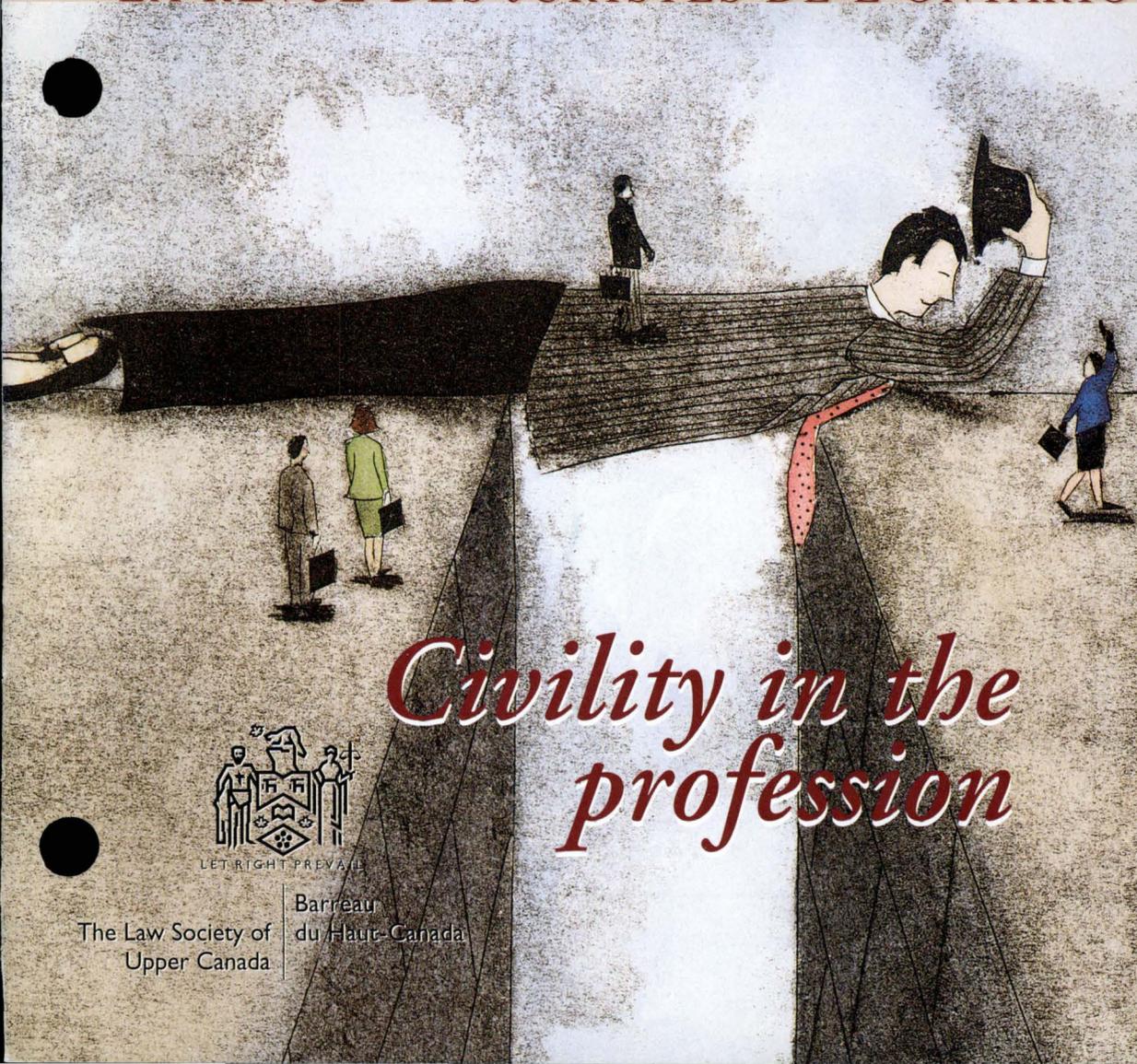


ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO



*Civility in the
profession*



The Law Society of
Upper Canada

Barreau
du Haut-Canada

FOCUS

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LA REVUE DES JURISTES
DE L'ONTARIO

Winter 2008
Vol. 12, No. 3

Hiver 2008
Vol. 12, n° 3

The Ontario Lawyers Gazette (ISSN 1206-5358) is published by the Law Society of Upper Canada, the licensing and regulatory body governing the legal profession in Ontario. Articles appearing in the Gazette do not necessarily represent Law Society policy. Direct all editorial enquiries and correspondence to:
Ontario Lawyers Gazette
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6
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communications@lsuc.on.ca

La Revue des juristes de l'Ontario (ISSN 1206-5358) est publiée par le Barreau du Haut-Canada, corps dirigeant de la profession juridique en Ontario. Les articles publiés dans la Revue ne représentent pas nécessairement la position officielle du Barreau. Pour communiquer avec nous, s'adresser à :
La Revue des juristes de l'Ontario
Barreau du Haut-Canada

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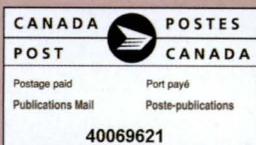
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2009 Nominations Requested



Law Society Medals

The Law Society Medal was established in 1985. The purpose of the award is to recognize outstanding service within the profession, whether in a particular area of practice, the academic sphere or in some other professional capacity. The award may be made for devotion to professional duties over a long period or for a single outstanding act of service in accordance with the highest ideals of the legal profession.



Lincoln Alexander Award

The Lincoln Alexander Award is awarded annually in recognition of an Ontario lawyer who has demonstrated long-standing interest and commitment to the public and to the pursuit of community service on behalf of residents of Ontario. The award was created in 2002 in honour of The Honourable Lincoln M. Alexander, P.C., C.C., O. Ont., Q.C., former Lieutenant Governor of Ontario, Member of Parliament, federal Cabinet Minister, and 2002 Law Society Medal recipient, to reward his dedication to the people of Ontario and the legal community.



Laura Legge Award

In May 2007, Convocation approved the establishment of the Laura Legge Award. This award is to be given annually to a female member of the Law Society who has exemplified leadership within the profession. Laura Legge has been a member of the Law Society of Upper Canada since 1948. She became the first elected female bencher, the first woman ever to serve as Treasurer and is a senior partner of the firm of Legge & Legge. This award has been created to recognize her exemplary professional career, her mentorship of other lawyers, her long-standing service to the Law Society and her admirable contribution to community service.

Nominations for these awards should be submitted in writing with a current curriculum vitae and letters of support to:

Deidre Rowe Brown, Office of the Treasurer, Osgoode Hall,
130 Queen St. West, Toronto, Ontario M5H 2N6

People who have been nominated in past years, but not recognized, may be nominated again. The deadline for nominations is February 27, 2009.

TREASURER'S MESSAGE

Enhancing justice through civility

The focus of this issue of the *Gazette* is civility. Civility is a fundamental part of professionalism and essential to the efficient and fair administration of justice.

In November 2007, The Honourable Coulter Osborne delivered his report on the *Civil Justice Reform Project*. The report made specific reference to civility and the culture of litigation as contributing factors in a process that is often "too expensive, too complex, and too slow." On November 28, 2008, The Honourable Patrick LeSage and Professor Michael Code delivered the results of their investigation of complex criminal cases, entitled *The Report of the Review of Large and Complex Case Procedures*. Concerns about lapses in civility were cited as affecting the length of criminal cases and their orderly administration.

MESSAGE DU TRÉSORIER

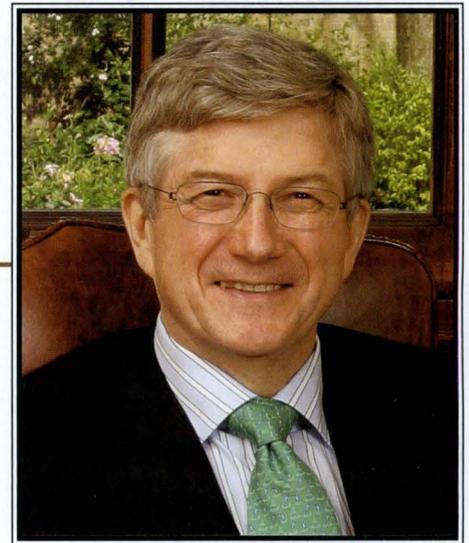
La justice passe par la courtoisie

Le présent numéro de la *Revue des juristes* porte sur la courtoisie. La courtoisie fait partie intégrante du professionnalisme et est cruciale à l'administration efficace et impartiale de la justice.

En novembre 2007, l'honorable Coulter Osborne présentait son rapport sur le projet de réforme du système de justice civile. Ce rapport dénonçait les questions de courtoisie et la culture du contentieux comme des facteurs contribuant à rendre le processus judiciaire coûteux, complexe et trop lent. Le 28 novembre 2008, l'honorable Patrick LeSage et le professeur Michael Code déposaient les résultats de leur enquête sur les affaires criminelles complexes, sous le titre *Rapport sur l'examen de la procédure relative aux affaires criminelles complexes*. Le rapport citait des manquements aux règles de civilité comme source de préoccupation quant à la longueur des procès criminels et à leur déroulement ordonné.

Both reports stressed what we, as lawyers, know. The administration of justice depends upon the parties involved treating each other and the proceedings with respect. Our *Rules of Professional Conduct* place explicit obligations upon us to treat our clients, our colleagues at the bar, and members of the judiciary with candour, fairness and courtesy. By doing this, we promote respect for the justice system.

The majority of our colleagues act responsibly but there have always been a small minority of uncivil and unprofessional lawyers. We recognise that sometimes the pressure of private practice results in unprofessional behaviour on the part of an otherwise professional lawyer. What we cannot and will not tolerate, however, is the systematic use of tactics that have little bearing on the case at hand and add delay and costs to clients and the



Treasurer W.A. Derry Millar

Les deux rapports soulignent ce que nous savons tous en tant qu'avocats. La façon dont se traitent les parties en cause et le respect qu'elles

témoignent au déroulement des instances jouent un rôle précieux dans l'administration de la justice. Notre *Code de déontologie* nous oblige de façon explicite à traiter nos clients, nos collègues à la cour et les membres de la magistrature avec franchise, équité et courtoisie. Ce faisant, nous favorisons le respect de l'appareil judiciaire.

La majorité de nos collègues font preuve d'un comportement responsable, mais on remarque une petite minorité d'avocats impolis et non professionnels. Nous reconnaissons que parfois la pression de la pratique privée peut peser sur le comportement d'avocats qui sont par ailleurs capables de se montrer professionnels. Ce que nous ne tolérons pas, cependant, est l'usage de tactiques qui ont peu de rapport avec un dossier, mais qui ajoutent des retards et des frais aux clients et alourdissent

judicial system. Uncivil behaviour affects access to justice for Ontario's citizens and undermines their confidence in the justice system.

The Law Society is committed to working with stakeholders on the civility issue – the judiciary, the bar, the government, Legal Aid Ontario and other legal organizations – to raise standards. As the regulator of the legal profession, we must ensure compliance with the *Rules of Professional Conduct* on issues of civility and educate our members with respect to this issue.

The Law Society has taken a number of preliminary steps in response to the recommendations of the LeSage-Code Report. First, I have asked our Professional Regulation Committee to consider what specific action we should take to address courtroom misconduct and what we can do to address the issues that underlie the conduct of lawyers. Second, I have met with the President of the Criminal Lawyers' Association (CLA) to discuss how the Law Society and the CLA can work together to develop additional mentoring support for the criminal bar. Third,

I will be meeting with the judiciary to develop a mechanism to facilitate the reporting of conduct issues that arise in the courts and to ensure that the Law Society is aware of the current issues facing judges and lawyers in the courts.

Civility is a priority for the Law Society and the legal profession. Our right to self-governance depends upon fulfilling our legislated mandate to govern in the public interest. We cannot lose sight of the fact that our first priority is to serve our clients, and to do that, we have to be respectful in our dealings with our colleagues and the judiciary. I call on the members of the bar, as individuals, to promote civility through their own actions in their practices.

Finally, I would like to take this opportunity to wish you and your families a safe and happy holiday season. ■



l'appareil judiciaire. Les comportements impolis portent atteinte à l'accès à la justice des citoyens et citoyennes de l'Ontario et minent leur confiance dans le système de justice.

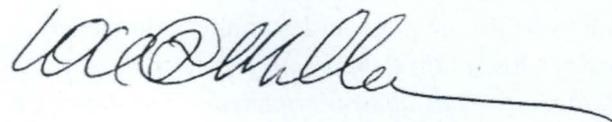
Pour élever les normes, le Barreau s'engage à travailler avec les parties intéressées par les règles de la civilité – la magistrature, le barreau, le gouvernement, Aide juridique Ontario et d'autres organismes juridiques. À titre d'organe de réglementation de la profession juridique, nous devons assurer le respect du *Code de déontologie* sur le plan de la politesse, et sensibiliser nos membres à cette question.

Le Barreau a entrepris des étapes préliminaires à la suite des recommandations du rapport LeSage-Code. D'abord, j'ai demandé à notre Comité de réglementation de la profession de réfléchir à ce que nous devons faire pour nous attaquer au problème de l'impolitesse au tribunal et pour comprendre ce qui motive le comportement des avocats. Ensuite, j'ai rencontré le président de l'association des avocats criminalistes pour voir comment son association et le Barreau peuvent élaborer ensemble de nouvelles activités de mentorat. Enfin, je rencontrerai des juges pour mettre au point un mécanisme visant à faciliter la dénonciation de mauvais

comportements qui surviennent dans les tribunaux et pour assurer que le Barreau est conscient des problèmes actuels auxquels font face les juges et les avocats dans les tribunaux.

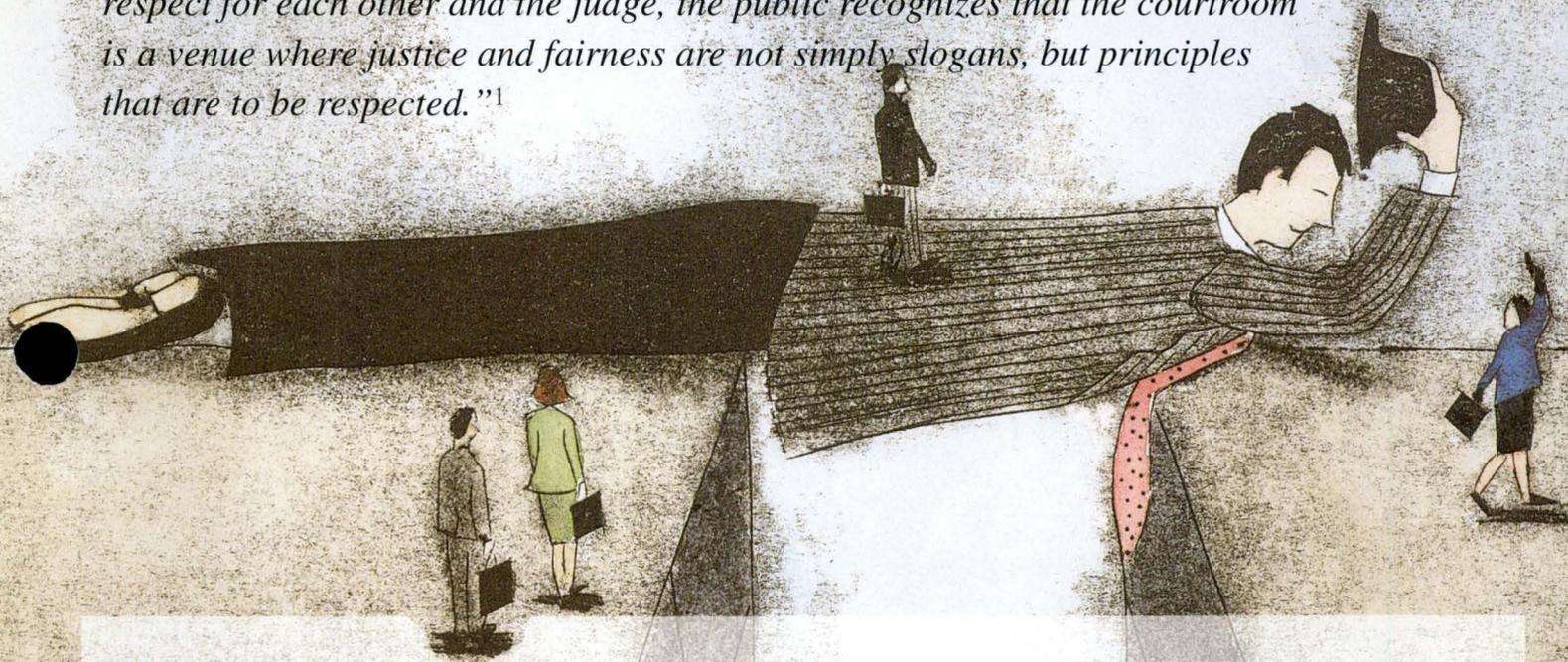
La politesse est une priorité pour le Barreau et la profession juridique. Notre droit à l'autogouvernance dépend de notre aptitude à remplir notre mandat de gouverner dans l'intérêt du public. Nous ne pouvons pas perdre de vue le fait que notre principale priorité est de servir nos clients, et pour ce faire, nous devons témoigner du respect lorsque nous traitons avec nos collègues et la magistrature. Je demande à tous les membres du Barreau de défendre les règles de la civilité par leurs actions personnelles dans leur pratique.

Pour conclure, j'aimerais saisir cette occasion pour vous souhaiter à vous et à vos familles de joyeuses fêtes. ■



Civility: A Cornerstone of Professionalism

Civility can be defined as a range of behaviours including courtesy, dignity, acting in good faith and respect. As officers of the court, lawyers are expected to extend respect for the bench, each other, clients, witnesses, the justice system and the profession itself. In the words of former Chief Justice the Honourable Patrick LeSage, “When lawyers show respect for each other and the judge, the public recognizes that the courtroom is a venue where justice and fairness are not simply slogans, but principles that are to be respected.”¹



The problems of incivility

Two recent reports have focused attention on the lack of civility in the legal profession. Former Associate Chief Justice the Honourable Coulter Osborne, in his report on the *Civil Justice Reform Project*, referred to incivility and the culture of litigation as contributing to a process that is often “too expensive, too complex and too slow,” with adverse effects on access to justice. *The Report of the Review of Large and Complex Case Procedures*, by the Honourable Patrick LeSage and Professor Michael Code released at the end of November, examined how incivility contributes to the complexity and cost of criminal proceedings.

Lawyers have a responsibility, as outlined in the *Rules of Professional Conduct*, “to uphold the standards and

reputation of the legal profession and to assist in the advancement of its goals, organizations, and institutions.” Any incivility shown by lawyers diminishes the public’s respect for the court and the administration of justice, and can destroy the reputation of the lawyer and the profession. With the loss of respect comes a loss of trust. When the public loses trust in lawyers and in the profession, access to justice is threatened.

By definition, members of a profession are held to standards of behaviour. As a self-governing profession, lawyers have traditionally held themselves to high standards of conduct, including ethics and professionalism. If lawyers fail to live up to those standards, then the public begins to question lawyers’ ability and right to continue to be independently governed.

The underlying causes of incivility

Some commentators point to a decline in civility within society generally, with a lack of standards of behaviour beginning in the home, spreading to schools and then into the workplace. As a part of society, lawyers reflect that changing standard.

"As a society, we question doctors, we question lawyers. With a rights-based society, a sense of entitlement can translate to a determination to get what you want, whatever the cost on the part of both clients and counsel," says Danny Melamed, a family litigator with Torkin Manes LLP.

The sheer size of the bar contributes to the phenomenon of incivility in the legal profession as well, resulting in a potential for less collegiality. "In a small town, you have to be careful because you are going to

be seeing the same lawyers and judges throughout your career," says senior litigator Earl Cherniak of Lerner LLP. "It's a bigger issue in bigger centres where you can deal with people you don't know."

"The business of law has changed and that is a huge contributing factor,"

"Unfortunately, they are unable to draw the distinction between being tough-minded and aggressive."

adds Sean Dewart, a litigator with Sack Goldblatt Mitchell LLP. "Clients are demanding more results for lower fees." A focus on the bottom line can lead to the use of sharp and aggressive tactics that are not necessarily going to affect the outcome of the case but may

add to delay and cost.

Clifford Lax of Lax O'Sullivan Scott, agrees, "There are some lawyers who fall into uncivil behaviour naturally because it's a part of their personality to be unduly aggressive. And there are others who fall into it for fear of not being seen to be tough enough in order to win clients. Unfortunately, they are unable to draw the distinction between being tough-minded and aggressive."

Cherniak points to a lack of mentoring as another major cause of incivility. "In my early years at the bar, it was very unusual for people not to have mentors or to be exposed to senior lawyers. When junior lawyers work with senior lawyers they can be trained, they can talk about cases, and learn how to deal appropriately with situations where the other side may not be as civil as one would hope," he says.

What is incivility?

From a regulatory perspective, there are three categories of complaints that raise professionalism issues: 1) incivility; 2) counselling or behaving dishonourably; and 3) misleading the court, another lawyer, the Law Society, a client or other member of the public.

Incivility can include failing to be courteous, failing to be civil or failing to act in good faith. Failing to maintain the integrity of the profession and unprofessional communications are other examples.

Law Society statistics from 2004 to 2007 show that complaints about professionalism have grown over the period from 11 per cent to 30 per cent of all complaints received. As one might expect, the largest portion relates to civil litigation (31 per cent), followed by matrimonial and family law (26 per cent) and real estate (18 per cent).

Incivility can exist between solicitors. In one file, the lawyer acting for a vendor refused to provide a statement of amount owing on a lien registered on the property being sold, and repeatedly insisted that the purchaser should accept his personal undertaking to remove it after closing without a discharge statement. When the purchaser's

solicitor refused to accept this, the vendor's solicitor was sarcastic and abrasive and hung up the phone.

Rudeness, swearing and the use of derogatory language raise obvious concerns. But equally pernicious are behaviours which are more difficult to prove, but lead to feelings of aggravation on the part of opposing counsel, clients and the judiciary, as well as increased costs, delays and frustration in the legal system.

Litigator Sean Dewart of Sack Goldblatt Mitchell LLP paints the following picture:

"Opposing counsel serves a motion that is not remotely urgent on four or five days' notice. You find that you're not available, and call them to seek a short adjournment, but there is no return phone call. Because you haven't heard, you arrange to have someone attend court to request an adjournment, but just in case, you also prepare them to speak to the motion. At court, the judge says, 'Well you're here now, let's proceed.' By failing to observe the usual courtesies, opposing counsel has driven up costs and basically barged to the front of the line. This type of conduct is every bit as uncivil as abusive correspondence and foul language, and far more common."



A lack of mentoring opportunities means that sometimes junior lawyers are not receiving the training and advice that can help them learn to defuse antagonistic situations.

“The single biggest cause of incivility is incompetence compounded by a lack of courage,” says Dewart. “Lawyers who are unsure of themselves lack the courage to get to the issue, and use tactics to play games. Sophisticated clients understand that gamesmanship and wasted costs are inversely proportional to the competence of opposing counsel. Good lawyers get to the issues. Bad lawyers play games and bicker because they don’t know what else to do, or are too afraid to act decisively. You have to zero in on the issues, then have the courage to stand up to your client and say this is what we are going to fight for. A lawyer should not be a mindless champion for their clients, they have to bring a level of control to the table.”

Enforcing standards

The *Rules of Professional Conduct* clearly set out the behaviours expected

of lawyers, and respect for the rule of law and for the administration of justice are integral principles. Lawyers should refer to the specific rules listed on page 10 which set out a lawyer’s obligations around civility when advising clients, when acting as an

“A lawyer should not be a mindless champion for their clients, they have to bring a level of control to the table.”

advocate, in dealing with tribunals and all parties in the course of litigation and in the course of his or her practice, as well as in maintaining the integrity of the profession.

As the regulator, one of the Law Society’s primary responsibilities is to enforce these rules by responding to complaints in a transparent and fair manner. The Professional Regulation division reviews and responds to all complaints it receives, including those that raise issues of civility.

“The Society takes the issues of civility and professionalism very seriously,” says Zeynep Onen, Director of Professional Regulation. “We address complaints about civility and professionalism through both formal and remedial proceedings, depending on factors like the nature and seriousness of the allegation, the lawyer’s response and the lawyer’s history of complaints. But we can only initiate a response once a complaint has been received.”

In the most severe cases, the Proceedings Authorization Committee can order a prosecution, which leads to a Law Society hearing, at which the full range of penalties may be imposed, from warning to licence restrictions, including suspension or loss of licence.

The Public Record

Under the *Law Society Act*, information about complaints and non-disciplinary solutions is confidential. However, this information remains a permanent part

of a lawyer's or paralegal's record with the Law Society and if further complaints indicate a pattern of conduct, Law Society staff will take the record into consideration. Most disciplinary hearings are open to the public, and the hearing schedule and decisions are posted on the Law Society website.

"As the regulator of the profession, the Law Society obviously has a major role to play in enforcing standards," says Treasurer W.A. Derry Millar. "The Law Society needs to work in collaboration with others, including practising lawyers and the courts in establishing and maintaining standards of civil conduct."

Organizations like The Advocates' Society and the Canadian Bar Association have also issued codes of behaviour for their members. The Advocates' Society's publication, *Principles of Civility*, which was developed after widespread consultation with the profession and the judiciary, is highly regarded as setting standards for relationships with opposing counsel and the conduct of trials.

"The Society takes the issues of civility and professionalism very seriously."

Professionalism and education

Education and collaboration with other legal organizations and law schools offer proactive means of disseminating the standards that the legal profession has agreed are proper. These initiatives also help to instil within the profession the importance of maintaining civility at all times, with clients and colleagues.

The Chief Justice of Ontario's Advisory Committee on Professionalism

The Law Society works with the Chief Justice of Ontario's Advisory Committee on Professionalism, which was established in 2000. Composed of representatives of the judiciary, the Law Society and various legal organizations, the Committee acts as a steering committee and clearinghouse for initiatives in education to enhance

professionalism. The committee's goals are to promote professionalism, civility and a spirit of community and collegiality in the legal profession. Colloquia are held twice a year at different law schools. The papers from the committee's colloquia on professionalism are available at www.lsuc.on.ca/latest-news/a/hottopics/committee-on-professionalism.

Continuing Legal Education

Lifelong learning recognizes that there are different development needs that arise at stages throughout a legal career. The Law Society's continuing legal education program contextualizes information about professionalism in substantive courses.

The Advocates' Society recently launched the Institute for Civility and Professionalism with the mandate of developing civility-related CLE, and also offers practical workshops on how to maintain civility when dealing with difficult situations.

Another recent innovation is the Centre for the Legal Profession located at the University of Toronto Faculty of Law, partly funded by the Law Foundation, which, according to

Academic Director Lorne Sossin, will bridge academia and the profession to identify where the best learning can happen and develop resources offering contextualized learning.

Going forward

Co-operation among the Law Society, the profession and the judiciary is necessary to facilitate the effective exchange of information and ensure there is ongoing dialogue around the issue of civility. On its part, the Law Society is continuing to work with other stakeholders to deal more effectively with this issue.

Treasurer Millar has arranged a meeting with the Chief Justices, and the presidents of the Criminal Lawyers' Association, the Crown Attorneys' Association and The Advocates' Society to improve the reporting of conduct issues that arise in courts, and to ensure that the results of the Law Society's actions are effectively communicated to the judiciary, the defence bar, Crown attorneys and the public. This initiative is also intended to ensure that

“As the regulator of the profession, the Law Society obviously has a major role to play in enforcing standards.”

the Law Society is kept aware of the current issues facing lawyers and judges in the courts and benefits from their advice and comments.

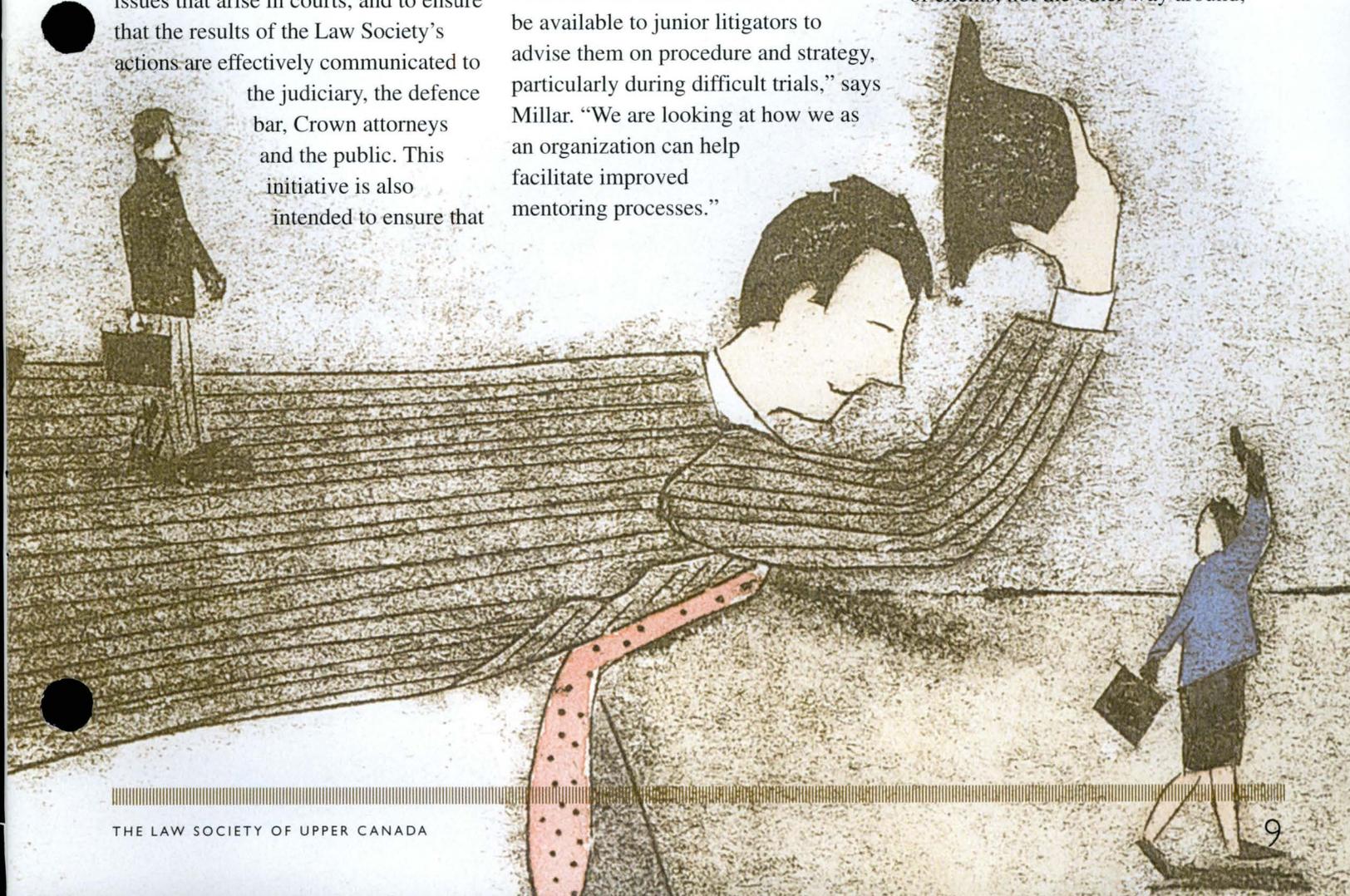
The Treasurer has already met with the president of the Criminal Lawyers' Association to discuss how our two organizations can work together to develop additional mentoring support for the criminal bar. “The Law Society agrees with the point made in *The Report of the Review of Large and Complex Case Procedures* that it is essential that senior members of the bar be available to junior litigators to advise them on procedure and strategy, particularly during difficult trials,” says Millar. “We are looking at how we as an organization can help facilitate improved mentoring processes.”

He has also referred the report to the Professional Regulation Committee, and asked them to review the report and the present approach to lawyer misconduct, and report back to Convocation as to what additional measures the Law Society should take with respect to conduct issues.

“The Law Society takes the issues of civility and professionalism very seriously and is committed to continuing to work with the Attorney General and all who are involved directly in the justice system so that it better serves the people of Ontario,” says Treasurer Millar.

The legal profession as a whole has a vital role to play in ensuring that its membership conducts itself in a professional manner.

“Lawyers, like the laws that enable our livelihoods, exist for the purposes of clients, not the other way around,”



said legal commentator Jordan Furlong at the March 2008 Colloquium on the Legal Profession. "We must work individually and collectively to rehabilitate the public perception of our profession by starting at first principles. We must remind ourselves why we became lawyers in the first place.

For most of us it was to serve the public interest through the pursuit of justice."² ■

¹ The Hon. Patrick LeSage, Q.C. *How to Protect Your Professional Reputation*. (Paper presented at the Advocacy Retreat, May 13, 2005.)

² Furlong, Jordan, *Professionalism Revived: Diagnosing the Failure of Professionalism among Lawyers and Finding a Cure*. (Paper delivered to the 10th Colloquium of the Chief Justice of Ontario's Advisory Committee on Professionalism, March 2008.)

Extracts from the Rules of Professional Conduct

Honesty and Candour

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

Advocacy

4.01 (1) When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

4.01 (2) When acting as an advocate, a lawyer shall not

- (a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party,
- (b) knowingly assist or permit the client to do anything that the lawyer considers to be dishonest or dishonourable,
- (c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence, or inducement affecting the impartiality of the officer,
- (d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate,
- (e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct,
- (f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument, or the provisions of a statute or like authority,
- (g) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal,

- (h) deliberately refrain from informing the tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by an opponent,
- (i) dissuade a witness from giving evidence or advise a witness to be absent,
- (j) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another,
- (k) needlessly abuse, hector, or harass a witness,
- (l) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge, and
- (m) needlessly inconvenience a witness.

Courtesy

4.01 (6) A lawyer shall be courteous, civil, and act in good faith to the tribunal and with all persons with whom the lawyer has dealings in the course of litigation.

Encouraging Respect for the Administration of Justice

4.06 (1) A lawyer shall encourage public respect for and try to improve the administration of justice. Provocative or disruptive conduct by the lawyer, even though unpunished as contempt, might well merit discipline.

Integrity

6.01 (1) A lawyer shall conduct himself or herself in such a way as to maintain the integrity of the profession.

Courtesy and Good Faith

6.03 (1) A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Civility: Ten litigators to watch out for

By Wendy Matheson, Torys LLP

What is it about litigation, and litigators, that makes civility a constant challenge?

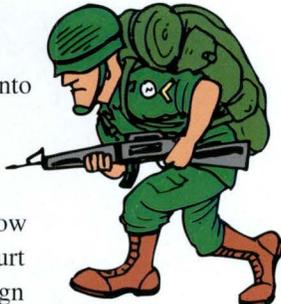
I expect that a panel of expert psychiatrists could muse endlessly on this question. Instead, I have referred to my own experience and that of some of my colleagues, and suggest ten types of uncivil litigators you may encounter in your practice. These categories are not mutually exclusive – you may see litigators with one, some or several of these characteristics. You may see some of the characteristics in yourself.

Are you dealing with a “fight fire with fire” litigator, or a “showman,” or a “fair weather professional?” You may find it easier to address the problem if you recognize the characteristics.

1. The Rambo Litigator

These lawyers are the “I am litigator. I go to war,” litigators.

The concept of professionalism does not come into their practice. They use rudeness as a weapon, and show disrespect in court as if it were a sign of strength against adversity.



A variation on the “Rambo” litigator is the litigator who has only read one line of the *Rules of Professional Conduct* – the part that says you should be a zealous advocate for your client, and has thrown the rest of the *Rules of Professional Conduct* in the garbage.

These litigators do not understand that you can be a zealous, tough and aggressive advocate without being rude or demeaning, or engaging in sharp practice. They do not understand that

there is nothing to be gained by unrestrained aggression in our practice and before our courts.

2. Fighting Fire with Fire Litigators

These litigators may normally be civil, but things seem to escalate out of control. One counsel does something mildly intemperate, the opposing counsel reciprocates, turning it up a notch. The first lawyer reciprocates in turn, and so on, and so on...



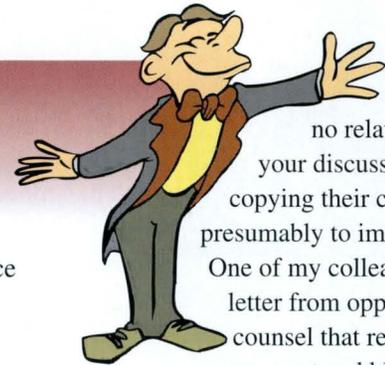
And before you know it, you have an all out war where each side thinks the other is the instigator.

For some people, all it takes is one “govern yourself accordingly,” and the letter war is on.

If you are in a “letter war” or even worse an “e-mail war” with opposing counsel, think about whether the above pattern is the cause, and break the pattern. Choose not to escalate. There is a good chance the other side will not escalate either.

3. The Showman

These lawyers behave civilly when dealing with you on the telephone or in person, and then write “zinger” letters



that bear little or no relationship to your discussions, copying their clients, presumably to impress them. One of my colleagues got a letter from opposing counsel that read: “Your arrogant and block-headed attempt to bludgeon opposing counsel into submission with Rule 57.07 provided my client with a nice bit of entertainment.”

This can also occur in court when their client is present. These lawyers may drive you to put everything in writing. But beware of the risk of becoming a “fighting fire with more fire” litigator.

4. The Novice

These lawyers are young and inexperienced litigators who, in the absence of training and mentoring, flail about in their practice and in court, not yet knowing how to behave.

They therefore occasionally behave badly. It is hoped that they will be given guidance, rather than retribution, from other litigators with more experience.



5. The Mimic

A variation on the novice is the inexperienced litigator who has learned bad habits by bad example, in court, on TV, or in their dealings with other lawyers. These litigators assume that if it is OK for someone else to behave in a certain way, it is an acceptable way to behave. Again, guidance will often produce civility.

6. The Stressed Out Litigator



These litigators are normally civil. But, with the pressure of practice, demanding clients, and the fast pace of life, anyone can get stressed out from time to time. This can lead to a short temper. Anyone can have a bad day – this should not provide a reason to start World War II.

If the bad day was your opponent's, don't over-react. If the bad day was yours, you can fix it. One of my colleagues, uncharacteristically, hung up on opposing counsel. The next day, she gave him a rose.

7. The Pawn



Some litigators act as they do on the direction of their clients, not realizing that you do not "take instructions" on professionalism.

8. The Junior (or "the devil made me do it" Litigator)

These young litigators act as they do because their senior tells them to. When you speak to them about the issue, they will often tell you that they would rather not have done things that way, but they were told to by the senior lawyer on the

file. I know of one young lawyer who quit litigation altogether out of dismay for the approach advocated by the senior litigator at his firm.

This is a particularly problematic category in that the senior lawyer should be providing a good example, not directing the junior to act uncivilly. It is also one example of a situation where the senior lawyers should discuss the issue directly, and hopefully address the real problem.

9. The Bully

These litigators, either as a result of personality or ego, treat people miserably until someone makes them stop. Bullies freely accuse other lawyers of unprofessional conduct. One of my colleagues, whilst still on the phone with opposing counsel, got a fax from opposing counsel accusing him of inappropriate conduct. The advent of e-mail and text messaging has made it much too easy to engage in this conduct.

Bullies are particularly hard on junior lawyers, and may be perfectly civil with senior lawyers on the same matter. Again, in this case, it can be helpful for the senior lawyers to speak about the issue directly. If your junior (or clerk, or staff member) has been subjected to abuse, you should, at the very least, register your dismay with opposing counsel and ask that the conduct not be repeated.



10. The Fair Weather Professional

These litigators behave civilly right up until the point when their case starts to go badly. At that point, they begin to lash



out at everyone, including counsel and even the court, making often extreme and totally unwarranted allegations of misconduct. These storms can be weathered. Ultimately, like all uncivil conduct, this type of behaviour reflects badly on that litigator's case, not yours.

In sum, there is no perfect solution to the problem of the difficult opponent, but the following may help:

- Decide which of these types of litigators you are dealing with.
- Be firm, but never escalate.
- Talk the problem over with other counsel; everyone has had to deal with these problems.
- Remember that life is too short to let yours be ruined by an uncivil opponent.

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Published in The Advocates' Society Journal Vol 25 No 1 (2005)*

Complying with the new client identification and verification of identity requirements of By-law 7.1

Background information on the new requirements

By virtue of their trust accounts, lawyers are targets for money launderers. Amendments to By-Law 7.1 on client identification and verification were approved by Convocation on April 24, 2008. These were originally to come into effect on October 31, 2008, but that period has now been extended until **December 31, 2008**.

The amendments are contained in sections 20-27 of the by-law. The new requirements are based on a Model Rule developed by the Federation of Law Societies of Canada as a part of its initiative to fight fraud. Law societies across Canada are in the process of implementing the Model Rule within their regulatory regimes to create a national, uniform standard for client identification and verification requirements.

Money laundering and terrorist financing

As a result of growing global concern in 2000, the government of Canada passed legislation known as the *Proceeds of Crime (Money Laundering and Terrorist Financing Act)* (the "Act"). Under the Act, regulated persons and entities are required to report suspicious transactions and certain other financial transactions. Reporting persons are also prohibited from "tipping off" their client about having made the report.

Despite concerns expressed by the Federation of Law Societies, in November 2001, the federal government promulgated regulations making the Act applicable to lawyers, requiring legal counsel to secretly report suspicious transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), a federal agency.

The Federation and the Law Society of British Columbia, supported by the Canadian Bar Association, initiated proceedings in the Supreme Court of British Columbia challenging the constitutionality of the legislation and seeking interlocutory relief from the application of the regulations to legal counsel. The Federation contended that the legislation required lawyers to act as secret agents of the state, collecting information about clients against their interests and reporting to a government agency.

The Supreme Court of British Columbia agreed with these concerns and granted an interim injunction such that legal

counsel were not required to report "suspicious transactions" pending a full hearing on the merits of the case. The B.C. Court of Appeal and the Supreme Court of Canada denied the government's application for a stay of the order. Similar orders were granted in other provinces and territories across Canada.

As a result of these interlocutory orders, in May 2002, the Attorney General of Canada agreed to suspend the application of the legislation to all Canadian lawyers (including Quebec notaries), pending a final decision on the merits of the constitutional challenge to the legislation. The hearing of the challenge has now been adjourned generally, and all lawyers in Canada remain exempt from the legislation by virtue of the injunction. The federal government indicated that, following consultations with the legal profession, it intended to put in place a new regulatory regime for lawyers that more appropriately reflected their duties.

In the interim, the Federation, independently of the litigation, launched its own initiatives to fight fraud.

No-cash rule

In 2004, the Federation adopted a "No-Cash" Model Rule. All law societies across Canada have implemented rules restricting lawyers from receiving cash in amounts of \$7,500 or more. The adoption of the No-Cash Rule rendered unnecessary the obligation under the Act to report transactions involving \$10,000 or more in cash that the federal government had sought to impose on lawyers.

Bill C-25

In October 2006, the federal government introduced Bill C-25 which made a series of amendments to the Act. Bill C-25 includes provisions (sections 6 and 6.1) enhancing the client identification, record-keeping and reporting requirements of the Act. In June 2007, new client identification and verification regulations under these provisions were published by the Department of Finance. The regulations purport to regulate how lawyers and others should identify and verify the identity of clients. For a summary of the regulations as applicable to lawyers see http://www.lsuc.on.ca/media/id_fedregulations.pdf.

The regulations were published in final form in December 2007 and come into force with respect to the legal profession in

December 2008. However, the injunction discussed earlier states that **any new regulations do not apply to the legal profession unless the Federation of Law Societies consents.**

The Federation's Model Rule on Client Identification and Verification in many respects codifies the steps that a prudent lawyer would take in the normal course to verify a client's identity. The Model Rule respects the threshold between constitutional and unconstitutional requirements imposed on lawyers when it comes to gathering information from clients: a lawyer must obtain and keep all information needed to serve the client, but must not obtain any information which serves only to provide potential evidence against the client in a future investigation or prosecution by state authorities.

Like the adoption of the No-Cash Rule, national implementation of the Model Rule on Client Identification and Verification will demonstrate that responsible self-governance by the law societies makes federal regulation of the legal profession on this subject matter unnecessary. ■

Resources for Client Identification and Verification requirements

The Law Society has developed various resources to assist lawyers to understand the new requirements and make changes to their practices and procedures to ensure that they comply with them.

Online FAQs

A series of Frequently Asked Questions are available on the website at <http://www.lsuc.on.ca/latest-news/allhottopics/law-societys-new-know-your-client-requirements-enhance-public-protection/>.

Sample forms

We have also developed three sample forms which can be completed online – these are also available on the website at <http://www.lsuc.on.ca/latest-news/allhottopics/new-client-identification-and-verification-requirements/> in Word and as pdfs.

These are:

- Sample File Forms for Verification of Identity where:
 - The client is an individual
 - The client is an organization
- Sample Attestation Form for Verification of Identity for use when the individual is in Canada and the lawyer is not meeting face-to-face with the individual
- Sample Form Verification of Identity Agreement where the lawyer is not meeting face-to-face with the person and the lawyer retains an agent to verify identity.

Steps

The **Steps to Assist in Compliance with the Client Identification and Verification Requirements** document found below is also available on the website at http://www.lsuc.on.ca/medialid_compliancesteps.pdf.

Steps to assist lawyers in complying with the new client identification and verification requirements – By-Law 7.1¹

STEP 1 – IDENTIFY THE CLIENT AND CERTAIN THIRD PARTIES

- When you are retained to provide legal services, you must identify your client and any third-party beneficiary or principal for whom your client acts or represents unless:
 - you are providing the legal services on behalf of your employer;
 - you are acting as agent for another lawyer authorized to practise law in a province or territory of Canada, or a paralegal licensed by the Law Society of Upper Canada who has already identified the client; or
 - you are acting for a client who has been referred to you by another lawyer authorized to practise law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified the client [Section 22, By-Law 7.1].

See also online FAQs: 1, 2, 3, 9, 29, 33

- In order to identify the client and/or third party, you must obtain and keep a record of certain information about that client and/or third party.

See also online FAQs: 4, 6, 8

- If the client and/or third party is an individual, obtain and keep a record of that person's:
 - full name
 - business address and phone number, if any
 - home address and home telephone number
 - occupation or occupations [Subsection 23(1), By-Law 7.1].

See also online FAQs: 4, 5

- If the client and/or third party is an organization² (e.g. corporation, partnership, or trust) obtain and keep a record of:
 - the organization's full name
 - the organization's business address and phone number, if any
 - the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if any
 - the general nature of the type of business or businesses or activity or activities engaged in by the organization unless the organization is a financial institution, government body or a company that is not a private company³
 - the name, position and contact information of all individuals authorized to provide instructions on behalf of the organization [Subsection 23(1), By-Law 7.1].

See also online FAQs: 6, 7

STEP 2 – VERIFY THE IDENTITY OF THE CLIENT AND CERTAIN THIRD PARTIES

- In addition to identifying the client, if you act for or give instructions on behalf of the client regarding the receiving, paying or transferring of funds⁴ you must verify the identity of that client and any third-party beneficiary or principal for whom the client acts or represents unless one of the following exceptions applies [Subsection 22 (1), By-Law 7.1]:
 - you engage in these activities on behalf of your employer [Subsection 22 (2), By-Law 7.1]
 - you are acting as agent for another lawyer authorized to practise law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified and verified the identity of the person [Subsection 22 (2), By-Law 7.1]
 - you are acting for a client referred to you by another lawyer authorized to practise law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified and verified the identity of the person [Subsection 22 (2), By-Law 7.1]
 - the funds being received are:
 - from a financial institution
 - from a public body
 - from a company that is not a private company
 - from a subsidiary of a public body or company that is not a private company where the financial statements of the subsidiary are consolidated with the financial statements of the public body or company
 - from the trust account of another lawyer authorized to practise law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada
 - received pursuant to a court order
 - received as a settlement in a legal or administrative proceeding
 - from a peace officer, law enforcement agency or other public official acting in their official capacity, or
 - for professional fees, disbursements, expenses or bail [Subsection 22(3), By-Law 7.1]

- the funds being paid are being paid :
 - to a financial institution
 - to a public body
 - to a company that is not a private company
 - to a subsidiary of a public body or company that is not a private company where the financial statements of the subsidiary are consolidated with the financial statements of the public body or company
 - to another lawyer authorized to practise law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada in trust on the direction of a client
 - pursuant to a court order or to pay a fine or penalty
 - as a settlement in any legal or administrative proceedings , or]
 - for professional fees, disbursements, expenses or bail [Subsection 22(3), By-Law 7.1]
- you have previously verified the identity of an individual and you recognize the individual [Subsection 23(12), By-Law 7.1], or
- the client and/or third party is an organization and you have previously identified the organization by obtaining the name and occupations of each director of the organization and the name, address and occupations of each person who owns 25% or more of the organization or of the shares of the organization and you have verified the identity of that organization including the individuals authorized to give instructions on behalf of the organization with respect to the matter [Subsection 23(12), By-Law 7.1].

See also online FAQs: 9, 10, 11, 12, 13, 14, 26, 27

- If you are required to verify the identity of a client or third party, you must do so by looking at an original identifying document that you reasonably believe to be reliable [Subsection 23(4), By-Law 7.1].

See also online FAQs: 30, 32, 33

- In this regard, if the client and/or third party is an individual, either before or when you act or give instructions on behalf of the client regarding the receiving, paying or transferring of funds, obtain and review an original government-issued identification of that person that is valid and has not expired such as a:
 - driver's licence
 - birth certificate
 - provincial or territorial health card, where permitted⁵
 - passport, or
 - other similar record [Subsection 23(5) and 23(7) of By-Law 7.1].

See also online FAQs: 15, 26, 29, 32

- If the client and/or third party is a corporation or society or other organization created pursuant to legislative authority no later than 60 days after first engaging in these activities, obtain and review a written confirmation from a government registry as to the existence, name and address of the organization including the names of the directors or officers such as:
 - a certificate of corporate status issued by a public body (e.g. government)
 - a copy of a record obtained from a public body that the organization is required to file annually under applicable legislation (e.g. annual government filings), or
 - a copy of a similar record obtained from a public body that confirms the organization's existence [Subsection 23(6) and 23(7) of By-Law 7.1].

See also online FAQs: 16, 29, 30, 31, 32

- ❑ If the client and/or third party is a trust, partnership or other organization which is not registered in any government registry, no later than 60 days after first engaging in these activities, obtain and review a copy of the organization's constating documents such as:
 - a trust agreement
 - a partnership agreement
 - articles of association, or
 - other similar record that confirms the organization's existence as an organization [Subsection 23(7), By-Law 7.1].

See also online FAQs: 17, 18, 29, 30, 31, 32

- ❑ In addition, where the client is an organization and you are required to verify the identity of the client, you must make reasonable efforts to obtain:
 - the name and occupation or occupations of each director of the organization, unless the organization is a securities dealer
 - the name, address and occupation or occupations of each person who owns 25% or more of the organization or of the shares of the organization [Subsection 23(2), By-Law 7.1].

See also online FAQs: 19, 20, 21

- ❑ If the client is an organization and if you are required to verify the identity of the client, you must also verify the identity of the individuals authorized to provide you with instructions with respect to the matter on behalf of the organization either before or when you act or give instructions on behalf of the client regarding the receiving, paying or transferring of funds, unless you have previously identified and verified the identity of that individual [Subsection 23(12), By-Law 7.1].

See also online FAQ: 28

- ❑ If you are not meeting with the client and/or third party face-to-face, you must have another person verify the identity of the client and/or third party by one of the following methods:
 - If the client and/or third party is an individual **present in Canada**, you may obtain an attestation from a person entitled to administer oaths and affirmations in Canada or from another designated person⁶ who has verified that client's and/or third party's identity by looking at the appropriate identifying document. The attestation consists of a legible photocopy of the independent source identifying document signed by that person and on which that person has indicated:
 - his or her name, occupation and address
 - the type and number of the document looked at by that person to verify identification [Subsections 23(8) – (10), By-Law 7.1].

See the online sample form attestation.

See also online FAQs: 22, 23, 24

- Alternatively if the client and/or third party is **not present in Canada** or if you choose not to use a commissioner of oaths or a designated person, you may retain an agent to verify the identity of that client and/or third party on your behalf, and prior to the agent acting on your behalf enter into a written agreement with that agent specifying the steps that he or she will be taking on your behalf to comply with the verification requirements [Subsections 23(8)-(11), By-Law 7.1].

See also online FAQ: 25 and sample form verification of identity agreement.

- ❑ Obtain a copy of every document that you have used to verify the identity of an individual or organization including copies of documents used by persons acting on your behalf to verify identity [Subsection 23(13), By-Law 7.1].

See also online FAQs: 34, 35, 36 and online sample forms you may use to assist you in identifying and verifying the identity of a client or third party.

STEP 3 – RETAIN RECORDS

- Retain a record of the information that you obtain and copies of the documents you receive to identify and verify the identity of an individual or organization, including attestations and agreements with agents for the longer of:
 - six years following completion of the work for which you were retained
 - the duration of the lawyer and client relationship and for as long as it is necessary for the purpose of providing service to the client [Subsection 23(14) of By-Law 7.1].

See also online FAQ: 37

STEP 3 – WITHDRAW IF APPROPRIATE

- If you reasonably suspect that you would be assisting your client in dishonesty, fraud, crime or illegal conduct, you must immediately cease engaging in any activities that would assist the client in such conduct and, if you are unable to do so, you must withdraw from representing the client [Section 24, By-Law 7.1, and Rules 2.02 (5) and 2.09 of the Rules of Professional Conduct].

See also online FAQ: 33

¹ This document has been prepared to assist lawyers to comply with the client identification and verification requirements of By-Law 7.1. Lawyers should refer to the by-law for a more detailed outline of their obligations. Please note that some of the terminology used to delineate the lawyer's obligations is specifically defined in the by-law.

² The term "organization" is defined as a body corporate, partnership, fund, trust, cooperative or an unincorporated association [Section 20, By-Law 7.1].

³ The terms "financial institution", "public body" and "private company" are defined in section 20 of By-Law 7.1. A "financial institution" includes certain banks, credit unions, loan and trust companies, government entities providing certain financial services to the public and some other similar entities. A "public body" includes a ministry, department or agent of the government of Canada or of a province or territory of Canada, a municipality and some other similar bodies. A "private company" is a company with constating documents that restrict the right to transfer shares, limit the number of its shareholders to 50 and prohibit any invitation to the public to subscribe for its shares or securities.

⁴ The term "funds" includes cash, currency, securities, negotiable instruments (e.g. cheques, bank drafts, money orders and promissory notes) and any other financial instruments that indicate a person's title or interest in such funds [Section 20 of By-Law 7.1].

⁵ A provincial or territorial health card may only be used to verify identity if the use of the card is not prohibited by the applicable provincial or territorial law. In Ontario, subsection 34 (4) of the *Personal Health Information Protection Act, 2004* provides: "No person shall require the production of another person's health card, but a person who provides a provincially funded health resource to a person who has a health card may require the production of the health card." The term "health card" is defined in subsection 34(1) of the Act as "a card provided to an insured person within the meaning of the *Health Insurance Act* by the General Manager of the Ontario Health Insurance Plan".

⁶ Subsection 23(9) designates the following persons as persons who may provide an attestation: a person entitled to administer oaths and affirmations in Canada, a dentist, a physician, a chiropractor, a judge, a magistrate or justice of the peace, a lawyer, a licensee (Ontario), a notary (Quebec), a notary public, an optometrist, a pharmacist, an accountant, a professional engineer or a veterinarian.

When Your Health Affects Civility

Civility in the profession means treating other counsel and clients, and even the general public you encounter, in a way that permits differences of opinion but still treats the other person with respect. Many commentators refer to the erosion of professional courtesy for a variety of reasons. Judge Carl Horn, in his book *LawyerLife*, refers to a more stressed work environment as one cause of this swing in attitudes.

When lawyers calls OLAP, we see various signals that the caller is not well and may be exhibiting anger to others,

speaking harshly and sharply, and communicating, both verbally and in writing, to attack not only the position but also the integrity of the other person. We also receive calls from lawyers who have been subjected to rude and abusive treatment. These callers find it difficult to deal with this behaviour, especially from a colleague in the profession whom we assume will hold true to certain rigorous standards.

Lawyers who act with disrespect may do so for many reasons. With issues of addiction, we see misuse and abuse of

substances (alcohol and drugs) making the person so focused on the all-consuming effort to function, that there are disruptions in their personal life: family breakup, fractured relationships with friends, financial strain, professional problems with claims, complaints and discipline. All of these issues can manifest as incivility. Not getting what one wants in a respectful manner may lead to trying to get what one wants by demanding, name-calling and applying pressure.

People who are not mentally well face the same coping challenges along with

Annual Reports

Staff in the Client Service Centre's Administrative Compliance department have been working for the past six months to prepare the 2008 Member's Annual Report (MAR), which will be sent to over 40,000 lawyers in late December.

Also, for the first time this year, over 2,200 licensed paralegals will be required to complete the new Paralegal's Annual Report (PAR). The development of the PAR is a result of Convocation's approval of amendments to By-law 8, extending reporting requirements to paralegals.

Lawyers and paralegals are required to provide information about their practice-related activities for the year ending December 31, 2008. Those responsible for maintaining trust accounts are also required to provide financial information relating to those accounts on their respective MAR or PAR. The Law Society's *Bookkeeping Guide*, available through the Resource Centre on the website at www.lsuc.on.ca, is an excellent source of information for anyone wishing to know more about how to keep trust accounts in order (see <http://rc.lsuc.on.ca/jsp/bookkeepingGuide/index.jsp> for lawyers and <http://rc.lsuc.on.ca/jsp/bookkeepingGuide/paralegal.jsp> for paralegals).

All those who are subject to the Law Society's annual filing requirements must complete and submit an annual report within 120 days of the March 31st deadline. Anyone who fails to do so is subject to administrative suspension.

E-filing

Over the past few years, the Law Society has actively encouraged lawyers to e-file their MAR. "We've had consistent feedback from our members that they no longer wish to receive the paper version, and we're very pleased that they have made this environmentally friendly choice," says Sandra Vernon-

Noble, Manager, Administrative Compliance. "As a matter of fact, we have seen a steady increase in the incidence of e-filing every single year since we began offering this option." Last year, over 70 per cent of all MARs submitted to the Law Society were filed electronically.

Prior to January 1, 2009 all lawyers and paralegals with a valid e-mail address will be sent an e-mail which contains a link to the Law Society's e-filing web pages. After clicking on the link, users will be prompted to complete an Application for Access and create a password. Once the password is created, users will then be able to log on to the e-filing site. Please note that it is important for individuals to remember the password they create during the Application for Access stage, as it will need to be re-entered in order to gain access to the actual e-filing utility.

All lawyers and licensed paralegals must ensure that the Law Society has their current contact information – including telephone and fax numbers, as well as mailing and e-mail addresses for their home and business. As part of the filing process, lawyers and paralegals should check their MAR or PAR to ensure the information contained in it is correct. (For e-filers, this information should be current within a 24-hour period. Mailed forms will contain contact information which is current as of mid-November 2008.) If the information is not correct or current, a Notice of Change of Information form is included as part of the paper filing package. It can also be downloaded and printed from the Law Society website at http://rc.lsuc.on.ca/pdf/membershipServices/member_changeinfo_en.pdf for lawyers and http://rc.lsuc.on.ca/pdf/membershipServices/paralegal_changeinfo_en.pdf for paralegals.

For those with questions about the annual reporting process, the Client Service Centre can be reached at 416-947-3315 or (toll-free within Ontario) 1-800-668-7380 ext. 3315. The CSC can also assist callers with address change requests. ■

trying to stabilize their mood and hold on to some level of self-esteem. Sometimes, this is done with misuse or abuse of substances. Often, they try to function without adequate psychological or psychiatric help, which leads to uncharacteristic, uncivil behaviour.

Notable changes can occur when callers get help, either medically or professionally, and/or obtain peer support. Anger, addiction, mental wellness and other issues are dealt with. Bursts of emotion can still manifest as incivility but identifying the trigger and then working on strategies to deal with that trigger can and does lead to respectful and courteous

behaviour. It can be a process, but is one that yields results.

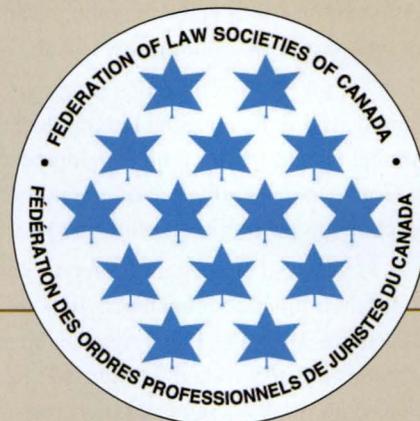
The Ontario Lawyers Assistance Program (OLAP) is a 24-hour confidential service that assists lawyers, law students and their immediate families with issues of stress, burnout, addictions and mental wellness issues. The OLAP website is at www.olap.ca. To contact the Program Manager, Leota Embleton, MSW, or Case Managers, Doron Gold, LLB and Terri Wilkinson, LLB, RN, please call 1-877-576-6227. To speak to the Volunteer Executive Director, John Starzynski, LLB, please call 1-877-576-6227.



Visit us at:
www.olap.ca

Federation of Law Societies' arguments in defence of solicitor-client privilege upheld by Supreme Court Decision

SOLICITOR-CLIENT PRIVILEGE IS FUNDAMENTAL TO OUR SYSTEM OF JUSTICE. YET DESPITE THIS SIGNIFICANCE, ENCROACHMENTS ON PRIVILEGE ARE ON THE RISE PRIMARILY DUE TO THE ESCALATION OF COMPETING CONCERNS SUCH AS COMBATING TERRORISM, ANTI-MONEY LAUNDERING EFFORTS AND ACCESS TO INFORMATION RIGHTS.



Although Canadian courts have traditionally been strong defenders of privilege, ongoing vigilance is required to ensure against subtle but persistent threats. The Law Society and the Federation of Law Societies of Canada both have long histories of intervening in cases to protect solicitor-client privilege.

Most recently, the Federation of Law Societies, with the support of the Law Society, successfully intervened at the Supreme Court of Canada in the case of the Privacy Commissioner of Canada v. Blood Tribe Department of Health.

The case involved a dismissed employee of the Blood Tribe Department of Health who requested access to her

personal employee file as she suspected her employer had collected inaccurate information and used it to discredit her.

When the request was denied, the employee filed a complaint with the Privacy Commissioner. All records were provided to the Commissioner except for those over which the employer claimed solicitor-client privilege. The Commissioner then ordered production of the privileged documents pursuant to s. 12 of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"). Section 12 grants the Commissioner power to compel the production of any records "in the same manner and to the same extent as a superior court of record."

The employer applied for judicial review of the Commissioner's decision and the case made its way to the Supreme Court where the Federation requested intervener status.

The Privacy Commissioner asserted that the 'court-like' powers granted to it by PIPEDA gave it the right to review documents over which solicitor-client privilege is claimed to determine whether the claim is justified.

The Federation disagreed, seeing the Commissioner's request as an encroachment on privilege and arguing that the case must be considered from the client's perspective. This position is summarized in the Federation's factum:

The Federation challenges the assertion of the Appellant that adjudication of a claim of privilege is not an infringement upon the privilege. Client confidence is the underlying basis of the privilege, and infringement must be measured through the eyes of the client. To a client, compelled disclosure to an adjudicator, even if not disclosed further, still constitutes an infringement on privacy.

A key point in the case was differentiating the Commissioner's function from that of a court. The Federation argued that although

Recent Federation interventions on solicitor-client privilege at the Supreme Court

R. v. Brown, 2002 SCC 32, [2002] 2 S.C.R. 185

Maranda v. Richer, [2003] 3 S.C.R. 193, 2003 SCC 67

Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink, [2002] 3 S.C.R. 209, 2002 SCC 61

The work of the Federation in defence of solicitor-client privilege is possible thanks to the generous donation of time and resources by members of the legal profession from across Canada.

administrative decision-makers are included in the justice system, they are not like a judge as they are not independent of the state, and they do not “share the courts’ fundamental responsibility for the fair and effective administration of justice, including protection of the substantive right of privilege”.

The Supreme Court unanimously agreed with the Federation’s argument. According to its decision:

An adjudication of a claim of privilege by the Commissioner, who is an administrative investigator not an adjudicator, would be an infringement of the privilege. Client confidence is the underlying basis for the solicitor-client privilege,

and infringement must be assessed through the eyes of the client.

To a client, compelled disclosure to an administrative officer, even if not disclosed further, would constitute an infringement of the confidentiality. The objection is all the more serious where, as here, there is a possibility of the privileged information being made public or used against the person entitled to the privilege.

The Supreme Court went on to emphasize the importance of solicitor-client privilege to the justice system: “Solicitor-client privilege is fundamental to the proper functioning of our legal system . . . experience shows that people who have a legal problem will often not

make a clean breast of the facts to a lawyer without an assurance of confidentiality “as close to absolute as possible.” Without that assurance, access to justice and the quality of justice in this country would be severely compromised.”

The significance of this case does not lie in the Supreme Court’s reaffirmation that solicitor-client privilege is fundamental to an effective justice system — this is an accepted position in Canadian courts. The significance lies instead in the recognition that privilege must remain as absolute as possible. The wholesale abandonment of solicitor-client privilege in Canada is unlikely — however, erosion by degrees is an ongoing threat. ■

New complaints process information sheet now available

One of the Law Society’s most important responsibilities is to respond to complaints about lawyers and paralegals. Our complaints process is principled and balanced to ensure fairness to all parties – while at all times protecting the public interest.

The Law Society reviews and considers every complaint received; however, we do not investigate every complaint.

Very few complaints lead to public disciplinary proceedings. The majority of complaints are closed or resolved at intake or by our Complaints Resolution department.

Early resolution of complaints

Many of the complaints the Law Society receives involve communication issues

between lawyers and their clients or another lawyer. These cases can often be resolved at an early stage.

In appropriate cases, the Law Society will contact the lawyer on receipt of a complaint to explore the opportunity for early resolution. Early resolution can assist in repairing relationships with the client and is generally less expensive and time-consuming than the more formal responses required in an investigation.

Duty to respond

Regardless of the severity of the complaint or the apparent merits of the complaint, lawyers have a duty to respond promptly to all communications from the Law Society. Prompt response may also help with

an early resolution. The obligation to respond to our investigators includes providing information that is confidential and/or covered by solicitor-client privilege. Disclosure to the Law Society does not constitute a waiver of solicitor-client privilege. Subject to the exceptions in the *Law Society Act*, we will not disclose information gathered in an investigation.

More information available on the Law Society website

Most lawyers are very concerned when they learn they are the subject of a complaint. The Law Society has recently prepared a detailed information sheet about our complaints process to help lawyers understand the process and their responsibilities. The information sheet is available at www.lsuc.on.ca under the Lawyer Regulation tab.

Justice bilingue en Ontario

DURANT LE DERNIER CONGRÈS DE L'AJEFO, M^e JOSÉE BOUCHARD, CONSEILLÈRE PRINCIPALE EN MATIÈRE D'ÉQUITÉ POUR LE BARREAU DU HAUT-CANADA, PRÉSIDAIT UNE CONFÉRENCE SUR L'ACCÈS À LA JUSTICE POUR LE JUSTICIABLE FRANCOPHONE EN ONTARIO ET AU QUÉBEC.

Son panel était formé de M^e Gérald R.

Tremblay, bâtonnier du Québec, de M^e Laurie Joe, des services juridiques de l'ouest d'Ottawa, de M^e Louise Aucoin, présidente de la Fédération des associations de juristes d'expression française de common law, et de M^e Mark Power, du cabinet Heenan Blaikie.

M^e Gérald R. Tremblay, qui a participé à la

rédaction d'un rapport sur l'accès à la justice en langue anglaise à Montréal, a tiré plusieurs parallèles entre la situation de la minorité anglaise au Québec et de la minorité française en Ontario. M^e Tremblay a souligné les valeurs qui devraient motiver les mesures d'amélioration de l'accès à la justice dans la langue de la minorité linguistique. Il a cité Montréal où on voit régulièrement dans des procès les avocats et avocates plaider indistinctement en français et en anglais sans problème. On y voit aussi que les demandes de s'exprimer en anglais par les anglophones qui ne sont pas représentés devant un tribunal judiciaire ou administratif sont en général



Les panélistes sur l'accès à la justice au Congrès de l'AJEFO, M^{es} Josée Bouchard, Mark Power, Laurie Joe, Gérald Tremblay, Louise Aucoin.

bien accueillies. Selon le bâtonnier, c'est un signe de bonne santé sociale que de pouvoir dire aux membres de sa minorité qu'on peut les comprendre dans leur langue et les servir dans cette langue au besoin. Comme l'a bien dit M^e Bouchard en présentant son premier panéliste, vu d'ici, le Québec est un modèle à suivre en termes d'accès à la justice en français en Ontario.

M^e Laurie Joe a donné plusieurs exemples des difficultés que rencontrent les personnes qui cherchent à se faire servir en français dans son district et pour qui l'obstacle de la langue empêche d'avoir accès à la justice. Elle a donné l'exemple d'une femme africaine

francophone devant décrire dans un anglais encore approximatif des événements traumatisants qu'elle a subis dans son pays pour avoir le statut de réfugiée et d'un travailleur de Kapuskasing dont la langue oscille entre le français et l'anglais. Sur les 80 cliniques d'aide juridique en Ontario, seulement cinq offrent des services en français. Les autres n'en fournissent que s'il y a un juriste bilingue et disponible. M^e Joe aimerait un système de cliniques où chacun pourrait s'exprimer dans la langue officielle de son choix et où il ne serait pas nécessaire de faire des demandes de financement d'année en année pour pouvoir offrir des services en français.

M^e Louise Aucoin a expliqué que si le projet de loi C-13 modifiant le *Code criminel* est adopté, il accorderait le droit à l'accusé d'obtenir une traduction de la dénonciation et de l'acte d'accusation, et d'être entendu dans sa langue par un juge et un jury. Pour le moment, les obligations linguistiques judiciaires varient d'une province à l'autre. En Ontario, les deux langues officielles doivent être utilisées dans les régions désignées bilingues, mais la pénurie de juges francophones ne permet pas de répondre aux besoins. M^e Aucoin a proposé, pour améliorer le système de nomination des juges, d'évaluer le nombre de juges bilingues requis pour assurer un accès à la justice égal en français comme en anglais. À l'heure actuelle, les gestionnaires, dont les juges en chef, se basent souvent sur la demande réelle en français et non sur la demande possible, et ne connaissent pas toujours cette information. Elle a également proposé qu'il y ait un mécanisme permettant au ministre de la Justice de demander des candidats et

candidates bilingues au comité de nomination lorsqu'on constate une pénurie de juges bilingues. Enfin, il faudrait évaluer le bilinguisme des juges et identifier les candidats et candidates bilingues pour tenir compte du bilinguisme dans le processus de nomination.

M^e Mark Power a parlé de deux moyens pour financer les recours judiciaires visant à faire reconnaître les droits linguistiques au Canada : la provision pour frais et le programme d'appui aux droits linguistiques. La provision pour frais est une somme d'argent que le tribunal ordonne à quelqu'un de verser pour payer les honoraires juridiques et les déboursés de l'autre partie avant la fin du litige, peu en importe l'issue. Ce genre d'ordonnance est autorisé en particulier en droit de la famille ou dans le cadre d'un renvoi devant la Cour suprême du Canada, mais il peut arriver que le tribunal l'autorise dans des cas non prévus par la loi, comme ce fut le cas dans *Colombie-Britannique (ministre des*

forêts) c. Bande indienne Okanagan où six des neuf juges ont accordé une provision pour frais en droit public en établissant les trois critères suivants pour l'obtenir : La partie n'a pas les moyens de présenter sa cause; la demande est fondée *prima facie*; la demande dépasse l'intérêt des parties et les questions en jeu n'ont pas été tranchées. La Cour suprême a resserré ces critères dans *Little Sisters Book and Art Emporium c. Canada (Commissaire des Douanes et du Revenu)* ce qui la rend très difficile à obtenir. M^e Power suggère de la demander en dernier recours après avoir épuisé toutes les autres possibilités de financement. Entretemps, le gouvernement fédéral a annoncé que le mandat du Programme de contestation judiciaire serait repris par le nouveau Programme d'appui aux droits linguistiques qui verra le jour en 2009. Avec un budget de 1,5 M\$, ce programme financera les frais juridiques de recours en reconnaissance de droits linguistiques. ■

La plaidoirie : un art et non une science

LE PRÉSENT ARTICLE EST UN RÉSUMÉ DES GRANDES LIGNES D'UN ATELIER SUR LA PLAIDOIRIE OFFERT LORS DU CONGRÈS DE L'AJEFO EN AOÛT 2008.

Dans un cabinet, la préparation d'un procès est un moment fébrile durant lequel il est essentiel de suivre certains principes de base si l'on veut faire bonne figure. Outre une bonne connaissance des règles de droit de la preuve, il faut bien maîtriser la théorie de sa cause pour faire passer un message qui soit clair et constant tout au long du procès. Durant le procès, on s'abstient de fixer son regard sur de longues questions écrites et on prête plutôt attention aux témoins, que l'on s'assure de bien traiter pour les mettre à l'aise. Il faut garder à l'esprit que de nombreux éléments peuvent influencer le témoin et qu'en cas de doute sur la véracité de ses propos, il serait plus juste d'attaquer le témoignage que le témoin. Par ailleurs, vaut mieux éviter les questions suggestives (qui contiennent des réponses), sauf pour les faits admis puisque cela risquerait d'éprouver la patience du juge et de mettre en jeu sa propre crédibilité. Il n'est jamais bien avisé de risquer sa

réputation pour un avantage qui s'avérerait temporaire. Dans l'esprit des règles de la primauté (primacy) et de la proximité temporelle (recency), il faut prendre garde de ne pas passer trop vite sur les éléments de preuve qui sont importants. Il est donc bon d'arrêter l'action sur les points critiques pour bien les faire ressortir. Pour cela, l'avocat ou l'avocate doit savoir distinguer le pertinent du superflu. Une méthode efficace pour ce faire est de peindre la scène au juge pour mettre la cause en contexte avant de demander un narratif de l'action. Dans les cas où une affaire semblerait trop compliquée pour la présenter simplement, il est avisé d'accepter une conférence préparatoire pour la simplifier.

Le temps vient, en contre-interrogatoire, de réparer ou de minimiser les propos qui ont jusqu'ici endommagé une cause. À cet effet, on en fait ressortir les faits neutralisants et on discrédite la preuve et la crédibilité des témoins. Pour bien

choisir les sujets du contre-interrogatoire, on analyse l'impact des faits au dossier sur sa cause et on fait ressortir si possible d'abord les faits qui seront acceptés facilement par le témoin, suivis de ceux qui ne peuvent être niés avant d'affronter le témoin avec les questions plus hostiles. En contre-interrogatoire, au contraire de l'interrogatoire, on évite les questions non suggestives qui pourraient inviter le témoin à partager son opinion, mais on écoute bien les réponses et on insiste pour que le témoin réponde aux questions. Si on désire attaquer la crédibilité du témoin, on utilise avec prudence la technique du reproche consistant à revenir sur des déclarations antérieures incompatibles en demandant au témoin de s'engager envers son propre témoignage. Le reproche se fait aussi en présentant la preuve d'une caractéristique physique ou morale et en démontrant chez le témoin un parti pris dans la cause. Le but ultime dans un contre-interrogatoire sur le fond doit être réaliste. On peut organiser son dossier par sujet plutôt que de présenter un narratif. On peut aussi commencer chaque partie par les faits détaillés et utiliser les questions concluantes

avec prudence et si possible, et idéalement, se garder un coup de théâtre pour la fin.

En conclusion, la plupart des juges le diront, la règle d'or d'un procès réussi est une bonne préparation. Celle-ci tient compte du juge qui entendra l'affaire. Il se trouve fort probablement que le juge ne connaîtra que très peu de choses sur une cause qui commence. Les plaidoiries doivent être bien informées sur les enjeux et la pertinence de la preuve, et présentées dans un langage clair et simple. L'avocat ou l'avocate doit évaluer son dossier du regard de la partie adverse pour bien connaître les deux côtés de la médaille. Certains juges conseillent de déposer un exposé écrit des questions de droit à la fin et non au début, pour se donner la chance de le changer en cours de route. Enfin, les juges sont très sensibles à la courtoisie et au professionnalisme entre juristes, d'où l'importance de connaître le *Code de déontologie* du Barreau. L'art de plaider, c'est aussi l'art de faciliter le travail du juge pour qu'il rende les décisions les plus justes possible. ■

Langue de préférence français ou anglais?

Le personnel du Barreau travaille fort pour offrir au public et aux juristes francophones des services en français. Les documents officiels du Barreau sont publiés en français et en anglais, le personnel répond au téléphone dans les deux langues et la plupart des départements comptent des employé(e)s bilingues. Si vous désirez recevoir les communications du Barreau en français, comme le formulaire de déclaration annuelle, vos avis de cotisation ou toute autre correspondance officielle, il vous incombe d'en faire la demande expressément. Le processus pour faire changer votre langue de préférence au français est simple et facile, mais pas automatique. Vous n'avez qu'à communiquer avec le Centre de ressources à records@lsuc.on.ca ou à appeler le 416-947-3315 ou le 1-800-668-7380, poste 3315 pour demander le changement. Merci de soutenir les services en français du Barreau!

EN BREF

Budget 2009

Le Conseil a approuvé le budget pour 2009. Les membres verront leur cotisation annuelle augmenter légèrement pour passer à 1 703 \$.

Barreau et Fédération

Le Conseil a donné son aval au mémoire du Barreau sur la consultation du Groupe de travail de la Fédération des ordres professionnels de juristes sur l'attestation des diplômes canadiens en common law. La consultation de la Fédération porte sur des questions de formation juridique et sur l'approbation des diplômes en common law aux fins d'intégration des barreaux et des programmes d'admission.

Modifications

Le libellé de la Règle 3 du *Code de déontologie* portant sur les règles de publicité a été modifié pour offrir un énoncé plus concis des concepts clés en la matière. Le Règlement administratif 7 a été modifié pour traiter des associations entre avocats et parajuristes.

Identité des clients

Le Barreau a prolongé la date d'entrée en vigueur des obligations relatives à la vérification de l'identité des clients et clientes au 31 décembre 2008.

Souligner la diversité

Le Conseil a approuvé un financement de 49 900 \$ pour un projet visant à recenser les expériences des premiers avocats des divers groupes minoritaires qui ont été assermentés au barreau de l'Ontario.

La politesse : un vernis qui va loin

La scène se passe dans un tribunal entre deux avocats qui se connaissent et qui ont l'habitude de s'affronter. L'avocat de la défense se met à insulter son collègue de la poursuite qui lui répond sur le même ton. Le juge intervient : « Maîtres, veuillez vous souvenir que vous êtes membres de la même profession et que cette profession vous confère un statut particulier. Veuillez en assumer la responsabilité et demeurer professionnels ! » Bien sûr, il s'agit d'une scène fictive, mais il arrive malheureusement que des avocats oublient la règle 4.01 du *Code de déontologie* tout comme son commentaire et le paragraphe (6) sans oublier la règle 6.03, qui traitent tous de bonne foi, d'attitude franche, droite, courtoise et respectueuse, de dignité et d'étiquette.

Selon la plupart des avocats plaidants, un bon plaideur présente clairement ses arguments à partir des faits et des précédents appropriés, et, fort de sa préparation, se garde de tomber dans la petitesse de l'impolitesse. L'avocat qui se fait rappeler à l'ordre par le juge risque de perdre des plumes et d'afficher un simple manque d'éducation plutôt que l'autorité d'un avocat bien informé qui,

comme le dit le Code, représente son client ou sa cliente avec fermeté et dignité, dans le respect des lois en vigueur, tout en maintenant à l'égard du tribunal une attitude franche, droite, courtoise et respectueuse.

Lors du dernier congrès de l'AJEFO, l'ancien juge en chef de la Cour de justice de l'Ontario, Brian Lennox, a parlé de courtoisie et de respect durant l'atelier de formation sur l'art de plaider qui, pour lui, est non seulement une technique, mais une question d'éthique. Le bon plaideur est courtois. Le bon plaideur songe dès la signature du mandat à conjuguer les intérêts du client avec son devoir éthique.

Il peut arriver que certains avocats soient plus facilement courtois envers les juges qu'entre eux. C'est que la fonction du juge est très différente et sa nature est neutre. Le juge n'est pas dans le champ de tir des animosités entre avocats. Comme les clients ont des droits et des besoins parfois contradictoires, chaque avocat fait de son mieux pour défendre les intérêts de son client « contre » les intérêts de l'autre. Cette attitude négative risque d'engendrer des conflits. Il devient nécessaire alors de prendre du

recul afin de ne pas s'approprier les conflits des clients et d'éviter une interaction agressive. Bien sûr, l'avocate ou l'avocat a le devoir de soulever résolument tous les points, de faire valoir tous les arguments et de poser toutes les questions, si déplaisantes soient-elles, qu'il estime favorables à la cause de son client ou de sa cliente, mais il doit s'acquitter de cette obligation par des moyens droits et honorables avec courtoisie et respect (commentaire, règle 4.01).

Règle générale, le bon plaideur accepte les demandes d'ajournements de la partie adverse avec courtoisie si cela ne cause pas de préjudice à son client; il ou elle fournit toutes les pièces nécessaires à la compréhension du dossier dans un temps raisonnable; il ou elle rend les appels promptement, et traite l'autre avocat et l'appareil judiciaire en témoignant du respect.

La courtoisie est un vernis qui va loin. La réputation d'un avocat ou d'une avocate est sa meilleure carte de visite. Son sens de la courtoisie, de l'écoute et du respect de l'autre l'aidera à bien gérer ses activités professionnelles et à participer au maintien de l'ordre nécessaire à la protection des droits du public. ■

CONVOCATION November 2008 Highlights

Law Society budget introduces minimal fee increases for 2009

Convocation approved its 2009 budget with modest annual fee increases of three per cent for lawyers and 6.5 per cent for paralegals. As a result, the 2009 fee for a practising lawyer will increase by \$50, from \$1,653 to \$1,703, while the fee for licensed paralegals will increase by \$55, from \$845 to \$900. See related story on page 32 for more details.

2009 LibraryCo Inc. budget approved

Convocation approved the 2009 LibraryCo budget for incorporation into the 2009 Law Society annual fee for lawyers. The LibraryCo levy for 2009 is \$220 per lawyer, down from \$235 in 2008.

Practice management review program selection criteria revised

Enhanced selection criteria for the practice management review program will ensure that more sole practitioners and small firm lawyers will benefit from the program. The original criteria for selection for participation were one to eight years from the call to the bar and in private practice. These criteria remain in place. The new criteria will now also select firms in approximate proportion to the percentage of law firms represented in Law Society conduct matters and LAWPRO negligence claims.

Law Society submission on Federation's Task Force on the Approved Common Law Degree Consultation Paper

Convocation approved the Law Society's submission on the consultation paper of the Federation of Law Societies of Canada Task Force on the Approved Common Law Degree. The Federation's consultation paper explores a number of issues related to legal education and approval of common law degrees for the purpose of entrance into law society bar admission/licensing programs.

Delegation of mediations at FSCO

Convocation approved a policy to provide that lawyers handling claims that involve catastrophic impairment at the Financial Services Commission of Ontario be permitted to delegate the mediation of subsidiary issues to licensed paralegals employed by their firm. Amendments to By-Law 7.1 [Operational Obligations and Responsibilities] reflecting the policy will be brought to Convocation for approval at a future meeting.

Visit our website for full Convocation reports:

All reports and materials noted in Convocation Highlights are available through the Law Society's website at www.lsuc.on.ca.

Final wording of advertising rules approved

Convocation approved the final wording of Rule 3 of the *Rules of Professional Conduct* and Rule 8 of the *Paralegal Rules of Conduct*. At its October meeting, Convocation approved amendments to the rules based on the Committees' drafts. The final versions were reviewed by the Law Society's drafter. The amended rules provide a more concise statement of the key regulatory concepts relevant to advertising and marketing. See report on page 41.

Proposed Lawyer Oath at Call to the Bar

Convocation discussed a proposed oath for the call to the bar and referred it back to the Committee.

Annual General Meeting Motion

The Secretary's Report to Convocation regarding the motion carried at the Law Society's Annual General Meeting was presented to Convocation for information.

By-Law 7 [Business Entities] amended

At its October meeting, Convocation amended By-Law 7 regarding partnerships between lawyers and licensed paralegals. The amendments were made in English only. Convocation approved the same amendments in French at its November meeting.

Appointments

Bencher Glenn Hainey was removed from the Human Rights Monitoring Group at his request. Bencher Mark Sandler was removed from the Equity and Aboriginal Issues Committee at his request. ■

DOCUMENTING HISTORY

Heritage Committee calls for information about the Lord Reading Club

The Law Society's Heritage Committee is putting out a call for information about the Lord Reading Club, so that more can be learned about this important group and its members.

The club, which is no longer in operation, was named after the first Jewish Lord Chief Justice of England, Lord Reading (1860 – 1935). It was founded by Jewish lawyers in response to their exclusion from various clubs and memberships – particularly the Lawyers Club which, when established back in 1922, was not open to women, non-whites and non-Christians.

Designed to promote the interests of Jewish members of the Ontario Bar, the Lord Reading Club hosted lectures and dinners, including those held in the Great Hall at Osgoode Hall. The club's first president was Percy Shulman, followed by Nathan Strauss. Leon Arthurs served as the first executive director.

In 1948, a Lord Reading chapter began in Quebec. Unlike the Ontario branch, the Montreal-based Lord Reading Law Society continues to be very active and just celebrated its 60th anniversary.

"The history of the Lord Reading Club is incredibly important to our understanding of Canadian legal history, because it is a celebration of a community's strength and determination," explains bencher and Heritage Committee Chair Constance Backhouse. "We believe that the Ontario chapter has had a very distinguished history, and we would like to capture more details about that so that the information is widely accessible for all members of our profession, both in the present and as a legacy for future generations."

Fellow benchers and Heritage Committee members Gary Gottlieb and Bob Aaron have contacted several Jewish members of the bar in an effort to piece more historic information together.

If you have any photos or other memorabilia associated with the club (such as meeting agendas or lecture programs), or know anyone who was involved over the years, please contact **Sophia Sperdakos**, Policy Counsel, at ssperdak@lsuc.on.ca or **416-947-5209**.

Law Society extends effective date of client ID and verification requirements to December 31, 2008 and amends requirements

At its October meeting, Convocation voted to extend the coming into force of new client ID and verification requirements to December 31, 2008 from October 31, 2008. Convocation also approved amendments to the requirements. See related article on page 13.

Paralegal Professional Conduct Guidelines to assist paralegals

The Law Society has developed *Paralegal Professional Conduct Guidelines* as an educational tool to help paralegals understand and apply the *Paralegal Rules of Conduct*. Convocation authorized the Paralegal Standing Committee to approve and publish the *Paralegal Professional Conduct Guidelines* and to amend them as required.

Lawyers and paralegals to be consulted on amendments to Rule 6.03(9) - Communications with represented organizational clients

Convocation approved a proposed redraft of Rule 6.03(9) on which lawyers and paralegals will be asked for input. The proposed amendments address concerns raised about the restrictions in the current rule when a lawyer or paralegal is dealing with a represented organizational client opposed in interest to the lawyer's or paralegal's client.

Paralegal Rules of Conduct amended

Convocation made a number of amendments to the *Paralegal Rules of Conduct*. The majority of changes deal with matters related to affiliations and MDPs (multi-discipline practices) and are based on the business structure provisions in the lawyers' *Rules of Professional Conduct*. The amendments are detailed in the Committee report.

Exemptions from paralegal regulation granted

Convocation approved a request for exemption for members of the Canadian Society of Professionals in Disability Management who are Certified Disability Management Professionals or Certified Return to Work Co-ordinators. The exemption granted was partial, in that only occasional services are permitted, and the exemption is to be reviewed by May 1, 2009. This will assist these professionals in deciding whether to obtain a licence or refocus their practice away from the provision of legal services.

Convocation also approved a request for exemption for trade union representatives appearing in Small Claims Court to enforce benefits payable under a collective agreement.

All exemptions granted by Convocation will be reviewed prior to May 2009.

Human Rights Monitoring Group

Convocation approved the Human Rights Monitoring Group's recommended interventions in the following cases:

- Chinese lawyers representing victims of contaminated milk
- lawyers Noor Mohammad, Muhammad Shoaib, Zafaryab Jilani and A M Faridi in India
- director and lawyer of Human Rights Watch abducted in Venezuela.

Publication policy when hearing panels issue invitations to attend

Hearing Panels that decide to issue an Invitation to Attend (ITA) to a lawyer or paralegal and dismiss an application once the lawyer or paralegal has attended will note that fact on their endorsements, orders or reasons, although the contents of the ITA will remain confidential. In general, ITA meetings are confidential as they are an extension of the Law Society's confidential investigatory process and not part of the public, discipline and hearing process. ITAs issued by a Hearing Panel are an exception as the conversion of the hearing to an ITA is done publicly. The decision to publicize the fact of the ITA is consistent with the Law Society's commitment to a transparent tribunals process.

Policy on compliance with the Federal Lobbying Act established

Convocation established a policy that benchers obtain authorization from the Treasurer or CEO prior to communicating with officers and employees of the government of Canada on behalf of the Law Society. The policy will allow the Law Society to track and record its dealings with the federal government and ensure the Law Society is exercising due diligence in complying with federal lobbying legislation.

Policy on access to records of historic discipline proceedings

Convocation approved a policy to permit limited third-party access to certain records of *in camera* discipline proceedings where the member in question is deceased and the request is made no earlier than 100 years after the member's year of birth. The *Rules of Practice and Procedure* will be amended to reflect the policy.

Appointments

Bencher Glenn Hainey was appointed to the Proceedings Authorization Committee.

Bencher Jennifer Halajian was appointed to the Tribunals Committee and was removed from the Proceedings Authorization Committee at her request.

Bencher Marshall Crowe was appointed to the Heritage Committee.

Bencher Susan McGrath was appointed as the Law Society's representative on the Alliance for Sustainable Legal Aid.

Bencher Janet Minor and CEO Malcolm Heins were reappointed as the Law Society's representatives on the Ontario Lawyers' Assistance Program Board of Directors. ■

September 2008 Highlights

New bencher elected

New bencher William J. Simpson of Ottawa was elected to replace Bonnie Warkentin who was appointed a judge of the Superior Court of Justice.



Licensing and Accreditation Task Force

Convocation voted to continue the articling requirement for candidates seeking admission to the bar, to enhance the licensing process, and to require new lawyers to complete 24 hours of continuing education during their first two years of practice.

New initiatives to enhance articling include an online articling registry to enhance information on articling opportunities; creation of a Law Society outreach position dedicated to promoting and co-ordinating articling initiatives and additional job placements; a voluntary bridging program for internationally trained candidates in the licensing process to support their integration into the Ontario legal profession; streamlined articling requirements for internationally trained lawyers; and simplified

administration of the program. The licensing process will include a new professional responsibility and practice course integrated with the articling program. Successful completion of that course, the articling requirement and the current licensing examinations are the requirements for call to the bar. Beginning in 2010, all new lawyers called to the Ontario Bar will be required to complete 24 hours of compulsory professional development during their first two years of practice.

LAWPRO insurance premiums

Convocation accepted LAWPRO's report outlining the Law Society's professional liability insurance program for 2009. The base premium for professional liability insurance coverage for Ontario lawyers in 2009 will be \$2,450 per lawyer.

Governance Task Force to begin consultation on principles of Law Society governance

The Governance Task Force is beginning consultations on Law Society governance with a facilitated session with benchers, which will be followed by consultations with members of the professions. Convocation approved a budget of \$95,000 for the consultation process.

Project to celebrate early lawyers from diverse communities

Convocation approved funding for a project to identify and record the experiences of early lawyers called to the bar from diverse cultural, ethnic, religious, Aboriginal, Francophone, disabled and other communities. The budget for the project is \$49,900.

Cheque signing authority

Convocation approved updates to the organization's authorized cheque signing officers and an increase in the threshold governing cheque signing procedures.

Errors & omissions insurance fund banking resolution

Convocation approved a new banking resolution regarding the bank account for the Law Society's errors and omissions insurance fund, approving an additional signatory for cheques.

Consultation on proposed new Rules of Practice and Procedure extended

Convocation approved the extension of the consultation process on the proposed new *Rules of Practice and Procedure* to October 31, 2008.

Appointments

Bencher Bob Aaron was reappointed as the Law Society's representative on the Canadian National Exhibition Association.

Bencher Thomas Conway was appointed Co-Chair of the Retention of Women Working Group (Equity) and appointed to the Licensing & Accreditation Task Force to replace Bonnie Warkentin.

Bencher Susan Elliott was appointed to the Access to Justice Committee.

Bencher Robert Topp was removed from the Equity and Aboriginal Issues Committee at his request.

Bencher Joanne St. Lewis was removed from the Professional Development and Competence Committee and the Retention of Women Working Group (Equity) at her request.

Bencher William Simpson was appointed to the Hearing Panel and the Tribunals, Priority Planning, Access to Justice and Government & Public Affairs Committees.

Reports not reached

The Paralegal Standing Committee and the Professional Regulation Committee reports were not reached. The item in the Tribunals Committee report regarding Invitations to Attend was also not reached. ■

Roll-Call Votes

September 25, 2008

Licensing and Accreditation Task Force Report

Professor Krishna presented the Report. It was moved by Professor Krishna, seconded by Ms. Pawlitza, that Convocation approve the following respecting the articling program:

- a. The Law Society will retain the 10-month articling requirement.
- b. The Law Society will undertake initiatives designed to increase articling placements as follows:
 - i. Engage legal organizations in efforts to support and enhance the articling process.
 - ii. Conduct a survey, with the assistance of legal organizations, on articling opportunities.
 - iii. Develop an online Articling Registry to enhance information on articling opportunities.
 - iv. Pursue discussions with government, the Law Foundation of Ontario and other third parties to increase funding for articling positions.
 - v. Create one additional staff position dedicated to outreach, promotion and co-ordination of articling initiatives and additional job placements.
 - vi. Implement a streamlined articling administrative process to reduce the burden on articling principals.
- c. The Law Society will provide for exemptions or abridgments of the articling requirement for internationally trained lawyers who are candidates in the licensing process as follows:
 - i. Internationally trained candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates would be required to complete an intensive three-day course on professional conduct as a mandatory component of the licensing process.
 - ii. All other internationally trained lawyers are required to complete the 10-month articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.
- d. The Law Society will work with external partners to develop a voluntary bridging program for internationally trained candidates in the licensing process to support their integration into the Ontario legal profession.

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

e. Candidates in the licensing process will be entitled to fulfill their entire 10-month articling requirement in national or international articles that the Law Society approves.

That Convocation approve the development of,

- a. a pre-call professional responsibility and practice requirement as described in paragraphs 94-106 and Appendix 7 to be integrated with the 10-month articling program; and
- b. a post-call professional development requirement of 24 hours to be taken during the first 24 months of entry into a practice category.

That Convocation approve the development of a more extensive Law Society communication plan as described in paragraphs 133-144 to,

- c. advise students, law schools and the profession about the articling program, including the role of outreach staff, and the Law Society's role in assisting them with the establishment of articling placements;
- d. re-affirm candidates' responsibility to secure their own articling placement; and
- e. communicate changes to the licensing process.

Carried. Vote: For – 43, Against – 1, 1 Abstention.

Governance Task Force report

Mr. Heintzman presented the Report.

It was moved by Mr. Heintzman, seconded by Professor Krishna, that Convocation approve consultations on principles of governance for the Law Society with benchers and key members of and other stakeholders within the professions, and the associated budget of \$95,000 for the consultations. Carried. Vote: For – 31, Against – 16.

October 30, 2008

Professional Regulation Committee Report

Re: Amendments to By-Law 7.1 [Operational Obligations and Responsibilities]

It was moved by Ms. Rothstein, seconded by Ms. Tough, that By-Law 7.1 (Operational Obligations and Responsibilities) be amended as set out in the bilingual version of the motion distributed under separate cover. Carried.

It was moved by Mr. Wright, seconded by Mr. Lewis, that the motion be amended by deleting the words "immediately after" and inserting the word "before" in subsection 23 (5) on page 11 of Appendix I. Lost. Vote: For – 14, Against – 29.

November 27, 2008

Licensing and Accreditation Task Force Report

Re: Amendments to By-Law 7.1 [Operational Obligations and Responsibilities]

Professor Krishna presented the Report.

It was moved by Professor Krishna, seconded by Ms. Pawlitz, that Convocation approve providing to the Federation of Law Societies of Canada Task Force on the Approved Law Degree the proposed Law Society submission provided under separate cover. Carried. Vote: For – 40, Against – 4, 4 Abstentions. ■

	Attendance			Motions*			
	Sept 25	Oct 30	Nov 27	Sept 25		Oct 30	Nov 27
				1	2		
Aaron, Robert	✓	✓	✓	F	A	A	A
Aitken, Melanie	✓	✓			F	A	
Anand, Raj	✓	✓	✓	F	F	A	F
Backhouse, Constance	✓	✓	✓	F	A	A	A
Banack, Larry	✓	✓	✓	F	F	F	
Boyd, Marion	✓	✓	✓	F	F	A	F
Braithwaite, Jack	✓	✓	✓	F	A	F	A
Bredt, Christopher	✓	✓	✓	F	F	A	F
Campion, John	✓	✓	✓		F	A	Ab
Caskey, James	✓	✓	✓	F	A	A	F
Chahbar, Abdul Ali	✓	✓	✓	F	A	A	F
Chilcott, W. Dan			✓				F
Conway, Thomas	✓	✓	✓	F	F	A	F
Crowe, Marshall	✓	✓	✓	F	A	F	F
Daud, Aslam	✓	✓	✓		F		F
Dickson, Mary Louise	✓	✓	✓	F	A	F	F
Dray, Paul	✓	✓	✓	F	F	A	F
Elliott, Susan	✓	✓	✓	F	F	A	F
Epstein, Seymour	✓	✓	✓	F	A	A	F
Go, Avvy	✓	✓	✓	F	F	A	F
Gold, Alan	✓	✓	✓			A	
Gottlieb, Gary L.	✓	✓		F	A		
Hailey, Glenn	✓	✓	✓	F	F	A	F
Halajian, Jennifer		✓	✓			F	F
Hare, Susan	✓	✓	✓	F	A	A	F
Hartman, Carol	✓	✓	✓	F	F	A	F
Heintzman, Thomas G.	✓	✓	✓	F	F	A	F
Henderson, Paul	✓	✓	✓	F	F	A	F
Hunter, George							
Krishna, Vern	✓	✓	✓	F		A	F
Lawrie, Brian	✓	✓	✓	F	F	A	Ab
Legge, Laura		✓	✓			F	Ab
Lewis, Doug	✓	✓	✓	F	A	F	F
MacKenzie, Gavin							
Marmur, Dow	✓		✓	F	F		F
McGrath, Susan	✓	✓	✓	F	F	F	F
Minor, Janet	✓	✓	✓	F	F	A	F
Pawlitz, Laurie	✓	✓	✓	F	F	A	F
Porter, Julian	✓	✓		F	F		
Potter, Judith	✓	✓	✓	F	A	F	F
Pustina, Nicholas J.	✓	✓	✓	F	F	F	F
Rabinovitch, Jack	✓	✓	✓	F	F	A	F
Robins, Sydney	✓		✓	F			F
Rock, Allan							
Ross, Heather	✓	✓	✓	F	F	F	F
Rothstein, Linda	✓	✓	✓	F	F	A	F
Ruby, Clayton		✓					
St. Lewis, Joanne	✓	✓	✓	F		F	F
Sandler, Mark	✓		✓		F		F
Scace, Arthur							
Schabas, Paul	✓		✓		F		F
Sikand, Baljit	✓		✓	F	F		F
Silverstein, Alan	✓	✓	✓	A	F	F	A
Simpson, William	✓	✓	✓	F	F	A	F
Strosberg, Catherine	✓	✓	✓	F	A	A	F
Strosberg, Harvey	✓			F	A		
Swaye, Gerald	✓		✓	F	A		F
Symes, Beth		✓	✓				F
Tough, Bonnie	✓	✓		F	F	A	
Wright, Bradley	✓	✓	✓	Ab	A	F	Ab
Millar, Derry (Treas.)	✓	✓	✓				

Non-voting benchers in attendance:

Sept. 25, 2008 – P. Copeland, P. Furlong, J. Ground, D. Murphy, R. Murray.
 Oct. 30, 2008 – P. Copeland, R. Murray, J. Wardlaw.
 Nov. 27, 2008 – D. Murphy, R. Murray.

*Motions A=against F=for Ab=abstain

Law Society budget introduces minimal fee increases for 2009

CONVOCATION APPROVED ITS 2009 BUDGET ON NOVEMBER 27, WITH MODEST ANNUAL FEE INCREASES OF THREE PER CENT FOR LAWYERS AND 6.5 PER CENT FOR PARALEGALS. AS A RESULT, THE 2009 FEE FOR A PRACTISING LAWYER WILL INCREASE BY \$50, FROM \$1,653 TO \$1,703, WHILE THE FEE FOR LICENSED PARALEGALS WILL INCREASE BY \$55, FROM \$845 TO \$900.

“We’re pleased that we were able to keep fee increases for lawyers and paralegals to a minimum, particularly in this uncertain and challenging economic climate,” says the Law Society’s Chief Executive Officer Malcolm Heins. “Thanks to reserves accumulated in previous years, we have been able to offset larger levy increases for 2009.”

Heins says the budget will continue to support the Law Society’s core responsibilities, including professional regulation and professional development and competence. “This budget will also fund increased volumes of activity within these areas, as well as new programs that are reflective of the diverse public we serve – as previously approved by Convocation,” he adds.

In presenting the 2009 budget to Law Society benchers, Finance Committee Vice-Chair Carol Hartman noted that this is the first time an operating budget for paralegals has been presented in tandem with the budget for the regulation of lawyers.

Highlights of the 2009 budget include:

- ❖ An additional \$2.6 million is devoted to the Law Society’s regulatory function for lawyers, to deal with mortgage fraud complaints, as well as an overall increase in regulatory complaints.
 - ❖ A total of \$590,000 is dedicated to fund implementation of the lawyer parental leave program as part of the recommendations from the Retention of Women in Private Practice Working Group.
 - ❖ The Law Society’s spot audit program for lawyers will receive a boost of an additional \$320,000 to ensure that all law firms undergo an audit within a five-year cycle.
 - ❖ As an additional part of the Law Society’s commitment to quality assurance, funding of \$290,000 is allocated to provide more practice management reviews for lawyers. The peer-conducted reviews are designed to help lawyers improve their practice management standards.
- ❖ A total of \$120,000 will fund the Ontario Civil Legal Needs Project to build a better understanding of the legal needs of low and middle income Ontarians and determine how the legal community can better meet those needs.
 - ❖ A major component of the 2009 paralegal budget – \$1,057,900 – is dedicated to professional regulation. These costs are mainly associated with good character investigations and hearings for grandparent paralegal applicants, as well as other paralegal regulatory expenses.

Hartman also told benchers that Licensing Process candidates will see a \$540 reduction in their tuition fees from \$2,940 in 2008 to \$2,400 in 2009. This is the result of changes to the lawyer licensing process which replaced the four-week Skills & Professional Responsibility Program with a five-day pre-call professional responsibility and practice requirement, along with a post-call professional development requirement of 24 hours within the first 24 months of practice.

The licensing process fee for paralegals will remain the same at \$1,075.

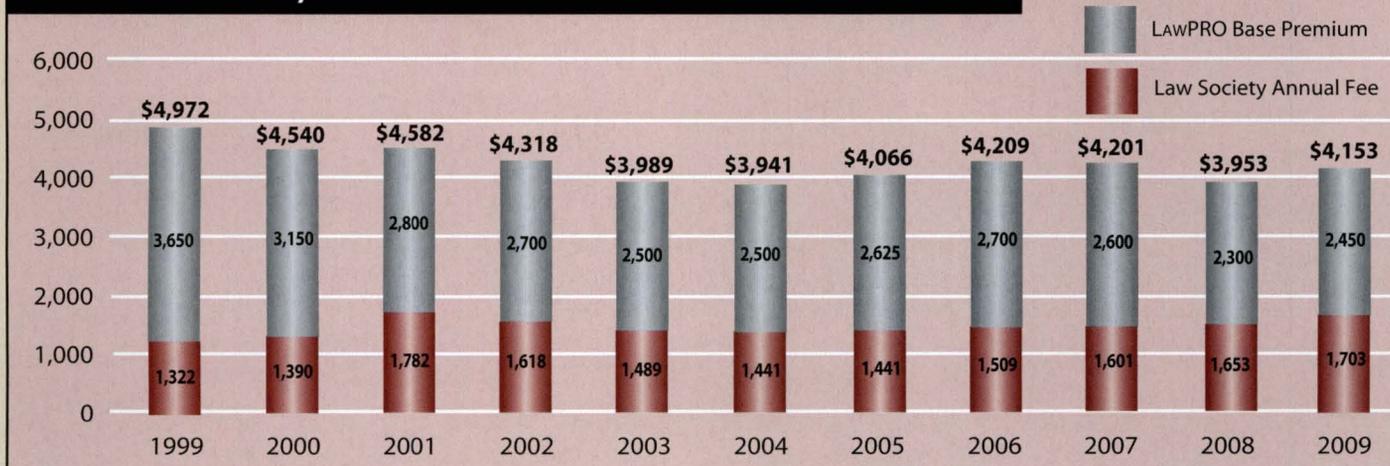
“We remain committed to maintaining and, in some cases, enhancing our core programs, to ensure that we continue to govern effectively and efficiently in the public interest,” says Law Society Treasurer W.A. Derry Millar. ■

Highlights of the 2009 Budget

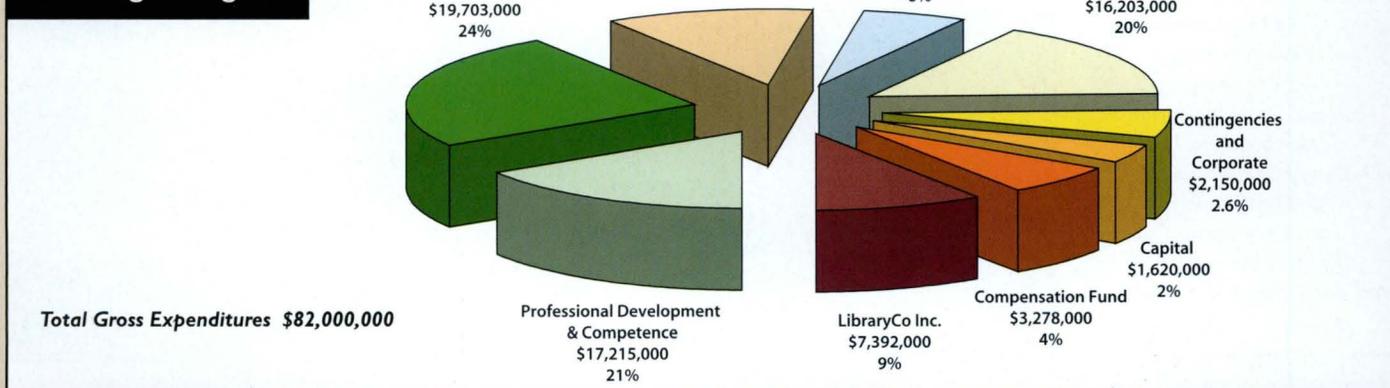
- ◆ In 2009, lawyers will pay an annual fee of \$1,703, a 3% increase from 2008.
- ◆ In 2009, paralegals will pay an annual fee of \$900, a 6.5% increase from 2008.
- ◆ Student Licensing Process fees are set at \$2,400, down \$540 from 2008.
- ◆ Paralegal Licensing Process fees are set at \$1,075, the same as 2008.

2009 Annual Fees	Lawyers			Paralegals		
	COMPONENTS	2009	2008	CHANGE	2009	2008
General Fee	\$ 1,212	\$ 1,143	\$ 69	\$ 710	\$ 625	\$ 85
Compensation Fund	\$ 226	\$ 200	\$ 26	\$ 145	\$ 145	–
LibraryCo Inc.	\$ 220	\$ 235	(\$ 15)	–	–	–
Capital	\$ 45	\$ 75	(\$ 30)	\$ 45	\$ 75	(\$ 30)
Total	\$ 1,703	\$ 1,653	\$ 50	\$ 900	\$ 845	\$ 55

Combined Law Society Fee & LAWPRO Base Premium – 1999-2009



Consolidated Lawyer & Paralegal Budgets





COMMITTED TO
JUSTICIA
ON S'Y ENGAGE

Fifty law firms commit to support women in private practice

MORE THAN TWO-THIRDS OF THE POTENTIAL POOL OF PARTICIPANTS HAVE PLEDGED SUPPORT FOR THE JUSTICIA PROJECT, DESIGNED TO DISCUSS AND PROMOTE POLICIES AND PRACTICES TO RETAIN AND ADVANCE WOMEN LAWYERS IN PRIVATE PRACTICE. THE LAW SOCIETY IS TARGETING FIRMS OF 25 LAWYERS OR MORE, AS WELL AS THE LARGEST FIRMS IN EACH REGION OF THE PROVINCE.

“The level of commitment to the Justicia project is gratifying and bodes extremely well for the future of this initiative,” says Treasurer W. A. Derry Millar. “We are pleased that law firms of all sizes have shown their support in addressing the realities that women in private practice face today.”

The Justicia project brings together senior representatives from firms to share best practices to promote the retention and advancement of women in the private practice of law. Co-chair of the working group, bencher Laurie Pawlitza, emphasizes that flexibility and creativity will be key to the discussions. “Every firm has different needs, so no two firms will be exactly the same. Both associates and partners need to recognize that retention is a two-way street,” she says. “Associates need to learn the

law, and also need to learn the “business of law”, including how much it costs to run the practice. When we have best practices that join those two solitudes, we will have achieved our goal.”

“We see the Justicia project becoming a symbiotic relationship where participating firms give and receive information about best practices,” says Jane Steinberg, firm managing partner of Gowlings. Her firm has already collected a lot of data about their women associates and partners and wants to share information about flexible working arrangements and business development issues. “We recognize that law is a business and we want to give all our lawyers, including women, the opportunity to have successful careers,” she says. “We’re very pleased that the Law Society is taking the lead on this issue.”

From left to right: Heather Williams, of Ottawa firm Cavanagh Williams and a member of the Expert Advisory Group to the Retention of Women Working Group, Working Group Co-Chair Thomas Conway, Equity Advisor Josée Bouchard, Treasurer W.A. Derry Millar, Working Group Co-Chair Laurie Pawlitza, and Kirby Chown, Ontario Regional Managing Partner McCarthy Tétrault, at the launch of Justicia on November 17.



Ambitious Goals

Participating firms have signed written commitments to work to achieve ambitious goals in the following four core areas:

- ❖ Tracking demographics: participants will work together to develop a system to maintain statistical data on gender in the composition of their firms.
- ❖ Flexible work arrangements: law firms agree to review their existing written policies on maternity, paternal and adoption leave and flexible work arrangements.
- ❖ Networking and business development: law firms will share information about any business development and networking opportunities they have that are specifically tailored for women lawyers and will develop initiatives based on their needs and interests.
- ❖ Mentoring and leadership skills development for women: the Law Society and participating firms will collaborate to develop various models

of mentoring and leadership skills development that reflect the needs and wants of women in their firms, and develop strategies to enhance women's participation in the leadership of the firm.

Newly appointed Co-Chair of the Working Group, bencher Thomas Conway, points out, "Clients today expect law firms not only to be committed to equality, but also to actively promote diversity in the workplace. From a business perspective, law firms' ability to compete for clients and the best talent is critical." Tracking demographics, for example, will be good business practice for firms that are serious about making a cultural change. Many American corporate clients now set diversity targets for their legal advisors, a practice that is slowly entering the Canadian market and is likely to become more common with time.

Claude Lacroix of Sudbury firm Lacroix Forest agrees. "This is an issue about quality. Quite simply, we want to hire and retain the best people, women or

men. We want people who are committed to private practice and have an entrepreneurial spirit. With careful planning and a team approach to files, we have been able to see our lawyers through periods of leave for a number of reasons – illness, pregnancy, whatever the issue."

"The Justicia project is obviously exciting for women in law, but it's not exclusively about women," says Pawlitza. "Changing societal norms mean that issues like flexible work arrangements and parental leave affect men and women. We are excited that law firm management is committed to exploring this change, and we believe that when practices to support women are just as readily accepted by men as they are for women, our programs will have been a success."

Firms who are interested in joining the Justicia project should contact Josée Bouchard at the Law Society by phone at 416-947-3984, toll free at 1-800-668-7380 ext. 3984 or via e-mail at jbouchar@lsuc.on.ca ■

JUSTICIA PARTICIPATING FIRMS

Aird & Berlis LLP
Beard Winter LLP
Blake, Cassels & Graydon LLP
Blaney McMurtry LLP
Borden Ladner Gervais LLP
Cassels Brock & Blackwell LLP
Crawford McKenzie McLean
Anderson & Duncan LLP
Davis LLP
Dutton Brock LLP
Evans, Philp LLP
Fasken Martineau DuMoulin LLP
Ferguson Barristers LLP
Fogler, Rubinoff LLP
Fraser Milner Casgrain LLP
Gardiner Roberts LLP
Gibson & Adams LLP
Goodmans LLP
Gowling Lafleur Henderson LLP

Hacker Gignac Rice
Heenan Blaikie LLP
Koskie Minsky LLP
Lacroix Forest LLP
Lang Michener LLP
Lenczner Slaght Royce Smith
Griffin LLP
Lerners LLP
Lewis Downey Tornosky Lassaline &
Timpano Professional Corporation
Mathews, Dinsdale & Clark LLP
McCarthy Tétrault LLP
McInnes Cooper*
McMillan LLP
Miller Maki LLP
Miller Thomson LLP
Minden Gross LLP
Nelligan O'Brien Payne LLP
O'Connor MacLeod Hanna LLP

Osler, Hoskin & Harcourt LLP
Paliare Roland Rosenberg
Rothstein LLP
Perley-Robertson, Hill &
McDougall LLP
Ridout & Maybee LLP
Ross & McBride LLP
Sack Goldblatt Mitchell LLP
Shibley Righton LLP
Siskinds LLP
SmithValeriotte Law Firm LLP
Stikeman Elliott LLP
Thomson, Rogers
Torkin Manes Cohen Arbus LLP
Torys LLP
Weaver, Simmons LLP
Weiler, Maloney, Nelson
WeirFoulds LLP
* out of province

NOTICE TO THE PROFESSION

Recent Rule and By-Law Amendments

November 27, 2008

Lawyer and paralegal rules amended regarding advertising and marketing

Convocation approved amendments to Rule 3 of the *Rules of Professional Conduct* and Rule 8 of the *Paralegal Rules of Conduct*. The amended rules are a more concise statement of the key regulatory concepts relevant to advertising and marketing. The amendments focus the rules on three key issues:

- ensuring advertising or marketing is not false
- ensuring advertising or marketing is not misleading or deceptive
- ensuring marketing of legal services is in the best interest of the public and consistent with duties of professionalism.

Convocation approved the amendments based on the Committees' drafts in October. The final versions were reviewed by the Society's Rules drafter and approved in November.

By-Law 7 amended regarding partnerships between lawyers and licensed paralegals

By-Law 7 [Business Entities] was amended to remove the requirement that lawyers control the provision of legal services when practising with licensed paralegals in multi-discipline practices or partnerships. The amendments effectively mean that such partnerships and practices are outside the multi-discipline practice structure. Guidance on such arrangements will be the subject of further discussion at the Professional Regulation Committee. Amendments were made in English in October, and the same amendments in French were approved in November.

October 30, 2008

By-Law 7.1 client ID and verification requirements amended and effective date extended to December 31, 2008

At its October meeting, Convocation voted to extend the coming into force of new client ID and verification requirements to December 31, 2008 from October 31, 2008. Convocation also approved amendments to the requirements.

By-Law 8 amended to extend reporting requirements to paralegals

By-Law 8 [Reporting and Filing Requirements] was amended to require licensed paralegals to file a Paralegal Annual Report (PAR) with details of their practice.

By-Law 11 amended regarding paralegal practice reviews

By-Law 11 [Regulation of Conduct, Capacity and Professional Competence] was amended to include licensed paralegals in the procedural provisions for practice reviews. The audit program for paralegals was approved by Convocation in February 2008.

Paralegal Rules of Conduct amended

Convocation made a number of amendments to the *Paralegal Rules of Conduct*. The majority of changes deal with matters related to affiliations and MDPs (multi-discipline practices) and are based on the business structure provisions in the lawyers' *Rules of Professional Conduct*. The amendments are detailed in the Committee report. ■

More information and printable versions of the updated rules and by-laws are available on the Law Society website at www.lsuc.on.ca

Bonnie Warkentin moves to the Bench



The Law Society congratulates bencher Bonnie Warkentin on her appointment to the Superior Court of Justice in the northwest region.

Madam Justice Warkentin was first elected a bencher in 2003. Over the past five years, she has made enormous contributions to Convocation, including co-chairing the Emerging Issues Committee and the Retention of Women in Private Practice Working Group and vice-chairing the Access to Justice Committee. She was also a member of the Paralegal Task Force and the Paralegal Standing Committee. In June, she was appointed Chair of the Finance Committee.

IT HAS BEEN TWO YEARS SINCE THE *ACCESS TO JUSTICE ACT* WAS PASSED, EXPANDING THE LAW SOCIETY'S REGULATORY AUTHORITY TO INCLUDE PARALEGALS. TODAY, MORE THAN 2,200 PARALEGALS THROUGHOUT ONTARIO ARE LICENSED BY THE LAW SOCIETY OF UPPER CANADA TO PROVIDE LEGAL SERVICES IN PERMITTED AREAS OF PRACTICE, GIVING CONSUMERS BETTER PROTECTION AND MORE CHOICE IN ACCESSING THE JUSTICE SYSTEM.

While the regulatory groundwork is now complete, the Law Society's Paralegal Standing Committee, which includes paralegals, lawyer benchers and three lay benchers, continues to identify and address issues related to licensing and governance – and to make recommendations to Convocation.

Further development of the new model will be required over time and exemptions and scope of practice are two areas that will continue to be reviewed.

"Paralegal regulation has been very successful," says the Law Society's Paralegal Standing Committee Chair and paralegal bencher Paul Dray. "Ontario is the first jurisdiction in North America to license paralegals. When we began building the regulatory framework, no one knew how many paralegals were practising in Ontario. Today, we have a self-funding regulatory system, complete with educational standards, rules of professional conduct, a licensing process, insurance requirements, a public directory, a complaints and disciplinary process and a compensation fund."

Now that the *Access to Justice Act* has met the two-year mark, the Law Society is preparing a review of the implementation process, comparing what has been accomplished to the original "blueprint" contained in its 2004 report prepared by the Task Force on Paralegal

Regulation. As required by legislation, the review findings will be submitted to the Attorney General of Ontario by January 19, 2009.

A second review will be conducted at the five-year mark, in October 2011, to assess the impact of paralegal regulation.

The following is a brief overview of developments that have taken place over the past six months.

Conduct Guidelines

Paralegal Professional Conduct Guidelines have been developed to help paralegals understand and apply the *Paralegal Rules of Conduct*. The guidelines are designed as an educational tool for paralegals to use in interpreting and applying their professional obligations and responsibilities under the *Law Society Act*, its by-laws and the *Paralegal Rules of Conduct*.

Practice Reviews

The Law Society began providing practice reviews for licensed paralegals in early November 2008, to reflect the Law Society's emphasis on quality assurance in the public interest. Like the spot audit program for lawyers, the reviews are designed to be consultative. All licensed paralegals are eligible for selection.

College Accreditation

A total of nine paralegal programs offered by community colleges have been accredited to date by the Law Society. They include: the paralegal program at Algonquin Careers Academy; the paralegal program at Algonquin College; the Court and Tribunal certificate program and diploma programs at Durham College; the court and tribunal agent program and paralegal studies degree offered by Humber Institute of Technology and Advanced Learning; the court and tribunal agent program at Seneca College; the court and tribunal program at Sheridan College; and the paralegal studies program at Westervelt College.

Licensing Examinations

Licensing examinations for applicants who applied to the Law Society for licensing last January were held on August 26 and October 23. Another examination for this group of applicants will be held on January 27, 2009.

Annual Filing

Amendments to By-Law 8 [Reporting and Filing Requirements] were made by Convocation in October to require licensed paralegals to file a Paralegal Annual Report (PAR) with details of their practice, just as lawyers are required to file a Members Annual Report (MAR). All licensed paralegals must file their first PAR by March 31, 2009.

Good Character

During the grandparent and transitional licensing process, some 400 applicants disclosed matters that required an investigation of their good character. More than half have now been cleared for licensing because, following investigation, there are no longer concerns about their present good character.

A team of Law Society staff continues to work diligently processing the remaining matters and conclude investigations as soon as possible. In some cases, we expect a formal, public hearing will be necessary to determine whether a paralegal licence should be granted or refused. Many of these applicants are permitted to continue practising as long as they meet the requirements of the application process, such as maintaining professional liability insurance and complying with the *Paralegal Rules of Conduct*. They must cease to practise if a Hearing Panel determines that they are ineligible.

Licensing hearings are pending in several cases – and more hearings are likely to take place over the next 18 months.

Continuing Education

The Law Society began offering Continuing Legal Education programs this fall for paralegals. A session on statutory accident benefits and the Financial Services Commission of Ontario was held on November 4. A CLE session on best practices before the Workplace Safety and Insurance Board and the Workplace Safety and Insurance Appeals Tribunal was held December 5.

For more information on paralegal regulation, visit the paralegal pages of the Law Society website at www.lsuc.on.ca ■

Stopping discrimination and harassment in the legal community – the DHC can help

THE LAW SOCIETY'S DISCRIMINATION AND HARASSMENT COUNSEL (DHC) HAS BEEN WORKING TO HELP STOP HARASSMENT AND DISCRIMINATION WITHIN THE LEGAL COMMUNITY FOR ALMOST 10 YEARS.

Available free-of-charge to lawyers, paralegals, law students, articling students, law firm staff and the general public, the program operates independently and at arm's length from the Law Society. It is funded by the Law Society as part of its efforts to promote equality and diversity in the workplace and the profession.

The DHC offers complainants confidential advice on the various options open to them, as well as informal resolution and mediation services where appropriate.

Last year, the DHC received 130 calls from members of the public and legal profession. Their concerns were based on the following prohibited grounds: sex, disability, race, age, ethnic origin, place of origin, family status, sexual orientation, religion and ancestry.

This number represents a slight decrease over the previous year, but it is too early at this stage to determine whether this is unique or represents a trend.

"Whether this becomes a trend or not, what is apparent is that complainants have greater awareness of their rights and are more willing to seek help and pursue avenues of recourse," says Cynthia Petersen, the Discrimination and Harassment Counsel.

Types of complaints

Petersen notes, "There has been broad consistency in the fact that more than half of the complaints we receive are from women, including both complaints from

the public and complaints from within the legal profession. Many of the female complainants report sexual harassment or sex discrimination, either by their employers or their legal advisers." Within these sex-based incidents, the types of complaints vary. For example, a woman lawyer working in a legal clinic reported that she was harassed and discriminated against at work because she took two maternity leaves in rapid succession.

After sex-related complaints, most complaints relate to race and disability. "Sometimes race discrimination cases involve flagrant racist insults, but more often they involve systemic racism complaints, which are more complicated to resolve," says Petersen.

In one case, a male Vietnamese lawyer complained that he was being discriminated against by his firm on the basis of his race, stating that he was not given the same quality of work or opportunities for advancement as other non-Asian lawyers and that his work was held to a higher standard than other lawyers in the firm.

Lack of accommodation for disabilities often leads to complaints. A woman lawyer, for example, reported that her employer refused to accommodate her psychiatric disability and threatened to terminate her employment if she could not complete her duties without accommodation.

Petersen reports that trends in human rights decisions have placed an onus on employers to accommodate disabilities, but

are now also putting an obligation on employees to be flexible in negotiating with their employers.

When asked about emerging issues, Petersen points to family status as a ground for complaints, with requests for accommodation to meet child or elder care obligations.

Advised of options

Complainants contacting the DHC Program are advised of the options open to them, which include filing an internal complaint in their workplace, filing a complaint with the Ontario Human Rights Tribunal or the Law Society, or contacting a lawyer for advice about possible civil actions.

They are also given information about how to file a complaint, possible costs, the processes involved (investigation, conciliation or a hearing), as well as the remedies that may be available and any related time limits.

Where appropriate, the DHC offers voluntary mediation services to complainants. "We don't represent complainants. We don't offer them legal advice. If we are mediating a complaint, we remain neutral as between the parties," Petersen explains. "What we do is facilitate the process whereby parties resolve the issues themselves."

Educating to prevent harassment & discrimination

An important component of the DHC's work is training law firms and legal organizations on the prevention of harassment and discrimination in the workplace via workshops presented in conjunction with the Law Society's Equity Initiatives Department.

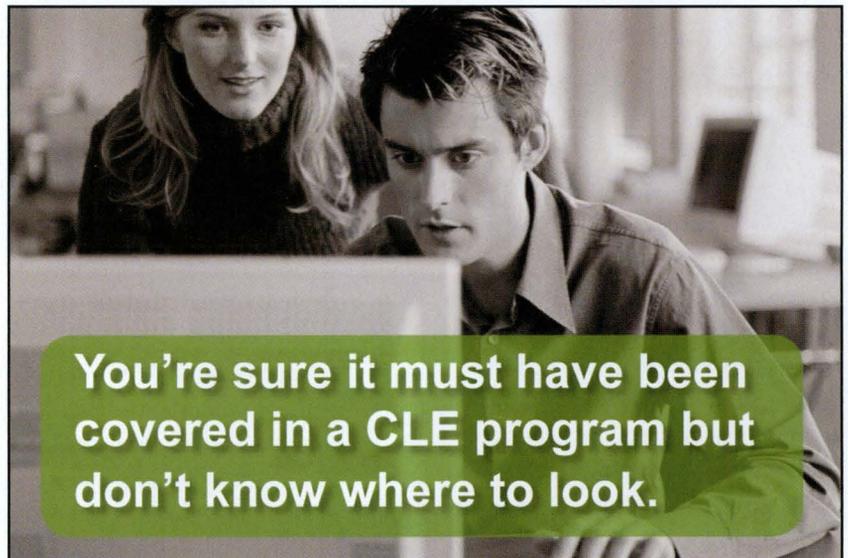
"Training is vital in showing employees that not only is an employer complying with its legal obligations, it is also committed to dealing with these issues," says Petersen. The DHC also talks about the program and professional responsibility to law students at various law schools.

Brochures about the DHC Program are available in English, French, Chinese and braille, and are circulated to legal clinics, community centres, libraries, law firms, government legal departments and faculties of law.

For more information about the DHC Program, visit their website at: www.dhcounsel.on.ca/. The

DHC is Cynthia Petersen and the two alternate DHC are David Bennett and Lynn Bevan.

Anyone who feels they have experienced human rights-based discrimination or harassment from a lawyer or paralegal can contact the DHC Program 24 hours a day and leave a confidential message on voice-mail at 1-877-790-2200. Confidential e-mail can be sent to: assistance@dhcounsel.on.ca. ■



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Unanimous support to retain articling in the licensing process

LICENSING Process



The Law Society's articling program will continue to be an integral part of legal training in Ontario after receiving resounding support from the profession and the society's governing board. Following an extensive consultation with the profession, Convocation voted in September to support the recommendations of the Task Force on Licensing & Accreditation to retain the 10-month articling component of the licensing process.

"When we asked the profession their view, we got an overwhelming response that we must continue with articling," said Professor Vern Krishna when introducing the report to Convocation. "Articling takes a student who has an academic qualification and puts them through an environment of vocational education to qualify them to serve the public."

By the end of May, more than 100 written responses to the consultation document had been submitted by individuals and legal organizations.

Improvements to the process

To address concerns about the limited number of articling positions available, the Law Society will pursue discussions with the government, the Law Foundation and other parties to increase funding for articling positions, as well as engage with firms and legal organizations to support and increase the number of positions.

The task force stressed that the active support of the profession is essential to this process. "To make change, there must be more than goodwill on the part of the profession – there must be action," said Professor Krishna. "The willingness of more lawyers to play a role in training the next generation of lawyers is essential to a revitalized articling program."

Other initiatives to improve the articling process, with a view to increasing the number of positions

available, are being introduced. These include:

- the development of an online registry to enhance information on articling opportunities
- conducting an articling survey to gather information on placements and opportunities to increase them, the reasons for jobs going unfilled, the reasons candidates turn down offers and lawyers choose not to hire, and hiring issues specific to equality-seeking communities
- the creation of a new Law Society outreach position to assist in promoting and co-ordinating articling initiatives and potential job placements
- simplified administration of the articling program, reducing the paperwork required of both principals and students
- permitting students to fulfil their entire articling requirement in national or international articles with Law Society-approved principals.

Skills and Professional Responsibility program

Benchers also approved changes to the Skills and Professional Responsibility program, which will be replaced by a five-day modular online course designed for self-paced learning. The modules can be undertaken at any time during the 10-month articling period, and will be

followed by a professional responsibility and practice assessment to be reviewed with the articling principal.

Newly called lawyers will be required to complete a new post-call professional development requirement of 24 hours of accredited CLE during the first 24 months of practice. The enhanced process will be in place for candidates entering articling in August 2009.

Internationally trained lawyers

The proposals also streamline the articling requirement for internationally trained lawyers with practice experience abroad. Previously, candidates had to meet exemption criteria and work for a minimum of seven years before they could apply for an exemption from the 10-month articling requirement.

Now, for candidates who have practised in a common law jurisdiction, the work experience period has been reduced to 10 months, provided the experience is relevant to the Law Society's articulated competencies. These candidates will be required to take an intensive three-day course that will focus on professional responsibility, ethical issues, professional conduct and practice management.

Convocation also approved a proposal that the Law Society work with external partners to develop a voluntary bridging program for internationally trained candidates to support their integration into the Ontario legal profession. ■

Consultation on the Canadian common law degree

IN SEPTEMBER, THE FEDERATION OF LAW SOCIETIES OF CANADA'S TASK FORCE ON THE CANADIAN COMMON LAW DEGREE ISSUED A CONSULTATION PAPER.

The Task Force was first established in June 2007 to review the criteria in place for the approved common law degree, and, if appropriate, articulate a national standard for an approved common law degree.

The profession was requested to consider a proposed framework of competencies for entry to the law societies' bar admission programs consisting of:

- Foundations of common law including:
 - the doctrines, principles and sources of common law, how it is made and developed and the institutions within which law is administered in Canada
 - contracts, torts and property law
 - criminal law
 - civil procedure
- The constitutional law of Canada, including principles of human rights and Charter values
- Equitable principles, including fiduciary obligations, trusts and equitable remedies
- Business organization concepts
- Principles of statutory analysis and regulatory and administrative law
- Dispute resolution and advocacy skills and knowledge of their evidentiary underpinnings
- Legal research skills
- Oral and written communication skills specific to law
- Professional responsibility.

The Task Force sought comment on whether law schools should be required to teach a stand-alone course on professional responsibility course to address the broad principles of professionalism and ethical issues such as conflicts, solicitor client privilege and

the lawyer's relationship with the administration of justice.

If competencies are approved, the Task Force has sought input on three options for measuring compliance with the standard:

- The status quo – reliance on law school internal and external reviews to ensure the quality of law school education
- An entrance examination – where successful completion of a national examination would be a prerequisite to entry to bar admission programs
- An approved law degree – the establishment of an articulated standard and a national monitoring program. This would increase the external review of law school programs to ensure that their degree offerings met minimum standards, and also has resource implications in setting up a national compliance body.

To view the full report, visit the Federation's website at http://www.flsc.ca/en/pdf/2008Consultation_paper.pdf ■

Advertising and marketing rules to be amended

Convocation amended Rule 3 of the *Rules of Professional Conduct* to provide a more concise statement of the key regulatory concepts relevant to offering and marketing legal services.

The amended advertising rules, which now define marketing to include advertisements, firm names and letterhead, focus on three key issues:

- ensuring marketing of legal services is true, accurate and verifiable
- ensuring marketing is not misleading or deceptive
- ensuring marketing is in the best interest of the public and consistent with duties of professionalism.

Convocation approved the amendments at its October meeting, based on recommendations from the Professional Regulation Committee.

A number of factors led the Professional Regulation Committee to review the rules. Among these factors were:

- a desire to take a more principle-based approach to marketing and move away from prescriptive detail in the rules
- the recommendations in the recent Competition Bureau report on regulated professions that law societies lift unnecessary restrictions on marketing, and
- the fact that few complaints about marketing are made to the Law Society.

Similar amendments have been made to the *Paralegal Rules of Conduct*.

Convocation approved the amendments based on the Committee's drafts. The Committee will return to Convocation with a final version of the wording following a review by the Law Society's Rules drafter.

More information is available on the Convocation news page of the Law Society website.

A conversation with women leaders in law

Bencher Laurie Pawlitza, the Honourable Madame Justice Bonnie Warkentin and Equity Advisor Josée Bouchard participated in an informal discussion at the University of Toronto Law School on current developments in retaining women in private practice. They were part of a distinguished panel which included Dean Mayo Moran and Professors Rebecca Cook and Denise Réaume from the law faculty, Kirby Chown, Ontario Regional Managing Partner of McCarthy Tétrault and Professor Judith Resnik of Yale Law School.

Kirby Chown opened the discussion with a summary of the challenges to change that exist in private practice, emphasizing the importance of establishing a solid business case to support initiatives to retain/advance women. "I ask, where do most of the women go who leave our firms? And the answer is, into our most important clients. Women counsel in corporations



Laurie Pawlitza, Professor Denise Réaume, Josée Bouchard, Professor Judith Resnik, Dean Mayo Moran and Professor Rebecca Cook at University of Toronto Faculty of Law meeting.

ask law firms to provide diverse teams, and that provides a strong impetus to firms to change."

The departure of women from private practice in the US is similar to the story in Ontario. Professor Resnik reported that while women account for one-third of the approximately one million lawyers in the US, they represent only 20 per cent of partners in private firms and earn 77 per cent of what men earn. "Women take a larger role in taking care of children and elders for their families," she says. "We need to redefine what we are doing – parenting should be called mentoring for example – maybe that will make all of us respect these tasks as much as we respect a traditional unit of work."

The panel and the audience applauded the Law Society for taking a leading role on the issue of women in private practice specifically, and the wider framework of culture change within law firms. "Perhaps Professor Resnik summed it up best when she asked, 'is this is an issue for women, or for people?'" said Josée Bouchard. "This event was a great opportunity for us to get the Justicia message out to a younger audience of women law students who may be agents of change in their own generation." ■



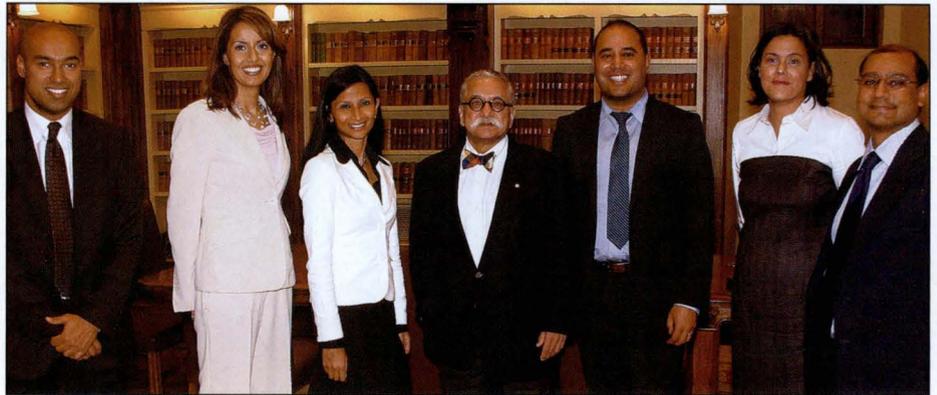
Kirby Chown, Ontario Regional Managing Partner of McCarthy Tétrault

South Asian Bar Association Inaugural Awards Ceremony

Bencher Professor Vern Krishna, C.M., Q.C., FRSC was honoured by the South Asian Bar Association of Toronto (SABA) at their third annual gala dinner. Professor Krishna received the Distinguished Career Award for his contributions to SABA and the legal community at the group's inaugural awards ceremony. Andrew Pinto, a past Chair of the Law Society's Equity Advisory Group, received the Male Lawyer Award; Soma Ray-Ellis, the Female Lawyer Award; and Pradeep Chand, the Young Practitioner Award.

Attended by 160 people, the event was held November 12 at Convocation Hall. The Hon. Peter Cory, former Supreme Court of Canada justice, gave the keynote address on Canada and tolerance.

SABA -Toronto was formed in 2005 as the 21st chapter of the North American South Asian Bar Association. Its members include legal professionals who self-identify as South Asian or of South Asian origin, as well as lawyers who advocate on



From left to right: Ron Choudhury, President of SABA; Sona Sood VP Law School Liaison and Membership SABA ; Sudevi Mukherjee-Gothi, VP Public Relations SABA; Vern Krishna, Recipient of the Distinguished Career Award; Pradeep Chand, Recipient of Young Practitioner Award; Shahana Kar, VP Events and Sponsorship SABA; Thomas Santram, Treasurer SABA.

issues of relevance to the South Asian community. SABA is a member of the Law Society's Equity Advisory Group, which is charged with advising the standing committee of Convocation on equity and diversity matters in the legal profession. The promotion of equality, diversity and access to justice is a priority for SABA Toronto.

Thomas Heintzman honoured by OBA



The Law Society congratulates Bencher Thomas G. Heintzman, O.C., Q.C., who received the Ontario Bar Association Award for Excellence in

Civil Litigation. This honour recognizes and honours outstanding advocacy, achievements and contributions of the best litigation counsel in Ontario. A partner at McCarthy Tetrault, Mr. Heintzman has been a bencher since 2003. He is currently chair of the Compensation Fund and the Governance Task Force.

LIFE MEMBERS

Life membership is granted to members of the Society who have been entitled to practise law in Ontario for a period of 50 years. Following is a list of those members who have been awarded life membership since the last issue of the Ontario Lawyers Gazette.

- | | |
|--|--|
| Leonard Thornburn
Montgomery, Q.C., Orillia | Harvey Jacobson, Toronto |
| Ruth Canton, Toronto | George Martin Luxton, Q.C., Hamilton |
| Murray Patrick Harrington,
Toronto | Albert Miller, Barrie |
| | Robert Lindsey Shirriff, Q.C., Toronto |
| | Wilfrid Rudolph Zalman, Kitchener |

JUDICIAL APPOINTMENTS

Superior Court of Justice
Effective Date: July 31, 2008

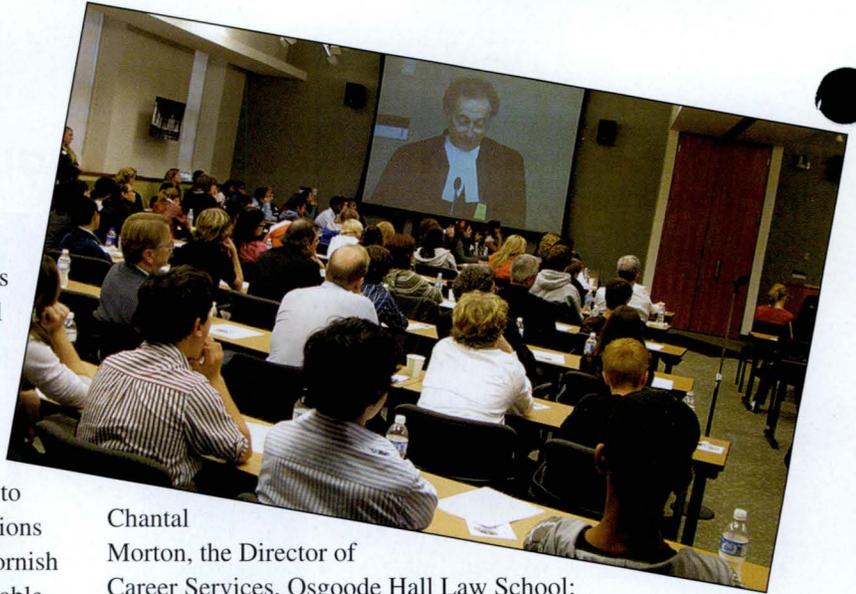
- Mr. Ian A. MacDonnell
Madam Justice Jayne E. Hughes

- Mr. Justice Edward J. Koke
Mr. Justice Peter Lauwers
Mr. Justice James McNamara

Take our Kids to Work at Osgoode Hall 2008

On November 5, 230 Grade 9 students and their hosts gathered in the Lamont Learning Centre at Osgoode Hall for *Take our Kids to Work*, a nationwide job shadowing experience organized by The Learning Partnership. Another 100 participants joined via live webcast.

Nine speakers gave students an overview of the steps to becoming a lawyer or a paralegal, what it means to work in the field of law and the range of professional options available after graduation. Presenters included Cettina Cornish and Stephen McClyment of the Law Society; the Honourable Mr. Justice Michael J. Moldaver from the Court of Appeal for Ontario; James L. Cornish, Crown attorney for Haldimand County; Jeffrey R. Manishen, partner in the law firm of Ross & McBride LLP; Geneviève Richard, an intellectual property lawyer at Sim, Lowman, Ashton & McKay /Sim & McBurney; Hilary Evans Cameron, head of the Refugee and Immigration Division at the University of Toronto's student legal clinic;



Chantal Morton, the Director of Career Services, Osgoode Hall Law School; and Michael Copeland, Chief Operating Officer of the Canadian Football Association.

This was the third time the Law Society has hosted this program. Previously, only Law Society staff were able to participate, but interest from sole practitioners and law firms prompted the expansion of the program. The live webcast was added this year to meet this growing demand. ■

PRO BONO LAW
ONTARIO



2nd National Pro Bono Conference

The 2nd National Pro Bono Conference, organized by Pro Bono Law Ontario in partnership with Pro Bono Law of British Columbia, Pro Bono Law Alberta and Pro Bono Law Saskatchewan, recognized the creative energies of the judiciary, government lawyers, the private bar and community groups that are working in partnership to serve the neediest and most vulnerable members of our society. The conference theme, **Spanning the Nation**, reflected the fact that stakeholders all over the country are committing to the idea that pro bono is a professional obligation and that it plays a critical role in improving access to justice.

Held September 18 and 19, 2008, the conference marked the launch of Pro Bono Law Saskatchewan and Pro Bono Law Quebec, both of which are contributing to the spread of pro bono principles and best practices. Innovative programs from Ontario and other provinces were profiled in the daytime sessions and were also honoured at the 2nd National Pro Bono Awards Dinner.

Keynote speaker, the former UN High Commissioner for Human Rights, the Hon. Madam Justice Louise Arbour, presented the Distinguished Service Award to Dennis Edney and Nathan Whiting for their work representing Omar Khadr. Blake Cassels and Graydon LLP received the National Law Firm Award, and

CLASSIC – a community clinic program in Saskatoon – received the National Program Award.

Other guest speakers included:

- **The Right Honourable Beverley McLachlin**, Chief Justice of the Supreme Court of Canada
- **Mike Harcourt**, former premier of British Columbia
- **Dennis Edney**, Alberta lawyer and pro bono counsel for Omar Khadr
- **M. Sue Talia**, California private judge and recognized expert on unbundled legal services
- **Lesra Martin**, British Columbia lawyer and former advocate for Rubin "the Hurricane" Carter.

This conference was made possible by the ongoing support and contributions of The Law Foundation of British Columbia, The Law Foundation of Ontario, The Law Foundation of Saskatchewan, Bennett Jones LLP, Blake Cassels & Graydon LLP, Borden Ladner Gervais LLP, Gowling Lafleur Henderson LLP and McCarthy Tétrault LLP.

The National Pro Bono Conference is held every other year in different cities across Canada. The next one is scheduled for 2010.

Charity tournament pays tribute to lawyers, drives funding for Feed the Hungry Program

Criminal lawyers David (Bugsy) Newman and Ken Danson were close – as friends, in their legal work and in their abiding commitment to giving back to their communities.

That's why winter, spring and summer, a group of their loved ones and friends work together to plan an event to ensure their memories live on through the *Bugsy and Ken*

Charity Golf Tournament. "We all come together for a fun event that has personal meaning for a great community cause. The 2008 tournament was very special with the additional support of so many Danson family members, led, of course, by the planet's best auctioneer, Ken's brother John," says Michael Gary, one of the organizers.

Now approaching its fifth year, the tournament, held annually in June, has reached \$100,000 plus in total dollars raised for **The Law Society Foundation** and its **Lawyers Feed the Hungry Program**.

"The Bugsy and Ken Charity Tournament was our second largest source of funding for the Feed the Hungry Program in 2008," says Wendy Tysall, Secretary Treasurer of the Foundation. "The colleagues and friends of Ken and Bugsy have really rallied to this cause. We are very appreciative of their support."

The tournament organizing committee, family and friends, lawyers and judges are all responsible for the event's success. Law Society members Jonathan Rosenthal, Adam Newman, Peter and Tim Danson, David Cohn and Richard Goldman are current committee members.



More than 120 lawyers, judges, family members and friends turned out for the 2008 Bugsy and Ken Charity Golf Tournament.

Mr. Justice Ronald Thomas commented on this year's tournament. "Looking around the room, it was clear that our friends were having a good time and no doubt proud of how much money would be and has been raised for the Lawyers Feed the Hungry Program. I and many others are proud of the committee who make it happen."

Next year the committee will create a tournament website with funds raised going to support both The Lawyers Feed the Hungry Program and Camp Oochigeas, a summer camp for kids with cancer. As a jump start, in 2009 they will be auctioning off a free lifetime membership at Diamondback Golf Club. Please contact michaelgary@rogers.com if you would like to participate.

The next Bugsy and Ken Charity Golf Tournament will be held June 10, 2009. It will be featured on The Law Society Foundation's new website, to be launched in the spring.

Please consider making a donation to the **Lawyers Feed the Hungry Program** by sending your cheque made payable to The Law Society Foundation to the address below, or by contacting the Foundation at lsf@lsuc.on.ca

The Law Society Foundation
130 Queen Street West, Toronto, ON, M5H 2N6 ■

Breakfast with Human Rights Watch

The Law Society of Upper Canada hosted a breakfast with Human Rights Watch and Lawyers' Rights Watch Canada to recognize the 2008 recipients of the Human Rights Defender Award, Bo Kyi of Burma and Umida Niyazova of Uzbekistan. Benchers Joanne St. Lewis, Paul Copeland and Raj Anand of the Human Rights Monitoring Group of the Law Society were present, along with representatives of Human Rights Watch, Lawyers' Rights Watch Canada and the Law Society. This was the third annual event of its kind hosted by the Law Society.

Umida Niyazova is a journalist and human rights activist who was thrown in jail for reporting on the 2005 massacre in Andijan. She spoke of the repression that exists in Uzbekistan, where torture is widespread and systematic, and lawyers and journalists are regularly jailed for their defence of political prisoners. She currently lives in Berlin where she is working with German politicians to press for the release from prison of her colleagues and human rights activists.

Although Bo Kyi was not able to travel to Canada because of visa difficulties, David Matheson, Human Rights Watch researcher for Burma and a friend of Bo Kyi, described the repressive regime in Burma, where the number of political prisoners has doubled over the past year. He spoke of the trials of those who were involved in last year's uprising and the harsh sentences that they are receiving –



Jasmine Hertl, Canada Director, Human Rights Watch, Bencher Joanne St. Lewis of the Human Rights Monitoring Group, Human Rights Defender Award winner Umida Niyazova of Uzbekistan, and Benchers Raj Anand and Paul Copeland of the Human Rights Monitoring Group.

65 years in some cases. He gave the example of an 85-year-old nun who was recently sentenced to four years' hard labour.

The Human Rights Monitoring Group receives and reviews information about human rights violations of lawyers and judges who are targeted for performing their legitimate professional duties and recommends Law Society interventions when warranted. Recent examples of the group's work include support for lawyers in Pakistan and for a fact-finding mission on human rights in the Philippines.

"Meeting people like Umida and David reminds us that we are part of a broader global community. We can use our network of legal organizations to fight injustice and promote respect for the law internationally," said St. Lewis. ■

NOTICE TO LAWYERS

Consultation on proposed amendments to Rule 6.03(9) - Communications with represented organizational clients

The Law Society's Professional Regulation Committee is seeking the input of lawyers on proposed amendments to rule 6.03(9) of the *Rules of Professional Conduct*.

This rule deals with a lawyer's obligations when communicating with a represented organizational client.

In the course of Convocation's approval of restructuring amendments to rule 6.03(9) in November 2007, questions were raised about the scope of the rule and in particular, the restriction on communicating with employees and agents of

the organization. The Committee reviewed this issue and is proposing that the rule and the relevant commentary be amended to reflect a more appropriate standard.

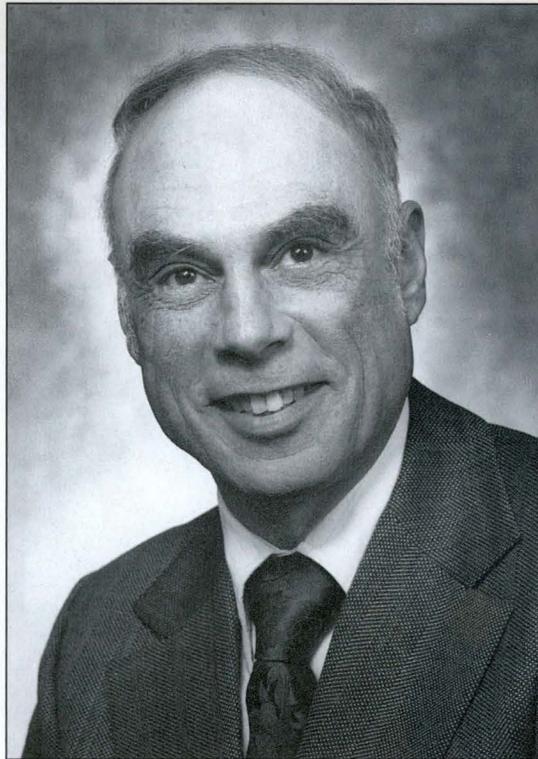
The proposed amendments and additional information are included in the report of the Professional Regulation Committee to October 30, 2008 Convocation, which may be accessed at www.lsuc.on.ca under the Latest News tab.

The Law Society welcomes your comments on this proposal. Responses should be sent on or before February 16, 2009 to jvarro@lsuc.on.ca or by mail to:

James Varro, Secretary
Professional Regulation Committee
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

IN MEMORIAM

Ronald W. Cass, Q.C., LSM, 1920-2008



The Law Society was saddened to learn of the death of Ronald W. Cass, Q.C., LSM, on July 18, 2008.

Ronald Cass was born in 1920 in Chesterville. He received his B.A. from Victoria College and M.A. (Mathematics) from the University of Toronto. During the Second World War, he served as a lieutenant in the Royal Canadian Navy Volunteer Reserve (R.C.N.V.R.), which was a naval reserve force of the Royal Canadian Navy.

After the war, Mr. Cass attended Osgoode Hall, where he achieved honours in his second year and was awarded a scholarship. While a law student, he worked as a night librarian in the Great Library. He was called to the bar in 1948, and practised law for 45 years in Belleville, the majority of that time as a sole practitioner. Mr. Cass was part of a family with a legal tradition: his father, William J.M. Cass, K.C., his brother, Frederick M. Cass, Q.C. (who served as Attorney-General for Ontario from 1962-64) and his sons, David W. Cass, who is Intake Counsel in the Professional Regulation Division of the Law Society, and Fred D. Cass, who is a partner at Aird and Berlis LLP. His granddaughter Tiffany Cass is currently studying law.

Mr. Cass was first elected as a bencher in 1966, and won three more terms, becoming eligible for Life Bencher status in 1983. Over his long career as a bencher he

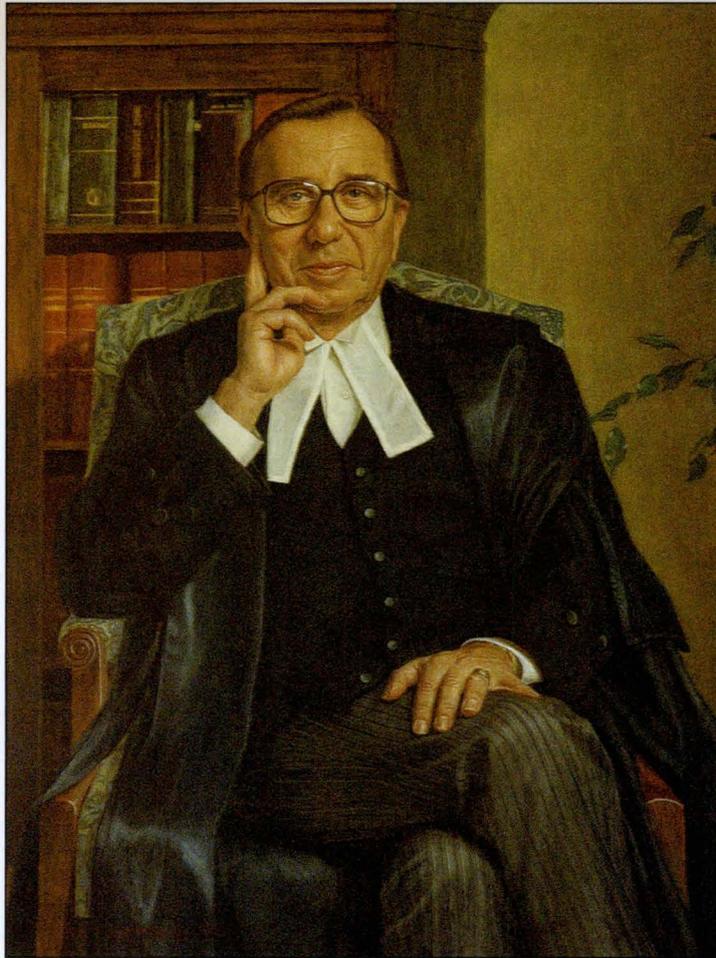
served on numerous Convocation committees, and chaired the Admissions Committee, the Legislation and Rules Committee, the Special Committee on the Minister's Committee on Insurance Claims and the Special Committee on the J. Shirley Denison bequest. He also served as the Law Society representative on the Council of the Canadian Bar Association.

"My father saw standing for election as a Bencher as his means of making a public service contribution, in a manner similar to his brother Fred, who entered the provincial political arena," says his son David. "This involved a substantial sacrifice for a sole practitioner travelling to and from Belleville for meetings. But he took this commitment very seriously and, even in retirement, had one of the best attendance records at Convocation."

Mr. Cass was awarded the Law Society Medal in 1998 in recognition of his service to the profession and the Law Society. ■

IN MEMORIAM

Charles L. Dubin, O.C., O. Ont., Q.C., 1921-2008



The Law Society of Upper Canada was saddened to learn of the death of Charles L. Dubin, O.C., O. Ont., Q.C., on October 27, 2008 at the age of 87.

Charles Dubin was born in Hamilton. After graduating from the University of Toronto in 1941, he attended Osgoode Hall Law School and earned the gold medal and several other prizes. He was called to the bar in 1944, and was named a King's Counsel in 1950, the youngest person at the time to receive that distinction in the Commonwealth.

He practised with Kimber, Dubin, Brunner & Armstrong, which later merged with Tory DesLauriers & Binnington. He was counsel and a senior partner in the litigation department until he was appointed to the Ontario Court of Appeal in 1973. He was elected a bencher of the Law Society in 1966 until his appointment to the bench.

He became Associate Chief Justice of Ontario in 1987, and Chief Justice in 1990. He retired in 1996 and went back into private practice at Tory's. He was invested as an Officer in the Order of Canada in 1998.

Mr. Dubin sat as head of numerous royal commissions, including one into air traffic safety in 1979, and another into hospital procedures for the Hospital for Sick Children. Mr. Dubin is perhaps best known for the Royal Commission into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance in 1988, after Olympian Ben Johnson was stripped of his gold medal in Seoul. As a

result of his work, Canada established the Canadian Anti-Doping Organization in 1991, which is responsible for drug-testing in Canada. Twenty years later, the recommendations of the Dubin Inquiry have been implemented in the World Anti-Doping Agency (WADA).

His citation for the Order of Canada read: "He has had a profound and lasting effect upon the Canadian judiciary. As the former Chief Justice of the Ontario Supreme Court, he is one of Canada's most versatile legal counsel and dedicated public servants. His career has encompassed the full spectrum of the legal system including criminal, labour, corporate, public and constitutional law. His appointments to a number of royal commissions and inquiries are indicative of the high esteem in which he is held within the profession." ■

IN MEMORIAM

The Honourable Allan F. Lawrence, P.C., Q.C., LSM, 1925-2008



The Law Society of Upper Canada was saddened to learn of the death of the Hon. Allan F. Lawrence, P.C., Q.C., LSM, on September 6, 2008.

After serving in the Navy in World War II despite being under age, Mr. Lawrence graduated from Osgoode Hall Law School in 1954. He practised with the firm McLaughlin May and Soward until he ran for provincial public office in 1958, at the time the youngest-ever member of the provincial legislature. He held many cabinet posts as Minister of Mines, Minister of Northern Affairs, Attorney General and Minister of Justice. In 1965, Premier John Robarts appointed Mr. Lawrence to chair the first legislative committee on company law. The Lawrence Report of 1967 became the template for the *Ontario Business Corporations Act*.

In 1971, he was narrowly beaten by Bill Davis in the race to be the leader of the provincial Progressive Conservative party. Elected to federal parliament in 1972, he served as Solicitor General and Minister of Consumer and Corporate Affairs under Prime Minister Joe Clark. As a member of the Opposition, he served as chair of the Public Accounts Committee. He retired from politics in 1988.

Mr. Lawrence then devoted his considerable energies to working at the Law Society as an Ex-Officio Bencher, attending Convocation as an active contributor to proceedings. While he served on many different committees, his political experience at both the federal and provincial levels meant that he was in a unique position to advise on government relations. In

2002, he led a delegation from the Emerging Issues Committee to Washington to present the Law Society's position before the Securities and Exchange Commission on proposed rules governing lawyer conduct under the newly passed *Sarbanes-Oxley Act* of 2002.

He was also a long-standing member of the Heritage Committee, being keenly interested in the history of the legal profession and dedicated to preserving the heritage of Osgoode Hall.

Mr. Lawrence's advice was always judicious, considered and presented in a collegial manner. He was very knowledgeable, and at the same time receptive to new ideas. He was awarded the Law Society Medal in 2001. In 2005, he was presented with the Churchill Society Award for Excellence in the Advancement of Parliamentary Democracy.

His intelligence and humour will be missed by all those who knew him at the Law Society. ■

ACCESS TO JUSTICE

Law Society, PBLO and LAO launch Ontario Civil Legal Needs Project

THE LAW SOCIETY IS PARTNERING WITH PRO BONO LAW ONTARIO AND LEGAL AID ONTARIO IN A NEW PROJECT DESIGNED TO BETTER UNDERSTAND THE LEGAL NEEDS OF LOW AND MIDDLE-INCOME ONTARIANS AND DETERMINE HOW THE LEGAL COMMUNITY CAN BETTER MEET THOSE NEEDS. SUPPORT FOR THIS IMPORTANT INITIATIVE IS BEING PROVIDED BY THE LAW FOUNDATION OF ONTARIO.

The Ontario Civil Legal Needs Project complements the partners' shared mandate to facilitate access to justice for the people of Ontario. "The Law Society shares with the legal community an obligation to address barriers to justice such as the increasing number of unrepresented litigants and the rising costs of legal services," says Law Society Treasurer W. A. Derry Millar. "While identifying practical and feasible solutions

to address these issues is a complex task, an important step is developing an understanding of the civil legal needs of Ontarians and exploring solutions through direct dialogue."

"Benchers immediately recognized the need for this type of project, and the benefits will be numerous," he says. "We will be better able to identify potential service innovations. The project will also improve justice system co-ordination and

demonstrate the commitment of lawyers and paralegals to facilitating access to justice."

The Ontario Civil Legal Needs Project is the first comprehensive, empirically based study of unmet legal needs in Ontario. It comprises three main components to provide a holistic view of the civil justice system:

- *A survey of the civil legal needs of low and middle-income Ontarians* – An extensive survey of the public will provide Ontarians with the opportunity to discuss their legal needs and priorities and to help identify solutions to meet these needs. The survey will also help uncover needs that are not necessarily immediately recognized by the general public as legal. Other themes to be explored include the public's understanding of the different roles played by lawyers and paralegals and legal information requirements and the best mechanisms for delivery.

Congratulations to our newest Certified Specialists



The Law Society of Upper Canada is pleased to announce that the following lawyers have achieved the Certified Specialist designation. Certified Specialists have met established standards of experience and knowledge requirements in designated areas of law and have maintained exemplary standards of professional practice.

Citizenship and Immigration Law: Immigration

Randolph Keith Hahn (Toronto)
Gregory John Willoughby (London)

Civil Litigation

William David Black (Toronto)
Michael Clayton Bruder (Hamilton)
Christopher John Cosgriffe (Toronto)
Joseph Dallal (St. Catharines)
Donald R. Fiske (Toronto)
David H. Lauder (Toronto)
Darcy Richard Merkur (Toronto)
David Andre Morin (Huntsville)
Gregory Mitchell Sidlofsky (Toronto)

Corporate and Commercial Law

Jeffrey David Cowan (Toronto)

Criminal Law

W. Vincent Clifford (Ottawa)
Rosalind E. Conway (Ottawa)
Joseph Di Luca (Toronto)

Estates and Trusts Law

Andrew Donald MacKillop Felker (Pickering)
Stephen O'Donohue (Toronto)

Family Law

Philip W. Augustine (Ottawa)
Birkin J. Culp (Brantford)

Health Law

Neil M. Abramson (Toronto)

Intellectual Property Law

Arthur B. Renaud (Toronto)

Municipal Law: Local Government

Thomas Alan Richardson (St. Catharines)
Robert James Swayze (Caledon)
Harold Rogers Watson (Oakville)
William Harold White (Waterloo)

The entire list of Certified Specialists can be found in the online Directory of Certified Specialists at www.lsuc.on.ca.

Visit the Resource Centre at www.lsuc.on.ca to learn more about the Certified Specialist Program, or phone us at 416-947-3315 or 1-800-668-7380, ext. 3315.

- *A series of comprehensive focus groups with front-line legal and social service providers* – This phase will consist of a series of site visits and focus groups with front-line legal and social service providers. This will help identify gaps in services as well as emerging issues.
- *The mapping of existing access to justice programs* – This component will help policy makers and program administrators in Ontario's justice system better understand the existing

legal services capacity for low and middle-income Ontarians and to identify feasible and cost-effective opportunities for innovation.

The final report and recommendations will analyze the findings and establish a roadmap to help stakeholders in the legal and social services delivery systems establish priorities, allot existing resources effectively and identify opportunities for enhanced collaboration.

An important feature of the project is its broad focus. "The rising cost of legal

services is just one of a number of barriers to justice. However, legal needs are often interwoven with other social needs. By comparing legal needs against social factors such as income, family status and race, the project will help improve all related services – both legal and otherwise," says Treasurer Millar.

The initial planning phase for the project is currently underway, while the remaining phases will be implemented in 2009. ■

Mark your calendar for these important dates in 2009

January 2009

- Jan. 1** 2009 Annual Fees due.
- Jan. 1** Foreign Legal Consultants' annual renewal fee due for FLCs approved prior to April 2003. Failure to pay fee will result in expiry of licence. FLCs approved after April 2003 must pay annual renewal fee on anniversary month of approval.
- Jan. 19** Pre-Authorized Monthly Payment Plan (PAP) application due.
- Jan. 29** Convocation.
- Jan. 31** Affiliations annual filing report due.
- Jan. 31** Multi-Discipline Partnership annual filing report due.
- Jan. 31** Certified Specialist annual fee and annual certification report due. Failure to submit report and payment by this date will result in revocation of certification.
- Jan. 31** Lawyer Referral Service subscription fees due.
- Jan. 31** LAWPRO 2009 Fourth Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

February 2009

- Feb. 26** Convocation.
- Feb. 27** Deadline for nominations for the 2009 Law Society Medal, the Lincoln Alexander Award and the Laura Legge Award.

March 2009

- Mar. 6** LAWPRO Lump Sum Payment Discount Deadline. Cheques must be dated and received June 26 Convocation. by this date to qualify for the \$150 per lawyer discount on the LAWPRO insurance premium.
- Mar. 26** Convocation.
- Mar. 31** 2008 Member's Annual Report (MAR) due. 2008 Paralegal's Annual Report (PAR) due.

April 2009

- Apr. 30** Convocation.
- Apr. 30** LAWPRO 2009 Real Estate and Civil Litigation Levy Surcharge annual exemption form due.
- Apr. 30** LAWPRO 2009 First Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

May 2009

- May 1** Final date to pay annual Law Society membership fees. Failure to pay fees will result in referral for suspension on or about this date.
- May 13** Law Society Annual General Meeting.
- May 28** Convocation.
- May 31** Final date to file Multi-Discipline Partnership annual report. Failure to file by this date will result in referral for suspension on or about this date.
- May 31** Final date to file Affiliations annual report. Failure to file by this date will result in referral for suspension on or about this date.

June 2009

- June 25** Convocation.

July 2009

- July 29** Final date to file the Member's Annual Report (MAR) or Paralegal's Annual Report (PAR). Failure to file by this date will result in referral for suspension on or about this date.
- July 31** LAWPRO 2009 Second Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

September 2009

- Sept. 15** LAWPRO CLE Premium Discount deadline: Complete the online declaration by this date to receive the CLE premium credit on your 2010 insurance premium.

October 2009

- Oct. 1** Professional Corporation annual renewal application and fee due.
- Oct. 31** LAWPRO 2009 Third Quarter Real Estate and Civil Litigation Levy Surcharge filings and applicable payments due.

November 2009

- Nov. 2** LAWPRO E-filing deadline. LAWPRO renewal applications for 2010 professional liability insurance must be e-filed by this date to be eligible for the \$50 per lawyer e-filing discount.
- Nov. 9** Final deadline to submit LAWPRO renewal application for 2010 professional liability insurance.

December 2009

- Dec. 31** Certificate of Authorization for Professional Corporations who fail to renew by this date will expire.

Discrimination and Harassment Counsel

Have you experienced discrimination or harassment by a lawyer or paralegal?

You can contact the DHC 24 hours a day and leave a confidential message by voice-mail, fax or e-mail.

Toll-free telephone:

1-877-790-2200

Toll-free fax:

1-877-398-1100

E-mail:

assistance@dhcounsel.on.ca

You are not alone.

The Law Society's Discrimination and Harassment Counsel (DHC) has been working to help stop harassment and discrimination within the legal community for almost 10 years. The DHC are Cynthia Petersen, David Bennett and Lynn Bevan – they can provide confidential information and support on human rights issues.

The DHC can help you to:

- ❖ Identify discriminatory and harassing behaviour
- ❖ Understand your options
- ❖ Assess the advantages and disadvantages of each option
- ❖ Negotiate or mediate a resolution

Available free-of-charge to lawyers, paralegals, law students, articling students, law firm staff and the general public, the DHC operates independently from the Law Society.

The DHC also provides training on the prevention of harassment and discrimination for law firms and legal organizations.

Visit our website for model policies on:

- ❖ *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment*
- ❖ *Guide to Preventing and Responding to Harassment and Discrimination*
- ❖ *Guide to Developing a Policy Regarding Workplace Equity in Law Firms*
- ❖ *Guide to Developing a Policy Regarding Flexible Work Arrangements*
- ❖ *Guide to Promoting Accommodations within Law Firms*

Website: www.dhcounsel.on.ca



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