: 416-947-5263
E-mail: lawsociety@lsuc.on.ca

Write to the Law Society of Upper Canada
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Consult the Directory of the Association des juristes d'expression française de l'Ontario

Available online at : www.ajefo.ca

Consult the Directory of the Ontario Bar Association

Available online at: http://www.oba.org/For-the-Public/Find-a-Lawyer

Rules of Professional Conduct
For information about the *Rules of Professional Conduct*, please contact the Law Society of Upper Canada's Practice Management Helpline at : http://mrc.lsuc.on.ca/jsp/pmhelpline/index.jsp or Call 416-947-3315 or 1-800-668-7380 extension 3315.

Information about the Equity Initiatives Department of the Law Society of Upper Canada is available at www.lsuc.on.ca.

Tab 7.2.2

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

Advising Clients of their French Language Rights -

Paralegals' Responsibilities

November 2013

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> "Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the *Charter of the French Language* itself indicates, a means by which the individual expresses his or her personal identity and sense of individuality."
>
> *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712 at 748-749

Introduction

The mandate of the Law Society is to govern the legal profession in the public interest by upholding its independence, integrity and honour for the purpose of advancing the cause of justice and the rule of law. Canada is an officially bilingual (French/English) country and paralegals in Ontario have the responsibility to act in the public interest and, when appropriate, to advise their clients of their French language rights.

Constitutional law and quasi-constitutional law recognize English and French as the official languages of Canada and as having equal status in all institutions of the Parliament and government of Canada. In Ontario, legislation and case law recognize the right to proceed in French before most judicial, quasi-judicial and administrative tribunals. This right is particularly important to the Francophone community as it allows its members to defend themselves in their language and encourages them to continue making the necessary efforts to prevent assimilation. It also recognizes the important role played by the Francophone community in the history of this province. Language rights are also of significance to those whose French is not their mother tongue but who wish to exercise their rights to proceed in French.

The Justice Paul Rouleau and Paul Le Vay report *Access to Justice in French* noted the following:

> "Over the last 35 years, successive governments have expanded the right to French language service in Ontario's court system. Those rights are broad and comprehensive. Much effort and investment has gone into

> developing and implementing them, and the courts, Ministry of the Attorney General, and other participants in the justice system, have exhibited goodwill and a commitment of resources in this regard […] The report sets out a road map to make the improvements necessary to allow the justice system to function as it is intended, and as it needs to function, if there is to be effective and meaningful access to justice in French in Ontario. The French Language Services Commissioner recently reported that there continue to be obstacles that make access to justice particularly difficult for French speakers in Ontario. Many key participants in the justice system, including judicial officials, court staff, and lawyers are unaware of these obstacles. As a result, the justice system is not as responsive as it could be in addressing the rights and needs of Ontario's French-speaking community and in ensuring meaningful access to justice in French."

The objective of this document is to describe paralegals' responsibilities to advise their clients of their language rights, to discuss when and in what circumstances that responsibility applies, and to ensure that paralegals are aware of their responsibility in this respect.

This document is not a legal opinion and is not exhaustive. It is current to the date of publication, and all members should keep abreast of legislative and jurisprudential changes.

Source

The Honourable Paul Rouleau and Paul Le Vay, *Access to Justice in French* (Toronto: French Language Services Bench and Bar Advisory Committee to the Attorney General, 2012) available at http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/full_report.pdf .

The Rules of Conduct – A Paralegal's Responsibility

A Paralegal should advise clients who speak French of Language Rights

Rule 3 , *Rules of Conduct*

"**Official Language Rights**

(13) A paralegal shall, where appropriate, advise a client who speaks French of the client's language rights, including the right of the client to be served by a paralegal who is competent to provide legal services in the French language.

Knowledge of the Rule

Paralegals should be cognizant of Rule 3 paragraph 13 and take steps to find out whether their clients want to proceed in French.

The Rule may apply in the following circumstances:

- subsection 19 (1) of the *Constitution Act, 1982* provides that French or English may be used in any court established by Parliament,
- section 530 of the *Criminal Code* provides the right of an accused to a trial before a court that speaks the official language of Canada that is the language of the accused,
- section 126 of the *Courts of Justice Act* requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and
- subsection 5(1) of the *French Language Services Act* for services in French from Ontario government agencies and legislative institutions.

The Rule would also apply when other laws and case law recognize language rights of clients in the judicial and quasi-judicial context. For example, the *Official Languages Act* specifies that English and French are the official languages of the federal courts.

Competency to Provide the Services

Paralegals may not be competent to act if they are unable to provide quality legal services in French to clients who have requested such services or appear to

require such services. These services include understanding clients in their official language and ensuring that relevant documents and evidence are prepared and provided in the official language of clients wherever possible.

In order to provide competent services, the communication should be effective for the client for whom it is intended. A paralegal who is incapable of effectively communicating with clients who request services, or who appear to require or to wish to receive such services in French may not have the "ability and capacity" to deal adequately with legal matters on behalf of the client.

The paralegal who offers services in Ontario in the French language should have sufficient knowledge of the language, including sufficient knowledge of French common law terminology (as opposed to civil law), to competently act for the client. The paralegal should be able to,

- communicate effectively, orally and in writing, with the client;
- where applicable, effectively represent the client before courts, tribunals and/or quasi-judicial tribunals.

If a paralegal does not feel competent to undertake the matter for reasons described above, the paralegal should recognize his or her lack of competence for a particular task and the disservice that would be done to the client by undertaking the task. In such circumstances, the paralegal should either decline to act or obtain the client's instructions to retain, consult, or collaborate with a paralegal or lawyer who is competent for that task.

Checklist

- ❑ *Ascertain whether the client speaks French*
- ❑ *Ascertain whether the client wishes to receive legal services in French*
- ❑ *Ascertain whether the client wishes to be represented in French*
- ❑ *Ascertain your clients rights by:*
    - o *Considering applicable legislation and jurisprudence, if appropriate*

- *Considering applicable rules of conduct*

- ***If you are not competent to offer services to the client in French, provide assistance in finding a paralegal or lawyer or paralegal who is competent to offer the services to the client in French.***

Sources

Rules of Conduct, Law Society of Upper Canada, 2007, http://www.lsuc.on.ca/with.aspx?id=1072

Constitutional and Quasi-Constitutional Language Rights

"Equality does not have a lesser meaning in matters of language. With regard to existing rights, equality must be given true meaning. This Court has recognized that substantive equality is the correct norm to apply in Canadian law. Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada."

R. v. Beaulac, [1999] S.C.R. 768

French Language in Federally Created Courts

The use of the French language is guaranteed in the courts created by the federal Parliament.

The *Official Languages Act* defines "Federal court" to mean "any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament."

"Court of Canada", as defined by the Supreme Court of Canada, means "court established by Parliament" and/or "federal court" and encompasses any federal institution that, by virtue of its organic statute, holds the authority to judge matters affecting the rights or interests of the individual and applies the principles of law. Federal courts are judicial tribunals and administrative tribunals performing quasi-judicial functions.

"Federal courts" include:

- Supreme Court of Canada;
- Federal Court of Appeal of Canada;
- Federal Court of Canada;
- Tax Court of Canada;
- Court Martial Appeal Court.

Federal tribunals are subject to the *Official Languages Act* and include the following:

- Board of Arbitration and Review Tribunal;
- Canada Industrial Relations Board;
- Canadian Artists' and Producers' Professional Relations Tribunal;
- Canadian International Trade Tribunal;
- Canadian Radio-Telecommunications Commission;
- Competition Tribunal;
- Copyright Board of Canada;
- Canadian Human Rights Tribunal;
- National Energy Board;
- National Parole Board;
- Canadian Transportation Agency;
- Immigration and Refugee Board;
- Pensions Appeal Board.

When considering language rights at the Supreme Court of Canada, section 11 of the *Rules of the Supreme Court,* [SOR/2002-156], provides for the use of English or French in oral or written communications before the Court. Services for simultaneous interpretation in both official languages are provided during hearings. In the case of motions heard by a judge or the Registrar, simultaneous interpretation is provided upon request of any party to the motion.

A Client's Constitutional and Quasi-Constitutional Language Rights

Closely linked to the constitutional language rights provided by the *Constitution Act, 1867* and the *Charter of Rights,* the *Official Languages Act* is the focal piece of legislation enacted to protect language rights in Canada. The purpose of the *Official Languages Act* is to,

> (*a*) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;
>
> (*b*) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and

(*c*) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

Part III of the Official Languages Act specifies that "English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court."

It also *imposes* obligations on the government, including,

- the duty on every federal court to ensure that a person giving evidence be heard in the official language of his or her choice;
- the duty on every federal court at the request of any party to the proceedings, to make available simultaneous interpretation of the proceedings, including evidence given and taken;
- the duty on every federal court other than the Supreme Court of Canada, to ensure that every judge or other officer who hears the proceedings is able to understand the official language of the proceeding without the assistance of an interpreter. If both languages are the languages of the proceeding, the judge or other officer must understand both languages without the assistance of an interpreter.

Any person may use either English or French in any pleading or process issuing from any federal court. Written pleadings include allegations by parties appearing for the applicant and the respondent, oral pleadings, memorandums and briefs. However, it does not cover evidence given in connection with written pleadings, since witnesses may testify in the official language of their choice.

Sources

Laws

Section 133 of the *Constitution Act, 1867*, 30 & 31 Vict, c.3
http://www.canlii.ca/en/ca/laws/stat/30---31-vict-c-3/latest/30---31-vict-c-3.html

Subsection 19(1) of the *Charter of Rights and Freedoms, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c. 11
http://www.canlii.ca/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html

Part III of the *Official Languages Act*, RSC 1985, c.31 (4th Supp)
http://www.canlii.ca/en/ca/laws/stat/rsc-1985-c-31-4th-supp/latest/rsc-1985-c-31-4th-supp.html

Section 11 of the *Rules of the Supreme Court*, SOR/2002-156

http://www.canlii.ca/en/ca/laws/regu/sor-2002-156/latest/sor-2002-156.html

Other sources

Vanessa Gruben, "Bilingualism and the Judicial System" in Michel Bastarache, ed., *Language Rights in Canada,* 2nd edition (Cowansville: Les éditions Yvon Blais, 2004) at 157-158.

Official Languages Act, Annotated Version, 2001

Criminal Law

> "Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada."[1]
>
> *R. v. Beaulac*, [1999]1 S.C.R. 768

Language rights protections in the *Criminal Code* are largely set out in Part XVII – Language of Accused, sections 530 and 530.1, Part XXVIII – Miscellaneous, and subsection 849(3) of the *Criminal Code.*

Section 530 sets out the conditions for granting an application by an accused for a judge or a jury who speak the official language of the accused. Section 530.1 enumerates the rights to which an accused is entitled once a section 530 order has been rendered.

The leading authority regarding the rights of the accused under the *Criminal Code* is the Supreme Court of Canada decision in *R. v. Beaulac,* which confirmed that section 530 confers upon the accused an absolute right, upon timely application, to be tried in his or her official language. The following provides an overview of the principles in *R. v. Beaulac.*

Trial in official language

- In order to be tried in the official language of his or her choice, the accused must assert his or her official language by bringing forward an application within the timelines established in section 530 of the *Criminal Code,* with some exceptions.

- The application need not be formal: see *R. v. Dow* (2009), 245 C.C.C. (3d) 368 (Que. C.A.), leave to appeal to S.C.C. refused 245 C.C.C. (3d) vi.

[1] Principle adopted in the criminal law case of *R. v. Beaulac*, *ibid.*, reiterated by the Supreme Court of Canada in the context of the New-Brunswick *Official Languages Act*, S.N.B. 2002, c. 0-0.5 (see *Charlebois* v. *City of Saint John*, [2005] 3 S.C.R. 563).

- The "language of the accused" is the official language to which the accused has a sufficient connection. The accused must be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself. The test to determine whether the accused has a right to a trial in his or her official language is whether the accused has sufficient knowledge of the official language to instruct counsel.

- The accused has a right to a trial in the official language of his or her choice even if the language chosen is not the dominant language. The ability of the accused to speak the other official language is also not relevant.

- An absolute right to a trial in one's official language exists, provided the application is made in a timely manner. The application must be made within delays established in paragraphs 530(1) a), b) and c), which vary with the type of infraction. When the accused fails to apply for an order and it is in the best interest of justice to make an order, the tribunal has the discretion to order the trial of an accused in the official language of his or her choice.

<u>Application in a "timely manner"</u>

- An accused has automatic access to a trial in one's official language when an application is made in a timely manner (within the delays established in section 530 (1) a), b) and c)). When the application is not timely, the judge has the discretion to order the trial in the official language of the accused. In exercising his or her discretion, the judge should consider factors to determine the reasons for the delay. The following questions are considered:
    - when the accused was made aware of his or her right?
    - whether he or she waived the right and later changed his or her mind?
    - why he or she changed his or her mind?
    - whether it was because of difficulties encountered during the proceedings?

- Once the reason for the delay has been examined, the trial judge should consider a number of factors that relate to the conduct of the trial, such as,
    - whether the accused is represented by counsel;
    - the language in which the evidence is available;

- the language of witnesses;
- whether a jury has been empanelled;
- whether witnesses have already testified;
- whether they are still available;
- whether proceedings can continue in a different language without the need to start the trial afresh;
- the fact that there may be one or more co-accused (which may indicate the need for separate trials);
- changes of counsel by the accused;
- the need for the Crown to change counsel; and
- the language ability of the presiding judge.

- Mere administrative inconvenience is not a relevant factor. The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling should not be considered.

Bilingual proceedings

- The accused may also have the right to a bilingual proceeding in some circumstances, such as ,
  - where counsel for the accused speaks only one official language and speaks a different language than the accused; or
  - where the official language of the accused is different from the majority of the witnesses.

Translation of Information/Indictment and other documents

- Where an order for a French or bilingual trial has been made under s. 530, "on application by the accused," s. 530.01 requires that the prosecutor provide the accused with a written translation of portions of the Information or Indictment. If the s. 530 application need not be formal, then surely the s. 530.01 application need not be either.

- While the Crown is not obligated to provide a translated version of every document in the disclosure, it may be that the Court has discretion to order that certain documents be translated in order to allow the accused to "make full answer and defence." See *R. v. Rodrigue* (1994), 91 C.C.C. (3d) 455 (Y.T.S.C.), aff'd 95 C.C.C. (3d) 129 (Y.T.C.A.), leave to appeal to S.C.C. refused 99 C.C.C. (3d) vi.

- In order to ensure an accused's right to a fair trial, a trial judge can refuse to accept into evidence a document that is written in a language other than the accused's chosen official language without the accused's consent or translation: *Boudreau v. New Brunswick* (1990), 59 C.C.C. (3d) 436 (N.B.C.A.)

Self-represented accused

- A judge or justice of the peace must inform a self-represented accused of the right to choose French or English as the language for the preliminary inquiry and trial.

Where an order is granted under section 530 directing that the accused be tried before someone who speaks the official language of Canada that is the language of the accused, section 530.1 applies. It provides as follows:

Written pleadings or documents

- The accused and his or her counsel have the right to use either official language for all purposes during the preliminary inquiry and trial of the accused, in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial.

Witnesses

- Any witness may give evidence in either official language during the preliminary inquiry or trial.

Interpreters

- The court must make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial.

- Counsel should be familiar with s. 14 of the *Charter of Rights and Freedoms* which entrenches the right to the assistance of an interpreter in the constitution. Counsel should also be familiar with jurisprudence concerning the right to *competent* interpretation and the *voir dire* procedure as to a court interpreter's qualifications: *R. v. Tran* (1994), 92 C.C.C. (3d) 218 (S.C.C.), *R. v. Rybak* (2008), 233 C.C.C. (3d) 58 (Ont. C.A.), *R. v. Dutt*, 2011 ONSC 3329 (voir dires) and *R. v. Dutt*, 2011 ONSC 5358 (mistrial due to issues of interpretation).

Judgment

- Any trial judgment, including any reasons given for it, issued in writing must be in either official languages and made available by the court in the official language of the accused.

Judges, juries, prosecutors and other court staff

- Judges, juries, prosecutors (except where the prosecutor is a private prosecutor) and other court staff must be available in either official language.

The *Criminal Code* also provides that any pre-printed portions of a form set out in Part XXVIII of the *Code*, such as warrants and summons, will be printed in both official languages.

Sources

Sections 530 and 530.1, Part XXVIII – Miscellaneous, and subsection 849(3) of the *Criminal Code*, R.S.C. 1985, c. C-46
http://www.canlii.ca/en/ca/laws/stat/rsc-1985-c-c-46/latest/

R. v. Beaulac, [1999] S.C.R. 768
http://csc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1700/index.do

Languages of the Courts of Ontario

"If linguistic duality were a person, today it would be an adult who communicates with others, participates in the democratic process, and cherishes tolerance and diversity; who travels, having acquired experience that is, in many respects, recognized and sought out around the world; who embodies one of Canada's strongest values and works with determination in a changing world. This person still faces many challenges in preserving past achievements and obtaining justice on as yet unexplored fronts."

Office of the Commissioner of Official Languages
Annual Report, Special Edition, 35th Anniversary 1969-2004, Volume 1 at 115

Courts of Justice Act – Use of French and English in proceedings before Courts of Ontario

Sections 125 and 126 of the *Courts of Justice Act* [C.J.A.] provide for the use of English and French in proceedings before the courts of Ontario.

The word "court" in the C.J.A. does not include administrative or quasi-judicial tribunals. See below for a discussion of the language requirements applying to such tribunals.

Sections 125 and 126 of the C.J.A. apply to:

- natural persons;
- corporations;
- partnerships; and
- sole proprietorships.

The following summarizes the language rights provided under sections 125 and 126 of the *Courts of Justice Act*.

Right to bilingual proceeding

- A party who speaks French has the right to request a bilingual proceeding including a judge or judges who speak English and French.

- The right to a bilingual proceeding is a substantive right available to individuals who speak French. However, case law provides that the court has the discretion to order a bilingual proceeding even if the party does not speak French.

- A bilingual proceeding includes the following elements:
  - that the proceeding is heard by a judge who speaks English and French;
  - a hearing held before a bilingual judge and jury is only available in the designated areas mentioned below;
  - if the bilingual hearing is held without a jury, or with a jury in an area named in the designated area below, the evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given;
  - in a proceeding that is not a bilingual hearing without a jury or with a jury in an area named in the designated area below, the court will provide interpretation of any submissions in French or any evidence given by a witness in French, into English;
  - a judge has a discretion to conduct any other part of the hearing in French if it can be conducted in that language;
  - oral evidence given in English or French in an out-of-court examination is to be received, recorded and transcribed in the language it is given;
  - the party does not necessarily have the right to file pleadings in French. For the right to file pleadings in French, see below.

<u>Designated areas for hearing before bilingual judge and jury and pleadings and other documents filed in French</u>

- The right to request a hearing before a bilingual judge and jury is, as of right, available in all areas below (this list may be subject to change from time to time). Pleadings and other documents written in French may be filed in the following areas:
  - The counties of Essex, Middlesex, Prescott and Russell, Renfrew, Simcoe, Stormont, Dundas and Glengarry.
  - The territorial districts of Algoma, Cochrane, Kenora, Nipissing, Sudbury, Thunder Bay, Timiskaming.
  - The area of the County of Welland as it existed on December 31, 1969.
  - The Municipality of Chatham Kent.

- The City of Hamilton.
- The City of Ottawa.
- The Regional Municipality of Peel.
- The City of Greater Sudbury.
- The City of Toronto.

Pleadings and other documents filed in French

- The right to file pleadings and other documents written in French may be filed in the designated areas specified above. Outside the designated areas, consent is required from the other party to file the pleadings and other documents in French.

- Opposing parties or their lawyers or paralegals do not have to file their pleadings and other documents, make submissions in, or communicate with the party who requested a bilingual proceeding, in the language of that party's choice.

- At hearings before a judge and jury in the designated areas mentioned above, at a hearing without a jury, or at examinations out of court, a party or counsel who speaks English or French but not both may request, and the court will provide, interpretation of anything given orally in the other language and translation of reasons for a decision written in the other language.

- Reasons for a decision may be written in English or French. Translations of decisions, judgments or orders are not required, but when requested by a party or counsel who speaks English or French but not both, the court will provide interpretation of anything given orally in the other language at hearings and at examinations out of court, and translation of reasons for a decision written in the other language.

- Costs of translation will not be awarded against the unsuccessful party.

- A document filed by a party before a hearing in a proceeding in the Ontario Court of Justice or in the Small Claims Court may be written in French. A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

The *Provincial Offences Act*

Where a defendant is served with an "offence notice, parking infraction notice or notice of impending conviction in a proceeding under the *Provincial Offences Act,*" and that defendant makes a written request that the trial be held in French, the proceeding in those cases must be conducted as a bilingual proceeding and be presided over by a judge or officer who speaks both official languages. The defendant is deemed to have exercised his right under section 126(1) of the *Courts of Justice Act*.

Sources

Sections 125 and 126 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43
http://www.canlii.ca/en/on/laws/stat/rso-1990-c-c43/latest/rso-1990-c-c43.html

Provincial Offences Act, R.S.O. 1990, c. P.33
http://www.canlii.ca/en/on/laws/stat/rso-1990-c-p33/latest/rso-1990-c-p33.html

Bilingual Proceedings, O. Reg. 53/01, s. 4. (The defendant is deemed to have exercised his right under section 126(1) of the *Courts of Justice Act.*)
http://www.canlii.ca/en/on/laws/regu/o-reg-53-01/latest/o-reg-53-01.html

Quasi-Judicial or Administrative Tribunals

"One of the underlying purposes and objectives of the *French Language Services Act* was the protection of the minority Francophone population in Ontario; another was the advancement of the French language and promotion of its equality with English. These purposes coincide with the underlying unwritten principles of the Constitution of Canada. As already stated, underlying constitutional principles may in certain circumstances give rise to substantive legal obligations because of their powerful normative force."

Lalonde v. Ontario (Commission de restructuration des services de santé) (2001), 56 O.R. (3d) 505

Official Languages Act

As mentioned above in the section on *Constitutional and Quasi-Constitutional Language Rights,* the *Official Languages Act* applies to federal courts (defined to include tribunals) or other bodies that carry out adjudicative functions and are established by or pursuant to an Act of Parliament.

The following summarizes the language rights of individuals appearing before a federal administrative or quasi-judicial tribunal:

<u>Official languages</u>

- English and French are the official languages of the federal tribunals and any person may use those languages in any pleading in, or process issuing from, any federal tribunal.

- A party has the right to speak and be understood by the court/tribunal in the official language of his or her choice.

<u>Judge and other officers</u>

- Every judge or every officer who hear the proceeding must understand the language chosen by the parties without the assistance of an interpreter. The same duties are imposed on the tribunal where the parties choose a bilingual proceeding. This is limited to the adjudicative functions carried out by the tribunal.

Witnesses

- Witnesses have a right to give evidence and be cross-examined in the official language of their choice.

Simultaneous interpretation

- When a party makes a request for translation, simultaneous interpretation of proceedings will be available from one official language to the other, including the evidence given and taken.

Crown

- The Crown must, when it is a party to a proceeding, use in oral and written pleadings before a federal tribunal, the official language chosen by the other party, unless reasonable notice of language chosen has not been given or where the other parties fail to choose or agree on the official language to be used in the pleadings.

Pleadings, forms, decisions

- The term "pleadings" includes oral and written arguments, but excludes evidence presented to the court.

- Pre-printed portions of any form that is used in proceedings and is required to be served by the institution that is a party to the proceedings on the other party must be in both official languages. The details in the form may be added in the official language of the issuer but must indicate that translation is available upon request.

- Every final decision, order or judgment, including reasons must be given simultaneously in both official languages where the decision, order or judgment determines a question of law of general public interest or importance or the proceedings leading to its issuance were conducted in whole or in part in both official languages. Such decisions, orders or judgments do not have to be available simultaneously in both official languages if delays prejudicial to the public interest or resulting in injustice or hardship to any party to the proceedings.

Tribunals Created by the Ontario Government

There are few obligations and very little guidance provided to administrative or quasi-judicial tribunals in the *Statutory Powers Procedure Act,* which only states

that summonses and warrants must be in the "prescribed form (in English or in French)", and that a tribunal has the obligation to make its rules available to the public in both languages. Obligations related to services offered in official languages of administrative tribunals are found under the *French Language Services Act* (the *F.L.S.A.*), supported by unwritten constitutional principles and other principles of interpretation.

The preamble to the Ontario's *French Language Services Act* sets out its underlying rationale as follows:

> Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act […]

Subsection 5(1) of the *French Language Services Act* provides a right to communicate in French with government agencies or institutions of the Legislature.

The definition of "government agency" in the *French Language Services Act* includes a board, commission or corporation the majority of whose members or directors are appointed by the Lieutenant Governor in Council. A government agency includes administrative tribunals, defined by the Ministry of the Attorney General as "an autonomous agency that is independent of the provincial government and is responsible for settling disputes between the Province of Ontario and its citizens. An administrative tribunal is also known as an agency, board or commission." There are approximately 235 administrative tribunals in Ontario.[2]

The Ministry of the Attorney General provides the following online information about French language rights before administrative tribunals:[3]

[2] They are listed at http://www.sciencessociales.uottawa.ca/crfpp/pdf/annexes_10-2005.pdf

[3] http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/french_language_services/services/administrative_tribunals.asp

Under which Act do administrative tribunals have obligations to provide French Language Services?

Section 5. (1) of the French Language Services Act states that : "A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency […]". Section 1. (b) indicates that "government agency" means "a board, commission or corporation the majority of whose members or directors are appointed by the Lieutenant Governor in Council". Therefore, the administrative tribunals, which are boards and commissions, must offer French Language Services in accordance with the French Language Services Act.

What services do administrative tribunals have to offer in French?

The French Language Services Act requires that administrative tribunals provide French language services to the public. This responsibility includes both the services provided to the public by the administrative tribunal's secretariat and the proceedings conducted by an agency, board or commission (i.e. telephone, correspondence, brochures, websites, etc.).

Do designated areas apply to administrative tribunals?

As is the case for services provided by the Government of Ontario, administrative tribunals are required to provide their services in French in accordance with the French Language Services Act. However, the Act also states that "a person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency […]". Since, in most cases, the services of an administrative tribunal are only offered in one location, this means that French Language Services must be offered even if the tribunal is not located in a designated area, if it serves a designated area.

Who pays the costs attributable to meeting linguistic requirements?

Where there is no legal or other requirements, costs attributable to meeting linguistic requirements must be paid by agencies, boards and commissions and cannot be passed along to parties.

Must the secretariat of the administrative tribunals be able to offer French Language Services?

The secretariat of every agency, board and commission must be capable of pro-actively providing French Language Services:

Signs, literature, information and advice should be available in French,

There should be a system of filing and exchanging documents which includes, if necessary, the provision of linguistic assistance or the translation of documents into either English or French,

Agencies, boards and commissions should ensure that French-speaking staff are available on a permanent and reliable basis whether services are delivered by tribunal staff or a private sector service provider.

Why is it important to ensure that the obligations of administrative tribunals under the French Language Services Act are met?

In addition to the importance of providing equal access to tribunal services in French, procedures should reflect the principle that meeting the tribunal's obligations under the French Language Services Act is one of the components of providing a fair hearing.

What are the consequences if the administrative tribunals fail to offer French Language Services?

Failure to meet the legislative obligations could impact on the fairness of proceedings with resulting inconvenience for citizens and for the Government of Ontario, investigation by the Ombudsman, the French Language Services Commissioner or recourse to the courts. Moreover, confidence in the proceedings within the Francophone community could be undermined.

PROCEEDINGS
Do parties have the right to be heard in French?

Parties can choose to be heard in the language of their choice, English or French.

Do proceedings have to be conducted in French if the parties are not French-speaking?

Where there is a public interest, administrative tribunals will have to meet the linguistic requirements of both French and English communities who wish to avail themselves of the right to participate.

Administrative tribunals must conduct proceedings designed in whole or in part:

- *To provide opportunity for participation by individual citizens as members of a community or by organizations representing communities;*
- *To inform a community of the plans or activities of the government or of one of its agencies;*
- *To ensure that a decision process is public.*

Do parties and officials have the right to speak and to be understood in French?

Linguistic requirements will be met at proceedings where all officials and parties can both understand and be understood in either French or English. In other words, all participants – adjudicators, counsel, parties and support personnel – must be able to make the contribution required of them in linguistic comfort.

DOCUMENTS

Do notices sent to parties have to be written in French?

Parties have the right to receive notice in either English or French. Given time constraints and possible mix-ups, the most effective notification will be in both languages in the first instance. If instead, a unilingual notice is given, the English notice should advise in French that notice is also available in French, and the French notice should advise in English that notice is also available in English.

Do notices sent to the public through the media have to be available in French?

Where notice is given through the media, both the French-speaking and English-speaking public should be notified. French-speaking media should be included in the communication strategy of the administrative tribunal.

Should notices advise the parties of their right to a bilingual proceeding?

Notices should advise that participation can be in either language and should ask participants to indicate their language of choice. A mail-back form might be used.

Do the documents used during the hearings have to be available in French?

All aspects of hearings – the use of documents, the making of arguments and submissions, examination and cross-examination – should be available in French or in English. However, any hearing decision has to be conveyed in the language of choice of the client.

Do tribunals have the responsibility to translate ALL documents from the client or in the client's file (referred as Complainant or Appellant in some instances)?

No, the tribunal's responsibility is to provide a translation of any correspondence, response or hearing decisions that they are making and conveying it to the Client, which means documents that the tribunal is producing only.

Do the administrative tribunals' decisions have to be published in French?

Decisions relative to hearings held in both English and French should be published simultaneously in both languages.

Do the administrative tribunals' reports have to be published in French?

Where agencies, boards or commissions publish a report of actual decisions or a summary of decisions, publication should be in both French and English. Where

decisions have an impact on the public, both the French-speaking and the English-speaking public should be advised of decisions simultaneously. If a tribunal makes its decisions available to the public by request only, it must make those decisions available in French if so requested and in a timely manner.

LINGUISTIC NEEDS

Are administrative tribunals required to have French-speaking staff?

Administrative tribunals should have appropriate support services in place throughout the entire process to facilitate the participation of French-speaking clients in hearings. This means French-speaking support staff, arbitrators, prosecutors, as well as any equipment required.

The availability of staff with linguistic competencies eliminates unnecessary translation costs and enables members of the public to understand untranslated lengthy written submissions.

When a panel makes decisions, do all of the members have to understand French?

Some members of the panel must understand the language of the proceedings, others can be assisted by interpreters.

Are there guidelines within respect to the use of linguistic assistance or interpretation services?

There are no specific guidelines in respect with the use of linguistic assistance. But, certain methods of linguistic assistance such as consecutive interpretation, simultaneous interpretation, use of professionals of various backgrounds and qualifications are recognized as being best practices. Different circumstances will require different approaches. At all times, however, linguistic assistance must enable participation by French-speaking persons without prejudice to them and it must be given by professionals. The ad hoc assistance of relatives or other participants is inappropriate and not recommended in a forum where rights are at issue.

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Statutory Powers Procedure Act

There are few language obligations and very little guidance provided to administrative or quasi-judicial tribunals in the *Statutory Powers Procedure Act,* which only states that summonses and warrants must be in the "prescribed form (in English or in French)", and that tribunals must make their rules governing their practice and procedure available to the public in both languages.

Sources

Official Languages Act, R.S.C. 1985, c. 31 (4th Supp)
http://www.canlii.ca/en/ca/laws/stat/rsc-1985-c-31-4th-supp/latest/rsc-1985-c-31-4th-supp.html

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22
http://www.canlii.ca/en/on/laws/stat/rso-1990-c-s22/latest/rso-1990-c-s22.html

French Language Services Act, R.S.O. 1990, c. F. 32
http://www.canlii.ca/en/on/laws/stat/rso-1990-c-f32/latest/rso-1990-c-f32.html

Resources

To find a paralegal who provides legal services to clients in French, you may contact the following:

Law Society Referral Service

The Law Society Referral Service (LSRS) provides members of the public with the name of a lawyer or licensed paralegal who will provide a free consultation of up to 30 minutes to help you determine your rights and options.

If a member of the public needs a licensed paralegal or a lawyer – for anything from a traffic ticket to buying your first home – but don't know where to find one, the LSRS can help.

The new LSRS also includes number of service enhancements that ensure members of the public will have even greater access to legal service providers.

And with the Internet increasingly playing a role in making justice more widely accessible, it is possible for more people to obtain referrals online.

The service can be accessed by calling 1-800-268-8326 or 416-947-3330 (within the GTA) or by accessing the on-line request form.

The service is available from 9 am to 5 pm Monday to Friday.

The phone call, the referral process, and the initial consultation of up to 30 minutes are all free. However consultation is meant to help the client determine her or his rights and options. A lawyer or paralegal should not be expected to do any free work during this time — that is not the purpose of the LSRS. However, the member of the public can certainly ask during the consultation what it might cost to have legal work done.

On-line information about the Law Society Referral Service:
http://www.lsuc.on.ca/faq.aspx?id=2147486372

On-line information in French about the Law Society Referral Service:
http://www.lsuc.on.ca/faq.aspx?id=2147486372&langtype=1036

The Law Society's Lawyer and Paralegal Directory

The online Lawyer and Paralegal Directory is useful if a member of the public has the name of a lawyer or a paralegal and wants to know how to contact him or her. The Directory also allows to find out whether the lawyer or paralegal is capable of offering legal services in the French language.

To access the Directory in English or in French:

http://www2.lsuc.on.ca/LawyerParalegalDirectory/

Contact the Law Society of Upper Canada
General Inquiries
Toll-free: 1-800-668-7380
General line: 416-947-3300
Facsimile: 416-947-5263
E-mail: lawsociety@lsuc.on.ca

Write to the Law Society of Upper Canada
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Consult the Directory of the Association des juristes d'expression française de l'Ontario at :

Available on-line at : www.ajefo.ca

Rules of Professional Conduct
For information about the *Rules of Professional Conduct,* please contact the Law Society of Upper Canada's Practice Management Helpline at : http://mrc.lsuc.on.ca/jsp/pmhelpline/index.jsp or Call 416-947-3315 or 1-800-668-7380 extension 3315.

Information about the Equity Initiatives Department of the Law Society of Upper Canada is available at www.lsuc.on.ca.

TAB 7.3

FOR INFORMATION

LAW SOCIETY FRENCH LANGUAGE SERVICES

BACKGROUND

29. The percentage of lawyers who can provide legal services to their clients in French is higher than the Francophone community in Ontario. Four point eight percent (4.8%) of the Ontario population self-identifies as Francophone while 12% of lawyers indicate that they can provide legal services in French and three percent (3%) of paralegals indicate that they can provide legal services in French.

30. As the province's regulatory body for the profession, the Law Society has committed itself to providing services in French to its members and the public. This report provides an update of the Law Society's services in the French language.

ACCESS TO JUSTICE IN FRENCH – BENCH AND BAR COMMITTEE

31. In June 2012, the Bench and Bar Committee released its *Access to Justice in French* report. Justice Paul Rouleau, Court of Appeal for Ontario, and Paul LeVay, Stockwoods LLP, co-chaired the Bench and Bar Committee. The Law Society was a member of the Bench and Bar Committee. Other members of the Committee included judges of the Superior Court of Justice and the Ontario Court of Justice, representatives of the Ontario government, the National Judicial Institute and the Association des juristes d'expression française de l'Ontario ("AJEFO").

32. Two recommendations focus on the Law Society (the recommendations are presented at Appendix 1) and indicate that the Attorney General, in cooperation with the Law Society and law faculties, should explore measures to support language rights education. In addition, it is recommended that the Law Society consider assessing language rights knowledge in the Licensing Process, develop strategies to enhance the knowledge of

French language rights and services before the court system and promote language rights and access to legal services in French with the public. As described below, the Law Society is in the process of implementing those recommendations.

33. In November 2012, the Ministry of the Attorney General announced the creation of a steering committee with representatives from the justice sector and other organizations to review and develop an implementation plan that responds to the recommendations outlined in *Access to Justice in French* report. The Law Society accepted the Ministry's invitation to participate on the steering committee.

RECENT DEVELOPMENTS

34. The Law Society makes ongoing efforts to enhance access to justice in French, including a bilingual Licensing Process, core regulatory information, forms, website information, numerous publications and various other communications materials in French. The Law Society also collaborates with many partners in the legal system to strengthen French language services within the justice system.

<u>For the Profession</u>

35. The following is a snapshot of services and activities for the profession:
    a. **Licensing Process:** Lawyer and paralegal licensing examinations, along with associated reference materials and other resources, are offered in French. The Law Society also assesses language rights knowledge in the Licensing Process, as recommended by the *Access to Justice in French* report.
    b. **Rules of Conduct:** In 2001, the *Rules of Professional Conduct* were amended to include a commentary to Rule 1.03 (Interpretation – Standards of the Legal Profession) that discusses the obligation of lawyers to inform their clients of their linguistic rights when applicable. The *Paralegal Rules of Conduct* also include a Rule to that effect.
    c. **Advising the Profession about the Rules:** The guides *Advising Clients of their French Language Rights – Lawyers' Responsibilities* and *Advising Clients of their*

French Language Rights – Paralegals' Responsibilities have recently been updated and are available online. This is the first step in the implementation of the *Access to Justice in French* recommendation to collaborate with associations of lawyers and paralegals where possible to develop strategies to enhance the knowledge of lawyers and paralegals of French language rights and services before the court system.

d. **Lawyer and Paralegal Annual Report:** The Lawyer Annual Report was modified to include the following voluntary questions (the Paralegal Annual Report also includes similar questions):

   i. Can you communicate with your clients and provide legal advice to them in the French language?

   ii. Can you communicate with your clients, provide legal advice to them and represent them in the French language?

e. **Continuing Professional Development:** In November 2012, the Law Society, in partnership with AJEFO, the Advocates' Society and the Official Languages Committee of the Ontario Bar Association ("OBA"), organized a very successful accredited CPD Program in the French language – *Plaider une action civile en français*. Approximately 60 lawyers and paralegals attended the program in person while 210 participated by webcast. A second accredited CPD was held on June 21, 2013 entitled *Droit au but- parlons grammaire*. The session was a success with about 165 members registered. The Law Society, in partnership with AJEFO and the Advocates' Society, will hold another CPD program on January 20, 2014 entitled *Plaider une cause pénale en français.* In addition, the Law Society participates in the organizing committee of the annual AJEFO conference.

f. **Internal Capacity:** The Law Society offers services in French, including through the Call Centre, the Practice Management Helpline, the Law Society Referral service, the Registrar's Office and the Policy, Tribunals (bilingual clerks and a number of adjudicators), Equity and Communications Departments. The Senior Management Team also has bilingual capacity.

g. **Communications in French:** The Law Society Portal enables all licensees to choose whether they would prefer to receive Law Society communications in French or English.

h. **Law Society Programs:** Numerous programs offer services in French. For example, the Discrimination and Harassment Counsel Program, the Member Assistance Program and the Career Coaching Program have offered services in French and English since their inception.

i. **Regulatory Forms:** The Law Society has translated most forms mandated under the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*, laws, regulations and by-laws, into French. The website has been updated to significantly increase the number of forms in French.

j. **Collaboration with Associations:** The Equity and Aboriginal Issues Committee is the committee responsible for French language services. AJEFO participates in committee meetings and provides input in policy development. AJEFO is also a member of the Law Society's Equity Advisory Group. The Law Society also participates in meetings of the AJEFO board and the Official Languages Committee of the Ontario Bar Association.

<u>For the Public</u>

36. The following is a snapshot of services and activities for members of the public:

a. **Law Society Referral Service:** The Law Society Referral Service operates bilingually and provides the public with access to bilingual lawyers and paralegals.

b. **Call Centre:** Call Centre staff field public calls in both English and French, with equal response times. From January to June 2013, the average time in minutes to respond to call was as follows:

	French	English
Practice Management Helpline*	n/a	0.08
Resource Centre	0.20	0.20
Complaints Reception	0.19	0.12
Reception	0.24	0.21

c. **Directory of Lawyers and Paralegals:** The online directory of lawyers and paralegals is bilingual and indicates whether a lawyer or paralegal is able to offer services in French.

d. **Commenting about the Law Society Services:** Contact information is available on the Law Society website for anyone who wishes to comment about Law Society services in French.

e. **Public Legal Education:** The Law Society offers at least two public legal education programs in French annually. On September 25, 2013 the Law Society, in partnership with AJEFO and the OBA, celebrated the Jour des Franco-Ontariens et des Franco-Ontariennes by hosting an event with Pascale Daigneault, President of the OBA. The event was attended by at least 85 lawyers, paralegals and members of the public. On March 28, 2013, the Law Society, with the AJEFO and the OBA, celebrated the Journée internationale de la francophonie by hosting an event with Françoise Boivin, the Deputy for Gatineau for the New Democratic Party. On June 19, 2013, the Law Society offered a public education program entitled *Legal Information for Everyone* in French. The program was organized in partnership with Community Legal Education Ontario, the Ontario Justice Education Network and AJEFO and was a success.

Appendix 1

Bench and Bar Recommendations

That the Attorney General, in cooperation with the Law Society and law faculties,

i. explore measures to support language rights education, and French language training, as well as take steps to increase the number of lawyers able to provide legal services in French.

That the Attorney General propose to the Law Society that it,

i. consider assessing language rights knowledge in the licensing process.

ii. collaborate with lawyers' and paralegals' associations where possible to develop strategies to enhance the knowledge of lawyers and paralegals of French language rights and services before the court system.

iii. collaborate with lawyers' and paralegals' associations, courts administration, Legal Aid Ontario, and other relevant stakeholders, to ensure that: (1) new clients are advised of relevant language rights; (2) the cadre of French-speaking lawyers and paralegals in the province is known; and (3) access to these lawyers and paralegals by French speakers who require their services, is facilitated.

TAB 7.4

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR 2013 - 2014

For a list of upcoming events, please consult http://www.lawsocietygazette.ca/events/

THE DOMESTIC APPLICATION OF INTERNATIONAL LAW : WHAT LAWYERS NEED TO KNOW
Rule of Law Event

In partnership with the Canadian Centre for International Justice and the Kirsch Institute

Date: November 21, 2013

Time and location: Donald Lamont Learning Centre (4:00 p.m. – 7:00 p.m.)
Convocation Hall (7:00 p.m. – 8:00 p.m.)

Speakers: Justice Philippe Kirsch, former Judge and first President of the International Criminal Court

The Honourable Ian Binnie, former Supreme Court of Canada Judge

Raj Anand, partner at WeirFoulds and Law Society of Upper Canada Bencher

Tina Lie, partner, Paliare Roland Barristers

Cost: Panel and reception: $150
Reception: $20

BLACK HISTORY MONTH
Date : February 6, 2014
Time and location : Donald Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 7:00 p.m.)

INTERNATIONAL WOMEN'S DAY
Date : March 6, 2014
Time and location: Donald Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 7:00 p.m.)

LA JOURNÉE DE LA FRANCOPHONIE
Date : March 25, 2014
Upper Barristers' Lounge (6:00 p.m. – 8:00 p.m.)

HOLOCAUST REMEMBRANCE DAY
Date : April 28, 2014
Donald Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ASIAN AND SOUTH ASIAN HERITAGE MONTH
Date : May 22, 2014
Donald Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ACCESS AWARENESS FORUM
Date: June 4, 2014
Donald Lamont Learning Centre (4:00 p.m. – 8:00 p.m.)

NATIONAL ABORIGINAL HISTORY MONTH - June 19, 2014
Donald Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

PRIDE WEEK - June 17, 2013
Donald Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)